

State of Florida
Department of Financial Services
Invitation to Negotiate
DFS TR ITN 11/12- 12
Controlled Disbursement and Electronic Funds Transfer (EFT) Services

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Respondents are cautioned to read carefully and respond precisely and fully to all information contained on PUR Forms 1001, General Instructions to Respondents, and PUR 1000, General Contract Conditions which, except as modified by this Invitation to Negotiate (ITN), (which constitutes Special Conditions to PUR 1000 and PUR 1001) are incorporated and are attached as Attachments L and M to this ITN as well as any requirements specified in the Response itself. Forms PUR 1000 and PUR 1001 are also available online at: http://dms.myflorida.com/business_operations/state_purchasing/documents_forms_references_resources/purchasing_forms.

CAUTION: Respondents are also advised that Respondent shall submit a redacted version of the Response/Reply if Respondent considers any portion of the documents, data or records submitted in reply to this solicitation to be confidential, trade secret or otherwise not subject

to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority. This redacted copy shall be clearly titled "Redacted Copy." FAILURE TO PROVIDE A REDACTED VERSION WHEN CONFIDENTIALITY IS CLAIMED BY THE VENDOR MAY BE CAUSE FOR DETERMINATION OF NON-CONFORMANCE. **FAILURE TO PROTECT A TRADE SECRET SHALL CONSTITUTE A WAIVER OF ANY CLAIM OF CONFIDENTIALITY AND THE DEPARTMENT MAY RELEASE THE REQUESTED DOCUMENT IN RESPONSE TO A PUBLIC RECORDS REQUEST.**

Respondents are further reminded that conditions and specifications that are considered mandatory requirements are expressed with the word "shall" or "must" in the description of the requirement. ITN Responses which fail to demonstrate both willingness and ability to comply with such a condition or specification will be considered non-responsive and will be disqualified.

SECTION 1: INTRODUCTORY SECTION

1.1 Purpose

Pursuant to section 287.057, Florida Statutes, the State of Florida Department of Financial Services ("Department") seeks Responses to this Invitation to Negotiate (ITN) from qualified vendors ("Respondent") interested in undertaking banking services related to the State of Florida's Electronic Funds Transfer (EFT) and Controlled Disbursements and their settlements. Operating requirements provide it necessary for a Respondent to maintain a full service branch in Tallahassee, Florida, in order to be considered for this contract.

1.2 Contact Person –Purchasing Agent

Refer ALL inquiries to the Purchasing Agent/Procurement Officer. The Purchasing Agent is the sole point of contact from the date of release of this ITN until selection of a successful Respondent. All procedural questions and requests for clarification of this solicitation shall be submitted in writing to:

Department of Financial Services
Attn: Michelle McBride, Purchasing Services
200 E. Gaines Street, Larson Building
Tallahassee, FL 32399-0317
Fax: 850.413.2070
Email: michelle.mcbride@myfloridacfo.com

Between the release of the solicitation and the end of the 72-hour period following the agency posting of the notice of intended award, excluding Saturdays, Sundays, and state holidays, Respondents to this solicitation or persons acting on their behalf shall not contact any employee or officer of the executive or legislative branch concerning any aspect of this

solicitation, except in writing to the Purchasing Agent as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a Response. The Department will not talk to any vendors or their agents regarding a pending solicitation. Please note that questions will NOT be answered via telephone. Responses to questions posed to the Purchasing Agent in writing will be posted on the Vendor Bid System (“VBS”) website, at http://myflorida.com/apps/vbs/vbs_www.main_menu (modifies PUR 1001 ¶5).

1.3 Purchasing Instructions and General Conditions

PUR Form 1001, General Instructions to Respondents (Attachment M) and PUR Form 1000, General Contract Conditions (Attachment L), except as modified by these Special Conditions, are incorporated and are attached. They are also available online at http://dms.myflorida.com/business_operations/state_purchasing/documents_forms_reference_s_resources/purchasing_forms.

1.4 Timetable

The following schedule will be strictly adhered to in all actions relative to this solicitation:

Date/Time	Action	
	Release of solicitation	May 8
Phase I		
	Initial Responsiveness Phase Last day for written inquiries	May 17
	Initial Responsiveness Phase Written responses to inquiries posted	May 22
	Initial Responsiveness Phase Response submissions due	June 1
	Estimated selection of qualified respondents	June 5
Phase II		
	Technical Phase Last day for written inquiries	June 13
	Technical Phase Written responses to inquiries posted	June 18
	Technical Phase Response submissions due	June 29
	Estimated selection of Replies to commence negotiations	July 23
	Estimated posting of Intent to Award	TBD

The Department reserves the right to make adjustments to this schedule and will notify participants in the solicitation. Adjustments to the schedule will be announced to all Respondents who have expressed interest by participating in the events listed in the table above.

The Department reserves the right to issue addenda to the ITN. Notice of any addenda will be posted to the Vendor Bid System. Such notice, if required, will contain the appropriate details for identifying and/or reviewing the formal changes to the ITN. Each Respondent is responsible for monitoring the site for new or changing information concerning this ITN. See “Vendor Bid System” at http://myflorida.com/apps/vbs/vbs_www.main_menu.

A vendor who holds the existing contract for substantially the same or functionally equivalent services or products (incumbent vendor), or a vendor who develops a program for implementation according to s. 287.057 (17), F.S., must, prior to an agency issuance of a solicitation or if discovered after solicitation posting, before solicitation response to questions, provide a mitigation plan and provide all documentation supporting a description of the technical and service requirements. If such mitigation plan is not provided 24 hours prior to the due date for solicitation response to questions to be posted, such vendor's solicitation response, if competing, may be deemed nonconforming or the Department may subtract evaluation points from the evaluation of the vendor's Response for failure to provide a timely mitigation plan.

1.5 Respondent's Conference

There will not be a Respondent's conference.

1.6 Definitions

Solicitation Definitions:

1.6.1 "Business days" include Monday through Friday, inclusive, except for holidays declared and observed by the state government of Florida. "Day" means business day (defined as the Department's normal working hours) unless otherwise described.

1.6.2 "Business hours" means 8AM to 5 PM on all business days.

1.6.3 "Calendar days" means all days, including weekends and holidays, except that if the last day counted falls on a weekend or holiday, the due date shall be the next business day thereafter.

1.6.4 "Chargebacks," unless indicated refers to the reversal of a prior outbound transfer of funds from a consumer's bank account, line of credit, or credit card.

1.6.5 "Contract," unless indicated otherwise, refers to the contract that will be awarded to successful Respondents under this ITN.

1.6.6 "Contractor," unless indicated otherwise, refers to a business entity to which a contract has been awarded by the Department in accordance with a Response submitted by that entity in response to this ITN. This may also be referred to as "Provider".

1.6.7 "Department" means the Department of Financial Services, or Chief Financial Officer. Terms may be used interchangeably. This may also be referred to as "Buyer" or "DFS".

1.6.8 "Desirable Conditions" designated by the use of the words "should" or "may" in this solicitation indicate desirable attributes or conditions, but are permissive in nature.

Deviation from, or omission of, such a desirable feature, will not in itself cause rejection of a Response.

1.6.9 "Electronic Payments," means a payment made over the Internet, Phone or at the Point of Sale using a Debit Card, Credit Card, ACH, electronic check or EFT.

1.6.10 "ITN" refers to this Invitation to Negotiate and includes attachments to this Invitation to Negotiate unless stated otherwise.

1.6.11 "Mandatory Requirements," means that the Department has established certain requirements with respect to Responses to be submitted by Respondents. The use of "shall" or "will" (except to indicate simple futurity) or "must" in this solicitation indicates compliance is mandatory. Failure to meet mandatory requirements will cause rejection of the Invitation to Negotiate Response or termination of the contract.

1.6.12 "Minor Irregularity," used in the context of this solicitation and contract, indicates a variation from the Response terms and conditions that does not affect the price of the invitation to Negotiate, does not give the Respondent an advantage or benefit not enjoyed by other Respondents, or does not adversely impact the interests of the Department.

1.6.13 "Respondent" means the entity that submits materials to the Department in accordance with these Instructions. This may also be referred to as "Vendor" or "Proposer". The solicitation response may be referred to as "Proposal", "Bid", "Reply", or "Response".

1.6.14 "Vendor Bid System" and "VBS" refer to the State of Florida internet-based vendor information system at http://myflorida.com/apps/vbs/vbs_main_menu.

Technical Definitions:

1.6.15 "A&A" means the Department of Financial Services, Division of Accounting and Auditing.

1.6.16 "ACH" means Automated Clearing House.

1.6.17 "DEO" means the Department of Economic Opportunity, with the State of Florida.

1.6.18 "Effective Date" means settlement date or payment date.

1.6.19 "EFT" means Electronic Funds Transfer, an electronic payment method.

1.6.20 "ERP" means Enterprise Resource Plan.

1.6.21 "FLAIR" means Florida Accounting Information Resource. This is the State of Florida's current accounting system. (See section 215.93, Florida Statutes)

1.6.22 "FRB" means Federal Reserve Bank

1.6.23 "Issue" or "Issue file" means a file used to update the Treasury Warrants Application, described in section 1.8.1.

1.6.24 "NACHA" means National Automated Clearing House Association.

1.6.25 "Technical Documentation" has the meaning given in ITN section 3.3.4.1 B1.

1.6.26 "RDFI" or Receiving Depository Financial Institution means

1.6.27 Re-employment Assistance, referred to as "UC" or Unemployment Compensation prior to July 1, 2012, (See Chapter 2012-30, Laws of Florida) means any compensation payable under state law, including amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances for unemployment.

1.6.28 "Warrants Applications" means Treasury's internal warrants accounting system.

1.6.29 "Warrant Disbursement," the payment of issued warrants through the Treasury disbursement account.

1.6.30 "Warrant Negotiations," the cashing and depositing of issued warrants by the Respondent.

1.7 Solicitation Terms and Conditions

The provisions of this solicitation, including the ITN and all its attachments, shall be read as a whole. In case of conflict between provisions, provisions shall have the order of precedence listed below, where the top listed item has the highest precedence:

- The Contract as amended by any written amendments
- Statement of Work or Scope of Work
- Remaining ITN Sections
- Other attachments to the ITN
- General Instruction to Respondents (PUR 1001)
- General Contract Conditions (PUR 1000)
- Any purchase order under the Contract
- Respondent's Response as modified by any applicable best and final offer

If there are any perceived inconsistencies among any of the provisions of the ITN and its attachments, Respondent shall bring these inconsistencies to the attention of the Department prior to the submission of the Response. To report inconsistencies, Respondent must submit a formal question prior to the submission of a Response.

The Contract, Attachment D, after completion of negotiations and execution by the parties, will include the ITN document. The contract that results from this solicitation will be posted on the Internet according to the state's Transparency Act..

In submitting its Response, a Respondent agrees that any inconsistent or contrary terms or conditions in its response, whether submitted intentionally or inadvertently, shall have no force or effect unless expressly negotiated into the final Contract, and that the Department shall not be held to have acquiesced to such terms or conditions. Failure to comply with terms and conditions of the ITN, including those specifying information that must be submitted with a Response, shall be grounds for rejecting a Response. [Modifies PUR 1001 ¶4]

1.8 Background

1.8.1 Overview

Treasury, a division of the Department, currently verifies, audits, and authorizes the payment of warrants and other disbursements issued by A&A. On a daily basis, Treasury receives an Issue file from FLAIR. This Issue file includes issued warrants, EFT settlements amounts, stop payment orders, and cancellations. This file is used to update the Treasury warrants application. The Issue file includes the following information: issue date, warrant type, warrant number, duplicate status, amount, and state account code. It holds 13 months of warrants issued at any given time. The system escheats stale dated warrants greater than twelve months old.

The Respondent will enter into a contract with Treasury to provide controlled disbursement and EFT services. This will include two (2) accounts. One account will be used to pay Re-employment Assistance warrants and EFT clearings. The second account will be used to pay

all other warrants and EFT clearings issued by A&A. The Respondent's responsibility will be to receive the daily warrant and EFT clearings. The Respondent will read and image the data using a sorter. The resulting file created by the Respondent will be compared to the Treasury's Issue file. The same day the Respondent will receive an online real-time report detailing exception items that shall not be paid. Using proper banking rules, the Respondent will process the exceptions for their own file. Once determined by the Respondent, the warrants that should be paid will be sent electronically to the Treasury. Treasury will receive this file through an overnight batch process. Treasury will use the Respondent's report to compare to the Treasury issue file to determine exceptions. There will be one day between the time the Respondent processes its file and the day Treasury processes its file. During this day between the files, stop orders and cancellations may have been added to the Treasury Issue file. Once Treasury has determined, accounted for, and returned all the exceptions to the Respondent; if necessary, Treasury will update the Issue file with the paid information and the paid warrant file will be transmitted electronically to FLAIR daily.

The paid warrants will be imaged by the Respondent. The Respondent will provide DVDs or CDs of these images to the Department weekly. The Respondent will store the physical warrants for three months. After three months, the Respondent will provide a written certification of the destruction of the warrants; the certification will include the warrants destroyed.

As mentioned above, A&A issues disbursements for the State of Florida. One method of payment is EFT. A&A is responsible for all EFT's except those related to Re-employment Assistance. A&A will utilize an ACH payment method to send EFT files to the Respondent. The EFT files will contain payroll, retirement, and other vendor payments. The Department of Economic Opportunity will transmit a file with Re-employment Assistance EFT information to the Respondent for disbursements. The Respondent will perform the ACH transmissions for both files on the State's behalf. The Respondent will credit the payee's account and debit the proper designated Treasury bank account for funding. The Respondent will transmit a daily Notice of Change and Consolidated Returned Items file to A&A for EFT disbursements; additionally, a daily Notice of Change and Consolidated Returned Items file will be sent to the Department of Economic Opportunity for Re-employment Compensation EFT disbursements.

Upon receiving the file, A&A will determine if the returned items will be reissued as warrants, or returned to the state through an ACH to a Treasury designated account. A&A will dispute any payments returned in error. A daily file will be downloaded from the Respondent's proprietary web based system of previous day activity.

1.8.2 Current System Functionality

The Department currently provides information to the Respondent via the internet using Secure Shell FTP (SSH SFTP).

The Department currently obtains information (1) by logging on to the Respondent's web-based system, or (2) through information/report(s) sent to the Department by the Respondent.

1.8.3 Objectives

The State's disbursement system has been in operation for more than 30 years. The Respondent will be responsible for providing disbursement services, including warrants and EFTs, according to contract terms and specific to the needs of the State. The vendor will be required to process, settle, and provide reporting for all disbursements at contracted rates. It is anticipated that the contract services will begin October 1, 2012 and run through **September 30, 2015** with an option in the Department's sole discretion for a renewal for three years. Any renewal is subject to Section 2.1 of this ITN and shall be contingent upon very high performance evaluations by the Department.

SECTION 2: TECHNICAL SPECIFICATIONS AND STATEMENT OF WORK

2.1 Scope

The Department is seeking a qualified financial institution to provide banking services related to the State of Florida's Electronic Funds Transfer (EFT), warrant disbursements, and their settlement. Respondents may offer other services and/or products that they believe to be beneficial and/or adds value to the EFT and Warrant Disbursement process at the approval of the Department. The minimum requirements and deliverables are summarized below and attached as Attachment C.

2.2 Minimum Mandatory Requirements

The Respondent must do the following related to the minimum mandatory requirements:

- 2.2.1 Maintain a full service branch in Tallahassee, Florida.
- 2.2.2 Maintain separate demand accounts for:
 - 2.2.2.1 FLAIR warrants and EFTs- this is a controlled disbursement account and will be assigned as a Master Account for funding purposes. The Treasury will fund this account through incoming wire transfers.
 - 2.2.2.2 Re-employment Assistance warrants and EFTs- This is a controlled disbursement account. The Department of Economic Opportunity will fund this account through incoming wire transfers originated by the U.S. Treasury and over-the-counter deposits.
- 2.2.3 Maintain an account with a branch of the Federal Reserve Bank (FRB) of Atlanta. The Treasury has a unique FRB transit number. This transit number will be encoded on all warrants and/or ACH debits except for the Re-employment Assistance activity. The transit number and designated account number of the Respondent will be encoded on state Re-employment Assistance warrants and/or ACH debits.

- 2.2.4 Have been designated as a “Qualified Public Depository” by the Treasury and collateralize the accounts in accordance with Chapter 280, Florida Statutes.
- 2.2.5 Certify that respondent will provide one hundred eighty (180) days written notice for Respondent’s system changes that affect reports received by the Respondent from the Department and reports received by the Department from the Respondent.
- 2.2.6 Certify that respondent’s internal controls will meet the minimum mandatory requirements described in ITN section 3.4.6 and that respondent will provide for approval by the Department within 30 days of execution of the contract and annually thereafter, documentation of internal controls related to the confidential information maintained pursuant to the provisions of the Florida Public Records Act, Chapter 119, Florida Statutes and its exceptions.

2.3 Scope of Work

The Respondent will perform the following tasks related to electronic payments:

- 2.3.1 Timely and accurately transmit and record Electronic Payments.
 - 2.3.1.1 Accept all wire transfers and other transfers into the above accounts from 2.2.2 to cover warrants and/or ACH debits paid, and give the Treasury immediate credit for, and use of such deposits.
 - 2.3.1.2 Process outgoing wire transfer requests initiated by the Treasury immediately, but no later than thirty (30) minutes after receipt of the instructions from the Treasury’s investments section. Outgoing wire requests may be originated via telephone, Enterprise Resource Plan, or the Respondent’s proprietary software.
 - 2.3.1.3 Establish templates for repetitive outgoing wires through Respondent’s web based system.

The Respondent must perform the following tasks related to Accounts Management:

- 2.3.2 Accounts Management
 - 2.3.2.1 Provide account information to assist the Department and the Department of Economic Opportunity in performing their daily processes.
 - 2.3.2.2 In the event of an overdraft, though unexpected, the account balance will be compensated for the following business day.
 - 2.3.2.3 Provide one day availability on all checks deposited into the Re-employment Assistance Warrant and EFT account. Cash, EFT receipts, and other “ready money” deposits will receive same day credit.
 - 2.3.2.4 No holds will be placed on funds deposited into the accounts.
 - 2.3.2.5 Provide a means to identify and return any and all unauthorized debits through positive pay. The Treasury will give the Contractor information on legitimate debits. All others will be returned to the originator and not posted to the Treasury’s accounts.

- 2.3.2.6 Process returned items received from the Treasury. A returned item is a warrant charged against the Treasury's accounts that cannot be paid for reasons including, but not limited to stale-dated, altered, stopped payment, previously paid, and not on the issue file. All returned items must be credited to the Treasury's accounts within two (2) Business days after receipt of the item(s) from the Treasury.
- 2.3.2.7 Pre-audit warrants and ACH debits presented for payment.
- 2.3.2.8 Prepare a final paid warrant and ACH debit file for daily submission to the Treasury. This file must be completed after the pre-audit requirements.

2.3.3 Warrant Negotiations

The Respondent must perform the following tasks related to Warrant Negotiations:

- 2.3.3.1 Negotiate state warrants payable to individuals if the following conditions exist:
 - 2.3.3.1.1 The warrant is not altered.
 - 2.3.3.1.2 The warrant is not stale dated (older than twelve (12) months).
 - 2.3.3.1.3 The presenter of the warrant is the payee and will present a form of identification acceptable to the Respondent.
 - 2.3.3.1.4 A fee of not more than \$1.00 per warrant may be charged to the payee for this service by the payer. Other than the payer's charge the Respondent shall not charge a fee to the payee for this service.
- 2.3.3.2 Redeposit checks that have been deposited into the Re-employment Assistance warrant and EFT account and returned Not Sufficient Funds through the banking system one additional time. If these items are returned a second time, they will become chargebacks to the Treasury. Chargebacks shall be posted to the account of original deposit.
- 2.3.3.3 Endorse all state warrants "PAID, FLORIDA STATE TREASURY" prior to imaging.
- 2.3.3.4 Implement and maintain a quality control program internally that ensures the quality and accuracy of the warrant images and index. The Respondent shall provide copies of warrants at no charge when the image does not satisfy the needs of the Treasury, or if an image is missing.
- 2.3.3.6 Store the paid warrants until imaged. Once imaged, the warrants can be destroyed. The Respondent will provide a written certification to the Treasury listing the paid date range of the warrants destroyed. This certification is to be signed by a representative of the Respondent and provided to the Treasury no later than the 10th working day of the month following the destruction. The Respondent must provide documentation of their internal control procedures related to the destruction and storage services.
- 2.3.3.7 Furnish upon request the original paid item unless previously destroyed. If destroyed or lost, the Respondent must provide a certified copy of the paid warrant.
- 2.3.3.8 Provide online access on a daily basis and one (1) compact disk (CD) on a weekly basis containing images of all warrants paid (front and back) on a

given day by bank account. The container holding the CD shall be labeled “Bank Account Number = XXXXXXXX” and “Warrant Paid Date = MMDDYYYY”. With the CDs the Respondent must provide self loading software to view and search the images. At a minimum, the index shall include warrant number, bank sequence number, paid date and amount to facilitate the search capability.

- 2.3.3.9 Provide electronic access to the State of Florida’s data using the Respondent’s proprietary Web site. This software shall include reporting, wire origination and ACH origination capabilities including ACH credits and debits. The proprietary software must provide that access to certain functionality is restricted based on user identifications (IDs). This software shall also include previous day and current day reporting and shall have download functionality.
- 2.3.3.10 Process return items received from the Treasury. A returned item is a warrant charged against the Treasury’s accounts that cannot be paid for reasons including, but not limited, to stale-dated, altered, stopped payment, previously paid, and not on issue file. As stated in the background above, the Treasury processes paid warrants against its internal issue file after the paid file is received from the Respondent. All returned items must be credited to the Treasury’s accounts within two (2) working days after receipt of the item(s) from the Treasury.
- 2.3.3.11 Give immediate credit on all warrants returned to the Respondent by the Treasury determined to be forged items or improper endorsements. An affidavit attesting to the status of the warrant will accompany these returned warrants. The Respondent will make a good faith effort to collect these returned warrants through the banking system. If payment of these warrants is disputed by another financial institution, the Respondent will assist the Treasury in the collection of the warrant by contacting the financial institution by telephone or letter and providing timely documents, witnesses and other reasonable litigation assistance to the State of Florida in legal action against the disputing financial institution, if requested.

2.3.4 Disaster Recovery

The Respondent must do the following regarding disaster recovery:

- 2.3.4.1 Have a plan assuring business continuity for the Department in the event the Respondent’s ability to perform required services is affected.
- 2.3.4.2 Provide full service ACH and wire origination within the same banking day of a disaster or event.
- 2.3.4.3 Resume standard warrant processing within 24 hours of the event.
- 2.3.4.4 Provide the orders of succession for key managers and key staff that the Department regularly works with in the course of business. The information would include successor’s name, regular and emergency phone, and email address. This list would provide a primary and two back up contacts for each

function. The Respondent will provide notification of any changes within 24 hours of said change.

- 2.3.4.5 As part of the business continuity plan, define the Respondent's role in assisting the Department and the Department of Economic Opportunity in establishing an acceptable back up methodology, which shall not be inconsistent with the Department's security and compliance requirements, if the ACH file transmission cannot occur through the file transfer specifications in 2.3.5.1 below.

2.3.5 EFT Origination

The Respondent must do the following regarding EFT Origination:

- 2.3.5.1 Receive, examine, and verify for accuracy the Daily ACH origination file(s) received for transmission from A&A. The file submission from A&A will be for the Department and the file submission from the Department of Economic Opportunity will be transmitted from the Department of Economic Opportunity. The A&A origination files will be transmitted via the internet using Secure Shell FTP (SSH SFTP.) The Department of Economic Opportunity origination file will be encrypted and then sent regular FTP. A&A will fax the transmission totals ("transmission report") for both the Department originated ACH files and the Department of Economic Opportunity originated ACH files to verify the dollar amount, item count, and effective date on the file received by the Respondent. The Respondent will verify the accuracy of the totals and send confirmation back to A&A with a financial institution representatives' signature via fax or electronic means. The Respondent's confirmation shall be sent to A&A within one hour after the file and transmission reports are received. Response time is critical to ensure adequate time to provide for the Department to resolve any problems and to resend the file, if necessary.

2.3.5.1.1 The ACH origination file for designated payrolls, as well as the combined monthly payroll, retirement files, and international ACH transactions will be transmitted to the Respondent three (3) days before the effective date. The ACH origination file for on-demand payroll, collections payroll, and vendor payments are one (1) day before the effective date. The transmission will occur by 12:00 p.m. eastern time (ET); however shall any delays occur; the transmission will be sent as soon as possible. There may be instances where more than one payroll file has the same effective date as another payroll file, thus two (2) transmissions for payroll would be made on one (1) day.

2.3.5.1.2 The ACH origination file will be transmitted to the Respondent two (2) days before the effective date of each Re-employment Assistance benefits payment file. The normal transmission time will be prior to 3:00 p.m. ET; however, shall any delays occur, the transmission will be sent as soon as possible.

- 2.3.5.2 The Department will contact the Respondent by 11:00 a.m. the day after an ACH file has been transmitted to the Respondent for the purposes of deleting items from payroll files before they are transmitted to the FRB. The Department will provide the documentation for the deleted items currently via fax transmission (refer to Technical Documentation). A list of Department personnel who are authorized to make the request will be provided by A&A. Deleted items will be credited to the EFT Return Account on the settlement date. The Respondent will provide written confirmation no later than 4:00 p.m. EST containing the total dollar amount and count of deleted items processed, signed by the financial institution's representative. This will allow the Department to return the funds to that originating state account by cancellation and reissue if necessary.
- 2.3.5.3 Assist with any ACH items that need to be traced through the ACH system. Maintain a detailed list of all transactions sent through the ACH system, as well as items to be posted to accounts residing with the Respondent ("on us items"). For the purpose of verifying transmission and assisting the Receiving Depository Financial Institution (RDFI) in locating payments, the list must contain the following: trace identification number and a differentiation between "on us" items, or items sent to the FRB. The Department will supply the Respondent the identifying information (i.e. payee name, amount, effective date) for any originated item that needs to be traced. The Respondent will initiate trace procedures and report the results back to the Department within 24 hours.
- 2.3.5.4 Represent the Department's interest in resolving items in dispute and dispute items improperly returned consistent with NACHA guidelines.
- 2.3.5.5 Process any ACH reversal request received within the proper timeframe pursuant to NACHA guidelines.
- 2.3.5.6 Credit ACH returns to the account of original charge as soon as received. Return item documentation will be communicated to the Department by secure fax or other electronic means as received. If sent by other electronic means, Respondent is required to encrypt the documentation to ensure confidentiality. The documentation will contain at a minimum: payee name, amount, effective date, reason, individual identification number, trace numbers and sending company ID number.
- 2.3.5.7 Acknowledge that all direct deposits are exempt from the provisions of Chapter 119, Florida Statutes; therefore, strict confidentiality must be maintained.
- 2.3.5.8 Process wire transfers as ordered by the department.
- 2.3.5.9 Process Notice of Changes and Consolidated Returns file on a daily basis for the previous day's activities to A&A and Department of Economic Opportunity for their respective accounts. The format and transmission specifications are shown in the Technical Documentation. The Department sends multiple ACH files within a business day. The Respondent would be required to transmit a consolidated returns file to the Department for the ACH activity that occurred within the same business day.

2.3.6 Positive Pay with Payee Match and Perfect Presentment Services

The Respondent must do the following regarding positive pay with payee match and perfect presentment services:

- 2.3.6.1 Perform a daily check reconciliation process to detect fraudulently issued checks. The Respondent on a daily basis will match issued checks against all checks presented for payment. Treasury will then have the opportunity to make pay/return decisions for each exception item(s).
- 2.3.6.2 Pre-audit warrants and ACH transactions presented for payment. The Respondent will be given read only access to the Treasury's warrant issue file to match daily warrant and ACH debit work against the Treasury records. Any errors and/or returned items are to be corrected or returned to the sending financial institution prior to the delivery of the paid file to Treasury. Copies will be made of all warrants that are returned to the sending financial institution and forwarded daily, along with reporting products to the Treasury. The layout specifications including MICR information for FLAIR produced warrants are shown in the Technical Documentation. The file transfer specifications are shown in the Technical Documentation.

2.3.7 Analysis Credit for Remaining Balances

The Respondent must do the following regarding analysis credit for remaining balances:

- 2.3.7.1 Provide that any balances remaining in the account after all warrants and/or ACH debits are paid for the day shall earn analysis credit at an interest rate, which is the average of the thirteen-week Treasury bill coupon equivalent rates reported in the four weekly auctions immediately preceding the calculations, with a minimum rate of 1%. If analysis credits exceed banking fees for a period, the net analysis credit shall be rolled into the next month's fee calculation.

2.3.8 Forgeries

The Respondent must do the following regarding forgeries:

- 2.3.8.1 The Respondent must process forgeries for 48 months from the date of the issuance of the original warrant as required by the Department in Administrative Code Rule 69I-10.082.
- 2.3.8.2 The Respondent must process all forgeries for the Department. The Department is not subject to Uniform Commercial Code guidelines.
- 2.3.8.3 Forgery affidavits filed by the Department will be accepted by the Respondent within 30 days of receipt by the Treasury.
- 2.3.8.4 Debits related to provisional credit must be approved by the Department prior to debiting the accounts.

The Department will include a process in the contract for testing, inspection and acceptance of deliverables.

2.4 Additional Pricing for Payment Functions Optional to the Department

The Department is seeking additional pricing to provide warrant and EFT processing services to replace the payment functions currently handled by the Department including:

1. Distribution of State Warrants for expense, public assistance, re-employment assistance, salary, and retirement payments.
2. Processing of ACH payments for expense, re-employment assistance, salary, and retirement payments.

The Department may exercise this pricing and service option at any point during the life of the contract, or may forgo this option completely. Services in Section 2.4 of this ITN are in addition to services required in Statement of Work Section 2.3.

The Department of Economic Opportunity (DEO) administers the Re-employment Assistance program, which provides a debit card option for recipients. The Re-employment Assistance debit card program is not part of this ITN. The warrants and ACH payments associated with the Re-employment Assistance program are part of this ITN.

The Department currently prints all State warrants drawn from the State Treasury and initiates most ACH payments from the State Treasury except for the Re-employment Assistance program. The Department maintains the ACH authorizations for all employees, retirees from the State Retirement System, and all vendors. The Department of Economic Opportunity currently maintains the ACH authorizations for Re-employment Assistance benefit recipients.

2.4.1 The Respondent shall offer services to print State warrants and/or provide electronic distribution of state funds via ACH transactions. Respondents can provide responses for both warrant and ACH services, or just ACH services.

2.4.2 In the case of ACH, the Contractor will be responsible for establishing and maintaining payment authorizations for payees. The Department will provide the Contractor with initial ACH authorization files for all active authorizations upon initiation of the contract. The Department will provide the Contractor payment files each night for the various payment types and payment methods. The file formats for these files can be found in the Technical Documentation. The Contractor will be responsible for distributing funds to the recipients according to their payment authorizations and for ensuring the funds reach the intended recipients.

2.4.3 If State warrants are produced, the Department must approve the warrant form used by the Contractor prior to its implementation. The Department reserves the right to require the Contractor to make warrant form changes at anytime during the life of the

contract at no additional cost. The Contractor will be given a reasonable amount of time to make such changes (usually 30-60 days).

- 2.4.4 The Contractor will be responsible for providing daily detailed files back to the Department confirming how payments were distributed (via warrant or ACH). In addition, the Contractor will be required to provide a daily authorization file to the Department which contains all ACH authorizations related to state payments being made under the contract (e.g., payee IDs, Names, bank account numbers, routing transit numbers, authorization statuses, etc.).
- 2.4.5 The Contractor must also provide a secured website for Department staff and payees/vendors to view detailed payment information, remittances, etc.
- 2.4.6 The Contractor must also offer to interview for employment any displaced Department staff resulting from the transfer of these payment function services to the Contractor.
- 2.4.7 The Department distributed the following warrant and EFT counts for the 2010-2011 fiscal year:

Payment Type	EFT Count	Warrant Count	Total
Expense	662,829	1,441,429	2,104,258
Payroll	3,418,863	98,902	3,517,765
Retirement	3,339,586	482,591	3,822,177
Re-employment Assistance	11,438,251	6,803,173	18,241,424
Total	18,859,529	8,826,095	27,685,624

Due to economic conditions during the 2010-2011 fiscal year, the Re-employment Assistance benefit counts were unusually high. The Re-employment Assistance volume has decreased dramatically in the 2011-2012 fiscal year. Estimated warrant and EFT counts that should be used for proposing on this ITN are as follows:

Payment Type	EFT Count	Warrant Count	Total
Expense	750,000	1,500,000	2,250,000
Payroll	3,400,000	90,000	3,490,000
Retirement	3,500,000	480,000	3,980,000
Re-employment Assistance	4,800,000	546,000	5,346,000
Total	12,450,000	2,616,000	15,066,000

- 2.4.8 Respondents are required to provide additional pricing for this section in Attachment A-2. Pricing should be presented on the price sheet by payment type and be based on the Department's transaction estimates per year provided above and on Attachment

A-2. Respondents may respond with a price for ACH Transactions only or both State Warrants and ACH Transactions. Price per payment type should incorporate all charges inclusive to Section 2.4 for the offered Transactions, including the following:

State Warrants:

1. Costs for warrant form stock with required security features (e.g., borders, seals, watermarks, etc.)
2. Costs for processing daily warrant print files from the Department
3. Costs for printing required payment information on the warrant
4. Distribution costs (envelopes, stuffing costs, postage, etc.)
5. Initiating daily detailed payment files to the Department, confirming individual payments and methods of payment
6. Customer service support to the Department and payment recipients
7. Ability for Departmental staff and vendors/payees to view payment information on the web

ACH Transactions:

1. Establishing and maintaining all payment authorizations, including control procedures to ensure authorizations are valid and payments are distributed to the proper payees
2. Processing daily payment files from the Department
3. Initiating daily detailed payment files to the Department, confirming individual payments and methods of payment
4. Initiating daily authorization files to the Department
5. Customer service support to the Department and payment recipients
6. Ability for Departmental staff and vendors/payees to view payment information on the web
7. Process returned items. Procedures for processing returned items may vary by payment type. Some returned items will be required to be sent back to the Department for further handling on a daily basis.

2.5 Modifications

The Scope of Services represents what the Department believes to be in the best interest of the State. The Department reserves the right to change, add, or delete any requirement from the Scope of Services if the Department deems it to be in the best interest of the State. In addition, the Department reserves the right to withdraw and/or cancel this solicitation at any time, at no cost to the State, prior to a duly authorized and executed contract.

SECTION 3: SPECIAL CONDITIONS

3.1 Response Contents and Format

Respondents are encouraged to minimize redundancy and provide concise responses. Provide a straightforward description of services to be provided and capabilities to satisfy the requirements of this ITN. Follow the outline below:

The number, order, and labeling of the tabs should be as specified in this section. Each tab should be labeled as indicated; for example, Tab A shall be labeled "Cover Letter and Executive Summary – Technical Response Section A." Detailed instructions for each section of the response are as follows:

3.1.1 Tab A - Cover Letter and Executive Summary– Technical Response Section A

The cover letter shall be on the letterhead of the entity submitting the Response. The letter shall be addressed to the Department's Purchasing Agent, must be dated, and signed by an individual who has the authority to bind the Respondent. The Respondent must state that it agrees to each of the Department's technical requirements of this ITN to qualify for selection under this ITN.

Tab A-1 Respondent's Statement of Agreement

Letter of Certification

Provide a Letter of Certification, signed by the Respondent, as follows:

1. Include a statement that the firm has operated a Controlled Disbursement Account business for a minimum of five (5) consecutive years. If the Respondent is the local resident manager/representative for a nationwide company, this fact shall be indicated in the certification. The local business address from which the firm operates, business telephone/cell phone number(s), and the name of a local contact person must also be included in the Response.
2. Include Respondent's certification as to the accuracy of the Response.
3. Include a statement that Respondent agrees to not seek indemnification from the Department for any costs or services.
4. If the Respondent's response is for goods or services of \$1 million or more, the Respondent shall certify that the Respondent as a company as defined in s. 287.135, F.S., is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. (See <http://www.state.gov/s/ct>)
5. Certify acceptance and compliance with all of the Terms and Conditions detailed in PUR 1000 (Attachment L) of the ITN document as modified by Special Conditions to this ITN.
6. Certify acceptance and compliance with all of the Terms and Conditions detailed in PUR 1001 (Attachment M) of the ITN document as modified by Special Conditions to this ITN.
7. Provide completed pricing worksheets with the Technical Responsiveness phase as noted in Attachment A of the ITN document if determined to be a qualified Respondent in the Initial Responsiveness phase of this ITN.
8. Certify that you have or will provide before contract signing proof of proper filings with the Department of State, and be eligible to conduct business with the State of Florida.

9. Certify that you have or will provide before contract signing proof of registration with the Department of Management Services as required by Rule 61A-1.030, Florida Administrative Code.
10. Certified understanding and agreement with all items in the Minimum Mandatory Requirements (Section 2.2) of this solicitation, or supply functionally equivalent alternatives.
11. Include the names, titles, addresses (including e-mail), and telephone numbers of the individuals who are authorized to make representations on behalf of the Respondent.
12. Include signature of person(s) authorized to legally bind the Respondent.

Tab A-2 Executive Summary

The Respondent shall provide an Executive Summary to be written in non-technical language to summarize the Respondent's overall capabilities and approaches for accomplishing the Statement of Work (Section 2 and Attachment C) specified herein. The Respondent is encouraged to limit the summary to no more than three pages.

Tab A-3 Experience and Ability to Provide Services

The Respondent must provide a management plan that describes administration, management, experience, key personnel, qualifications, company history, and financial information.

1. Administration and Management
Respondent must include a description of the organizational structure established and the methodology to be used to control costs, provide service reliability, and maintain schedules, as well as, the means of coordination and communication between the organization and the Department. The Respondent must maintain a full service branch in Tallahassee, Florida. Provide a summary of the Respondent's locations and staffing in Florida. Provide a summary of the Bidder's ability to respond to the need for local contacts from the Department and the local communities served by the Department. The Department reserves the right to visit the location listed in this section of the Response should the Respondent be selected.
2. Experience
 - i. Respondent must provide documentation of previous experience in conducting services similar to the requirements of this ITN. Experience shall be reflective of the Respondent's ability to perform the services requested in this ITN. Provide a summary of the Respondent's background (including its age, stability, financial viability, etc.), specifically providing the vendor's managing officers and the qualifications and relevant experience of any key personnel assigned to this project.
 - ii. Provide Respondent(s) Financial Statements and References

Include independent evidence of sufficient financial resources and stability for Respondent(s) to provide the services sought, such as audited financial statements

that include balance sheets and income statements for the last two (2) fiscal years. Financial Statements will not become part of the final Contract.

iii. The Respondent shall complete the Client Reference Survey form, **Attachment E** and include it with the Responses. References will not become part of the final Contract.

3. Identification of Key Personnel

i. Respondent must provide the names and title of each individual who will be engaged in this project. Include a description of the functions and responsibilities of each key person relative to the task to be performed.

ii. Respondent must include a listing of all persons who will work on this project together with their experience and qualifications. All of Respondent(s) personnel assigned to this project will be subject to State approval. As part of the Minimum Qualifications, the Respondent will designate specific members of the project team considered to be essential to the services to be provided as key personnel. Key personnel will be those assigned to agreed-upon key roles. Key roles shall be defined within the proposed organizational structure and fulfill the Minimum Requirement of a designated support team for the services. The State requires that the Respondent's Contract Manager is on the designated key personnel list. State the number of Florida jobs that will be created by the Respondent in performance of the proposed Contract.

4. Staff Information

List all staff assigned to this project, including any subcontractors. The following information must be provided for each:

i. Name;

ii. Title;

iii. Specific work or role to be performed and/or services to be provided. All personnel named for key roles shall be clearly designated as such;

iv. Description of qualifications and relevant experience that makes the proposed individual suitable for the designated role on this project;

v. Percentage of time that will be dedicated to this project if the Respondent is selected, and the number of other projects currently assigned;

vi. Any additional information that indicates the individual's ability to aid the Respondent in successfully performing the work involved in this solicitation; and

vii. Résumé. The resumes will not become part of the final Contract.

viii. Subcontractors may be used. However, the vendor will be responsible for meeting the timeframes provided regardless of delays caused by a subcontractor.

5. Location of work.

All staff assigned by Contractor to work on the implementation Project described in the Statement of Work will perform their duties primarily at designated Project facilities in Florida, unless otherwise authorized by the Department. Without limiting the generality of the foregoing, Key Personnel will primarily work on-site at the

project facilities described in the Project Plan in the form accepted by the Department.

6. Transition and Conversion

- i. Provide the name of the group that will conduct the planning and implementation of new Controlled Disbursement accounts.
- ii. Describe the implementation transition planning process. Provide a sample of documentation and a calendar for normal transition.
- iii. Give a detailed description of the last comparable conversion and include the details of the specific problems that occurred and resolutions implemented. Provide a list of the tasks necessary for the outgoing contractor to perform to successfully implement new control disbursement accounts and Services.
- iv. Describe your current or planned involvement in any major system changes, acquisitions, or conversions. Please explain your plans and include the potential impact to this Contract.
- v. Describe the planned exit transition at the conclusion of the contract.

Tab A-4 Capability to meet Deliverables and Minimum Requirements

The Department has provided a listing of Statement of Work Deliverables and Minimum Requirements in **Attachment C**. Vendors must provide these services either directly or through an acceptable third party provider. **Vendors must separately address each of the minimum requirements/deliverables listed in Attachment C and provide evidence of the Vendor's capability to meet each requirement/deliverable listed.**

3.1.2 Tab B - Qualifications Requirements – Technical Response Section B

The Respondent must provide the below qualifications requirements:

Tab B-1 Provide a concise summarization of the products and services offered to meet the State's needs, the Respondent's approach to providing the services, the benefits that the State will derive from completing the project, and documentation as to why the Responder is best qualified to perform this engagement.

Tab B-2 Provide the following documentation related to internal controls:

1. Identify the internal and external entities that audit, regulate, and/or review the Respondent. Briefly discuss the frequency and scope of audits/attestation engagements performed during the last three (3) fiscal years.
2. Provide copies of any opinions or disclaimers issued by independent auditors within the last three (3) fiscal years as they pertain to controlled disbursement and EFT services.

3. What level of management review is applied to reports resulting from audits and reviews? What level is required to implement changes to correct deficiencies noted? Provide a recent example of this process.
4. Provide copies of the latest opinions or disclaimers issued by an independent auditor and performed in accordance with the Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization. Additionally, provide any Gap/Bridge letters provided by the independent auditor. The SSAE opinions or disclaimers and letters will not become part of the final Contract.
5. Do you have an internal audit staff that regularly evaluates all controls, systems and risks associated with controlled disbursement services? Identify and briefly explain.

3.1.3 Tab C - Technical Response – Technical Response Section C

After vendors have been qualified based on ITN section 3.3.4.1.A, the Technical Documentation will be provided to the remaining qualified vendors who will be responsible for preparing the remaining tabs in Section C and Section D, and price sheets in Tabs C-1 and D-2 below.

Tab C-1 Complete Attachment A – Cost/Price Response (Separately Sealed) – Price Response

The Price Sheet, Attachment A-1, must include the price proposed and a signature by an authorized representative of the Respondent.

Tab C-2 Optionally Complete **Attachment B – OPTIONAL TO THE VENDOR.** Identical Tie Response Certification. Whenever identical solicitation responses are received, preference shall be given to the response certified in accordance with Rule 60A-1.011, Florida Administrative Code and Florida Statutes. It is optional to include an attached Identical Tie Response Form attached as **Attachment B**, if applicable to the Vendor.

3.1.4 Tab D- Payment Functions- Technical Response Section D (Mandatory for Respondent and to be utilized at the Department’s discretion)

Tab D-1 The Respondent shall provide a brief summary discussing the Respondent’s capabilities and approaches for accomplishing the payment functions requested in Section 2.4 of this ITN for the volume of payment distributions as specified in Section 2.4.7. The summary shall include the Respondent’s experience in the following:

1. Printing and distribution of checks and/or warrants and providing the related payment transaction files.
2. Providing electronic distribution funds via ACH transactions and providing the related payment transaction files.
3. Establishing and maintaining ACH payment authorizations for payees and providing the related authorizations files.

4. Establishing and maintaining a secured website for accessing detailed payment information.
5. Providing a clear and specific transition plan that will be implemented in order to complete all required activities needed to transfer the service or activity from the state agency to the contractor and operate the service or activity successfully
6. Providing a contingency-plan that describes the mechanism for continuing the operation of the service or activity, including transferring the service or activity back to the state agency or successor contractor if the contractor fails to perform and comply with the performance standards and levels of the contract and the contract is terminated.

Tab D-2 Complete Attachment A-2 for payment functions optional to the Department discussed in Section 2.4 of this ITN.

3.1.5 Summary of Initial Responsiveness Mandatory Documents and Requirements – Technical Response Section E

Failure to comply with each of the requirements listed below may result in the response being deemed non-responsive and therefore may not receive further consideration in this ITN process. This includes, for the Initial Responsiveness Phase, all requirements in ITN section 3.3.4.1, requirements in the PUR Forms, Attachments L and M, as modified by Special Conditions to this ITN, and as required by law, rule or regulation.

Initial Responsiveness Phase--Initial Responsiveness Checklist

1. Did the Respondent submit its Response before the indicated deadline?
2. Has the Respondent met the Initial Responsiveness requirements as outlined in Section 3.3.4.1 A of this ITN?
3. Has the Respondent provided evidence of its capacity to perform all mandatory technical requirements of this solicitation as outlined in Tab A-4 of this ITN?

Responses shall be considered non-responsive if they contain disclaimers that the Response is for evaluation purposes only and should not be interpreted as a binding offer or commitment on the part of a Respondent.

For the Technical Phase for qualified Respondents, this includes, but is not limited to the following:

1. Did the Respondent submit its Response before the indicated deadline?
2. Did the Respondent submit a Cost/Price Response (Attachment A-1) per the instructions in Sections 3.1 and Attachment A-1 and A-2 of this ITN?
3. Did the Respondent submit responses related to the Technical requirements as outlined in Section 3.3.4.1 B of this ITN?

3.2 SUBMISSION INSTRUCTIONS

3.2.1 Submittal of Response

Responses shall be prepared simply and economically. The Department is not liable for any cost incurred by a Respondent in responding to this solicitation. The Respondent is required to examine carefully the contents of the solicitation and be thoroughly informed regarding all of its requirements.

The objective of this solicitation is to elicit firm contractual offers subject to negotiation. For a Response to be responsive the respondent must be committed to enter into a contract based on this ITN and the Respondent's Response. If a Response contains language which withdraws, or negates commitments to requirements of the ITN, or qualifies the Response such that it is not a firm offer to contract under terms consistent with the requirements of this ITN, the submission shall be subject to being deemed nonresponsive and rejected. Respondents are cautioned to carefully proofread responses to ensure the removal of boilerplate disclaimers which have the effect of negating commitments made elsewhere in the Response.

The initial responses relating to minimum and mandatory requirements for the Initial Responsiveness Phase will include only Tabs A and B and Attachments F and N. Sealed responses containing only Tabs A and B and Attachments F and N are due according to the ITN Section 1.4 timetable for Initial Responsiveness Phase Responses. All remaining sealed response tabs including cost/price response and all other documents required are due according to the ITN Section 1.4 timetable for Technical Phase Responses.

3.2.2 Format and Copies

The Sealed Response must be received in the Purchasing Office at 200 East Gaines Street, Larson Bldg. Purchasing Services, Tallahassee, FL 32399-0317 by the deadline listed in the Timeline in Section 1.4. All responses received by the deadline will be opened in the Purchasing Office at that time. Mark the Response package clearly on the outside with: RESPONSE NUMBER ____, DATE AND TIME OF RESPONSE OPENING, number of binders (as described below). Provide 7 copies of the Response. (This submission requirement replaces the submission instructions in PUR 1001 ¶ 3.)

- a) The "original" Response will contain the originals of any documents required to be signed as part of the Response submission (e.g., the original signed cover letter). The original Response as submitted should bear the following printed information on both its outside front cover and on its spine:
 - [Respondents exact legal name, in which name of the contract would be awarded]
 - Response regarding ITN # _____
 - ORIGINAL, Binder __ of __
- b) Include with the copies of the Response, photocopies of signed documents. Bind each copy in a 3-ring binder(s) just as the original, with a complete and exact duplicate of the original. For each copy, all sections may be contained in one binder clearly labeled at each section and tab. Each copy of the Response should bear the following printed information on both its outside front cover and on its spine:

- [Respondent’s exact legal name, in which the contract would be awarded]
- Response regarding ITN # _____
- Copy # ____, Binder __ of __

(c) Also, Respondent shall submit a redacted version of the Response as required by ITN Sec. 3.4.2 which states that if Respondent considers any portion of the documents, data or records submitted in reply to this solicitation to be confidential, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, Respondent must also simultaneously provide the Department with a separate redacted copy of its Response. This redacted copy shall contain the Department’s solicitation name, number, and the name of the Respondent on the cover, and shall be clearly titled “**Redacted Copy.**”

3.2.3 Communications

a. Notice required by statute.

Respondents to this solicitation or persons acting on their behalf may not contact any employee or officer of the executive or legislative branch, between the release of the solicitation and the end of the 72-hour period following the agency posting of the notice of intended award, excluding Saturdays, Sundays, and state holidays, concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

b. Communications.

No negotiations, decisions, or actions shall be initiated or executed by the Respondent as a result of any discussion with any Department employee. Only communications which are in writing from the Department may be considered as duly authorized communications on behalf of the Department. During selection, the respondent, its agents and employees will not engage in any written or verbal communication with any Department employee whether or not such individual is assisting in the selection of the Respondent, regarding the merits of the Respondent or whether the Department should retain or select the Respondent. The Respondent will not engage in any lobbying efforts or other attempts to influence the Department or the evaluation team in an effort to be selected. The selection period shall begin according to the Timetable in Section 1.4.

3.2.4 Clarifications/Revisions.

Before award, the Department reserves the right to seek clarifications or request any information deemed necessary for proper evaluation of submissions from all Respondents deemed eligible for Contract award. Failure to provide the additional requested information may result in rejection of the Response.

3.3 EVALUATION PROCESS

Responses shall be opened on the date and at the location indicated on the Timetable.

Respondents may attend, but they are not required to do so. The Department may choose not

to announce prices or release other materials pursuant to s. 119.07(1) (b), Florida Statutes. Prices will not be read at the ITN Opening.

3.3.1 Evaluation Team

An evaluation team consisting of at least three members, appointed in writing by the Department, will evaluate the Responses. Each member will evaluate the Technical Response independently of the others.

3.3.2 Determination of Conformance

Responses must satisfy certain mandatory minimum requirements in order to proceed into the detailed evaluation phase. All Responses will be reviewed for compliance with these mandatory minimum requirements. Responses that meet these requirements will be accepted into a detailed evaluation phase.

WARNING: Responses that fail to meet these mandatory minimum requirements will be rejected and considered no further in the evaluation process.

The Department will conduct an Initial Responsiveness review to determine responsiveness and responsibility. Respondents will be required to receive affirmative answers to all questions (copies of the questions are provided in Section 3.3.4.1 A of the ITN) related to Initial Responsiveness requirements. After a determination of responsiveness and responsibility, the Department will conduct an evaluation of the Technical Responses.

3.3.3 Evaluation of Responses

Each team member will evaluate the Responses independent of the others and establish a competitive range of Responses reasonably susceptible of award, based on the evaluation criteria.

In determining whether to select or reject a Response, the Department will consider and evaluate all information submitted in response to this ITN, including information presented during oral presentation, if required; and to this extent, each requirement for solicited information is an evaluation criterion. Responses that do not contain all the required information may be considered non-responsive and may be rejected. In its assessment of Responses, the Department will analyze the information submitted in relation to the information requirements and evaluation criteria of this ITN, the applicable provisions of the Florida Statutes and the Florida Administrative Code, will compare each Response to the other Responses submitted, and establish a competitive range of Responses that are reasonably susceptible of award. The Department may then select one or more Responses within the Competitive Range with which to commence negotiations, or may reject all Responses.

3.3.4 Evaluation Criteria

3.3.4.1 Response Evaluation Selection Criteria

The criteria that will be used for determining the acceptability of the reply and guiding the selection of the vendors with which the Department will negotiate are specified below:

A. Initial Responsiveness Phase.

Initial responses that are incomplete or do not meet the minimum mandatory requirements will not be eligible for the Evaluation Stage or award. **All initial review questions in subsections 1-3 below must receive a “yes” answer to proceed to Evaluation or award.** The Department reserves the right to seek documentation to support the responses.

1. Respondent’s Business Qualifications:

Question Number	Question	Response Y/N
1.	Are you and any proposed subcontractors or partners certified as a Qualified Public Depository as described in Chapter 280 Florida Statutes?	
2.	Respondent should provide signed Confidential Information Nondisclosure Agreement (Attachment F); qualified Respondents will not receive Technical Documentation until Attachment F is received.	N/A
3.	Do you have a minimum of five (5) years of experience in providing Controlled Disbursement and Electronic Funds Transfer (EFT) Service to any government sector?	

2. Initial Responsiveness Minimum Mandatory Response Requirements:

#	Requirement	ITN Reference	Y/N
1	Mandatory Letter of Certification, Summary and Experience received	3.1.1, Tab A	
2	Proposal received on time at the correct location	3.2.2 and 1.4	
3	Respondent met the requirement for having no Conflicts of Interest	Attachment N (see Attachment M PUR1001(6))	
4	Respondent not located on any of the Prohibited Vendor Lists or Discriminatory Vendor List per s. 287.134, F.S.?	Attachment M, PUR 1001(7-8)	
5.	Respond Yes to all Minimum Mandatory Requirements in Section 2.2 of this ITN, or supply functionally equivalent alternatives.	2.2	

Bidders who meet these qualifications will be announced according to the timetable in section 1.4 and may continue to be considered for this solicitation.

B. Technical Phase--Criteria for Evaluation and Scoring of Written Responses.

1. The State of Florida notes that information provided in the DFS’s technical specifications documentation (Technical Documentation) are confidential and proprietary information, based on section 119.011 (14) and 119.071(1) (f), Florida Statutes, the exclusive property of the Department of Financial Services, and are intended to be used for the purpose of this Invitation to Negotiate. Additionally, the parties shall not be required to disclose to the public any materials protected by law and disclosure of any confidential information received by the State of Florida will be governed by the provisions of the Florida Public Records Act, Chapter 119, Florida Statutes and exceptions. Respondents will be required to complete the confidentiality agreement, attached as Attachment F before receiving this information. The Department of Financial Services owns the FLAIR system. In the event any sensitive data processing software information is needed for completing Responses at any stage of the solicitation, the selected Respondents will receive a confidentiality agreement and must sign it to receive such technical documentation. If a Respondent refuses to sign the confidentiality agreement to obtain such data, it will be deemed nonresponsive.

2. This document is intended to provide the Department of Financial Services Technical Evaluation Team with a Scoring Methodology that can be used in conjunction with the Respondent’s ability to meet the minimum mandatory technical requirements and business rules and to calculate the scoring of each Respondent’s response to the Technical Evaluation Questions. These questions are relevant to the requirements outlined in the Statement of Work.

C. The Technical Evaluation:

This document is intended to provide the Department of Financial Services Technical Evaluation Team with a Scoring Methodology that can be used in conjunction with the Respondent’s ability to meet the minimum mandatory technical requirements and business rules and to calculate the scoring of each Respondent’s response to the Technical Evaluation Questions. These questions are relevant to the requirements outlined in the Statement of Work and Technical Documentation.

The Evaluation Questionnaire outlines the Technical Requirements that will be evaluated and scored in accordance to the following scale:

Evaluation		
Rating	Description	Description Detail
2	Meets Requirements	Acceptable minimum technical or business rule requirements.

1	Partially Meets Requirements	Responsive to the question but does not meet all minimum technical or business rule requirements.
0	Does not meet Requirements	Responsive to the question but does not meet minimum technical or business rule requirements.

Respondents must complete the Questionnaire; respond to all requirements and include documents and work samples as directed. Prepare responses to the information requested in the boxes provided in the questionnaire table and labeled RESPONSE.

1. Experience and Ability to Provide Services.

Evaluation of the Respondent’s experience and ability to provide service will be based upon information contained in the entire response, but primarily on the information contained in **Tab A-3**. Replies will be evaluated using, but will not be limited to, the following considerations:

1. Within the last two years, have you had a contract for Controlled Disbursement and Electronic Funds Transfer (EFT) Services with a minimum annual disbursement volume of 20 million?
2. Has the Respondent demonstrated via the reply, that their organization structure and methodology meet the needs of the Department?
3. Has the Respondent demonstrated that they meet the minimum requirements to enter into a contract with the Department? These items include full service branch in Tallahassee, Florida, ability to maintain two (2) separate demand accounts, and maintains an account with a branch of the Federal Reserve Bank (FRB) of Atlanta.
4. Has the Respondent demonstrated via the reply, that it has experience in performing contracts of similar size and scope?
5. Has the Respondent provided independent financial statements for the last two (2) fiscal years with unqualified opinions?
6. Did the Respondent provide a detailed description of the planned staffing for the contract?
7. Was the Respondent’s staff well qualified for the solicitation?
8. Was the Respondent’s location of work within an acceptable distance for the Department’s needs?
9. Did the Respondent submit the references?
10. How sufficient was the transition planning process provided by the Respondent?
11. Has the Respondent demonstrated, via their response, that they are capable of providing transition and conversion needs of the Department?
12. Client References Sheet submitted with responses (Attachment E)

2. Technical Phase—Capability to meet Minimum Requirements

Evaluation of the proposed solution description will be based upon information contained in the entire reply, but primarily on the information contained in **Tab A-4**. Replies will be

evaluated using, but will not be limited to, how well the proposed solution meets the following considerations:

1. Ability to electronically report the amount of warrants, wire transfers, and ACH debits.
2. Ability to execute wire transfers within required time limits.
3. Ability to provide current day data.
4. Ability to provide electronic reports for deposits.
5. Ability to provide access and use of proprietary software in the timeframe relevant to the Department.
6. Ability to provide copies of warrants when images are unavailable.
7. Ability to provide daily reports and statements necessary to the Department.
8. Ability to provide bank supplies and deposit slips for the Department and the DEO.
9. Ability to process chargebacks.
10. Ability to provide CDs of paid warrant images.
11. Ability to provide internal control procedures, and sufficiency of procedures.
12. Ability to provide disaster recovery services as needed by the Department.
13. Ability to verify the accuracy of the ACH origination files totals and send confirmations.
14. Ability to maintain ACH transaction detail.
15. Sufficiency of trace procedures as necessary by the Department.
16. Ability to process returned items.
17. Ability to provide a Notice of Changes and Consolidated Returns files daily to the Department and the DEO.
18. Ability to provide perfect presentment.
19. Ability to provide positive pay services.
20. Ability to provide and report analysis credit on remaining balances.
21. Ability to process forgeries for the Department.
22. Ability to provide reporting for forgeries.
23. Ability to provide monthly analysis statements for all of Treasury's accounts.
24. Ability to prepare and provide a monthly report for the Re-employment Assistance account.
25. Ability to provide a report of warrants paid, exceptions, and returned items.
26. Ability to provide SSAE 16 annually.

3. Technical Phase--Qualification Requirements

Evaluation of these requirements will be based upon information contained in **Tab B**. Replies for each functional area below will be evaluated based on how well the solution technically and functionally addresses the requirements described in Section 3.1.2.

Functional Area
1. Was the Respondent's summary of background information sufficient to meet the Department's needs?
2. Was the Respondent's summary of products and services sufficient to meet the needs of the Department?
3. Was the Respondent's independent financial statements provided to the Department?

4. Is the Respondent's location and staffing sufficient to meet the needs of the Department's Tallahassee location?
5. Is the implementation sufficiently detailed to accomplish implementation in 6 months or less?
6. Does the implementation identify the tasks of a predecessor during implementation?
7. Is the exit transition sufficiently detailed to accomplish exit transition in 6 months or less?
8. Does the FLAIR interface implementation description sufficiently address daily electronic transmission of EFT?
9. Does the FLAIR interface implementation description sufficiently address daily electronic transmission of Positive Pay files?
10. Does the FLAIR interface implementation description sufficiently address daily electronic transmission of Returns and Notice of Change?
11. Does the exit transition sufficiently detail the ACH transition specifications?
12. Does the exit transition sufficiently detail the warrant transition process?

4. SERVICES OPTIONAL TO THE DEPARTMENT: Certain Payment Functions based on the following criteria:

Evaluation of the Respondent's experience and ability to provide service will be based upon information contained in **Tab D**. Replies will be evaluated using, but will not be limited to, the following considerations:

1. Respondent had a sufficient level of experience in printing and distributing checks and/or warrants.
2. Respondent's warrant payment transaction file met the needs of the Department.
3. Respondent had a sufficient level of experience in providing electronic distribution of funds via ACH transactions.
4. Respondent's ACH payment transaction file met the needs of the Department.
5. Respondent had a sufficient level of experience in establishing and maintaining ACH payment authorizations for payees.
6. Respondent's ACH authorization file met the needs of the Department.
7. The Respondent maintains a secured website for accessing detailed payment information.

D. Cost

The Price Sheets (**TAB C-1 and D-1**) will be opened at the conclusion of the Technical Evaluation. The Price Sheets will be used in conjunction with negotiations to obtain the best value for the state.

E. Criteria for Negotiation Stage.

Evaluation Criteria for the Negotiation Stage will be provided prior to the Negotiation Stage.

3.3.4.2 Evaluation Process.

a) The Department shall evaluate Responses in the phases described against all Evaluation Criteria set forth in the Invitation to Negotiate in order to establish a competitive range of Responses/Replies reasonably susceptible of award.

b) Selected Respondent(s) will be invited to provide more detailed clarifications of their Responses, to provide interactive presentations of the Responses, or to enter into negotiations with the Department. Based on the clarifications, presentations and negotiations, the Department will either (1) award the contract to the Respondent who provides the best value for the Department and the State based on the selection criteria, or (2) reject all Responses. The Department reserves the right to negotiate concurrently or separately with competing Respondent(s).

c) Oral Presentations: The Department may request oral presentations from any or all of the responsive and responsible Respondents after the Initial Responsiveness Phase. The Purchasing Office will coordinate and conduct the presentations. The process for evaluating and selecting a vendor will involve two phases as specified in Section 3.3.6. The first phase involves evaluation of the replies to the ITN, which will result in the selection of Respondents to proceed to the next phase. In the second phase, Respondents will be asked to provide a presentation / demonstration of the proposed solution. This phase also includes negotiation of a final statement of work, terms and conditions of the contract, including requirements to be included in the final agreement. The negotiation phase culminates in one or more Respondents receiving a request to submit a best and final offer (BAFO) or other result in final drafts that will include: (1) revised statement of work; (2) final contract draft; (3) final contract draft; and (4) revised cost and compensation model.

3.3.5 Reservations

The Department reserves the right to reject any or all Responses or to waive minor discrepancies if it is in the Department's best interest to do so. The Department may, by written notice, revise and amend the solicitation before the due date for the Responses. The Department reserves the right to negotiate concurrently or separately with competing Respondents. The Department reserves the right to accept portions of a competing Respondent's reply and merge such portions into one project, including contracting with the entities offering such portions. In determining Respondent's responsibility as a vendor, the Department shall consider all information or evidence which is gathered or comes to the attention of the Department which demonstrates the Respondent's capability to fully satisfy the requirements of the solicitation and the contract.

3.3.6 Negotiation Stage

a) The Department may select one or more Vendors within the competitive range with which to commence negotiations.

b) Using the evaluation criteria specified above, in accordance with section 287.057, F.S., in order to establish a competitive range of replies reasonably susceptible of award, the Department will evaluate and rank the replies and, at the Department's sole discretion, proceed to negotiate with Respondent(s) as follows:

1. The focus of the negotiations will be on achieving the solution that provides the best value to the State based upon the selection criteria and satisfies the applicable statutes. The Department reserves the right to utilize subject matter experts, subject matter advisors and other advisors to assist the negotiation team with reviewing the Responses according to the selection criteria. The negotiation process will also include negotiation of the terms and conditions of the contract in accordance with Chapter 287, F.S., as applicable to the services being procured pursuant to this ITN.

2. In submitting a reply a Respondent agrees to be bound to the terms of the General and Special Contract Conditions. Proposed solutions and Cost/Price Proposal Sheet should assume those terms apply, but the Department reserves the right to negotiate different terms and related price adjustments if the Department determines that it provides the best value to the State.

3. The Department may issue a written request for best and final offer (BAFO) to one or more of the Respondents with which the negotiation team has conducted negotiations. At a minimum, based upon the negotiation process, the best and final offers or other final drafts must contain:

- A revised Statement of Work;
- All negotiated terms and conditions to be included in the final contract; and
- A final cost offer.

The Respondent's BAFO Response will be returned to the negotiation team for review.

Thereafter the negotiation team will determine which offer constitutes the best value to the State based upon the selection criteria as described above. The Negotiation Team's decision and recommendation for award will be based the Reply and any BAFO Response or other final drafts that the Negotiation Team has determined best meets the primary goals and the needs of the Department, and provides the best value. The Chief Financial Officer will make the final determination for award.

3.3.7 Contract Award

a) After negotiations are conducted, the Department shall award the contract to the responsible and responsive Respondent that the Department determines will provide the best value to the State, based on the Selection Criteria. The Department may enter into a contract with the Respondent(s) who offers the best value for the State.

b) The Department will coordinate a contract for signature, substantially in the form attached as **Attachment D**, as modified by any applicable Request for Best and Final Offer or final version distributed after negotiations, between the Department and the successful Respondent(s) as soon as possible after the posting of the notice of award on the Vendor Bid System (VBS) website, http://myflorida.com/apps/vbs/vbs_www.main_menu.

c) The Department is not bound to enter into a contract with the winning Respondent unless the Department is able to negotiate the conditions and price that it considers fair, competitive, and reasonable.

3.3.8 Nonexclusive Contract

This procurement will not result in an exclusive license to provide the services or products described in this ITN or the resulting contract. The Department may, in compliance with applicable law, contract with other vendors to provide the same or similar services.

3.4 ADDITIONAL CONTRACT TERMS

3.4.1 Fidelity Bond or other Performance Assurance

Contractor shall cause to be furnished to the Department one of the following to cover the liability identified in subsection (a) below:

(a) The Contractor shall, as of the contract effective date and at all times during the contract term, maintain a fidelity bond with the State Treasury in the amount of the contract cost annually. The fidelity bond will insure against computer crime among other things, and must be issued by an insurer holding a valid certificate of authority from the Florida Office of Insurance Regulation. The bond must provide coverage against intentional acts as well as negligent acts or omissions in connection with its activities under the Contract and shall name the Department as an additional named insured. The fidelity bond must be made available for inspection by the Disbursements Administrator, and shall not be changed, cancelled, or altered without express approval by the Department.

(b) Cash held under terms reasonably satisfactory to Department in such amount forfeitable based on the conditions specified in (a) above, or

(c) An evergreen letter of credit approved by the Department, conforming to the Uniform Customs and Practice for Documentary Credits (UCP), and providing protection equivalent to the performance bond described above, if approved by the Department, which shall be issued and executed in accordance with reasonable requirements of the Department.

3.4.2 Public Records

a) Confidential Records

1. Sealed bids, proposals, or replies filed in response to this competitive solicitation are temporarily exempt from public record requests. Pursuant to section (s.) 119.071(1)(b), Florida Statutes (F.S.), these Responses are exempt only until the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier. Notwithstanding any provisions to the contrary, the Department is obligated to make available for inspection or copying any non-exempt public record pursuant to the requirements of chapter 119, F.S., (Public Records Act), and Article I, s. 24 of the State Constitution. As such, upon receipt of a request to inspect or copy a Response to this competitive solicitation, the Department will make Responses to this

competitive solicitation that are no longer exempt pursuant to s. 119.071(1)(b), F.S., available for inspection or copying upon receipt of a public record request as required by the Public Records Act, and Article I, s. 24 of the State Constitution.

2. Confidential Trade Secret Information: The Department does not solicit or desire a Respondent's trade secrets to be included as part of a Response to this procurement. Pursuant to s. 812.081, F.S., a person who claims that information is a trade secret must take measures to protect such information and to prevent it from becoming generally available. As such, if Respondent includes in its Response information that Respondent considers to be a trade secret that meets the definition provided in s. 812.081, F.S., Respondent shall:

- Segregate trade secret information in a sealed separate envelope, Respondent should provide the Department with an additional copy of its Response that has been redacted to conceal only that information that Respondent claims to be a confidential trade secret meeting the definition of a trade secret as provided in s. 812.081, Florida Statutes. Such additional redacted copy shall be clearly identified as having had trade secret information redacted.

- Regarding any supplemental information where a vendor is making oral presentations or answering questions about their sealed responses, provide a written notice of trade secret that puts the Department on notice that Respondent has included trade secret information in such information. Segregate such confidential trade secret information and place it in a sealed, separate envelope that is labeled "CONFIDENTIAL TRADE SECRETS."

3. If a public record request is made for a Response to this competitive solicitation or supplemental information, the Department will notify the Respondent of such request if Respondent has provided the Department with a notice of trade secret. If the Department receives a public records request related to the Response, the Respondent shall be solely responsible for taking whatever action it deems appropriate to legally protect its claim of exemption from the public records law. Any prospective vendor acknowledges that the protection afforded by section 815.045, Florida Statutes, is incomplete, and it is hereby agreed that that no right or remedy for damages arises from any disclosure.

The Contractor shall retain such records for the longer of three years after the expiration of the Contract or the period required by the General Records Schedules maintained by the Florida Department of State (available at: http://dlis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm).

b) The Contractor shall require the Contractor's employees and its subcontractors to comply with public records laws, specifically to:

1. Keep and maintain the public records that ordinarily and necessarily would be required by the Department in order to perform the service or activity.

2. Provide the public with access to such public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed that provided in Chapter 119, F.S., or as otherwise provided by law.

3. Ensure that records that are exempt, or records that are confidential and exempt are not disclosed except as authorized by law.

4. Meet all requirements for retaining records and transfer to the Department, at no cost, all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt, or confidential and exempt. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

3.4.3 Modification of Terms

a) Any terms and conditions that the Contractor provides that attempt to modify the Contract or add additional restrictions of usage, license conditions, or requirements have no effect and are not enforceable under the Contract. (modifies PUR 1000 ¶42) Any proposed software license agreement, service level agreement, or any other draft agreement submitted in the Response shall not contain any provisions, unless such provisions are expressly negated in the Response, which:

- (1) are inconsistent with Florida law,
- (2) exclude, prohibit, or negate other contract documents,
- (3) subject the State of Florida to the jurisdiction of another state, or
- (4) provide that the State will indemnify the contractor or any other person.

3.4.4 MyFloridaMarketPlace

Unless exempted under Rule 60A-1.030-.032, each vendor doing business with the State of Florida shall submit reports and be assessed a Transaction Fee of one percent (1%), on its payments under a Contract, which must be remitted within 40 days after receipt of payment for which such fees are due, or the vendor shall pay interest at the rate established under Sec. 55.03(1), Florida Statutes, on the unpaid balance from the expiration of the 40-day period until the fees are remitted. (see PUR 1000 ¶14).

3.4.5 Duty of Continuing Disclosure of Legal Proceedings

Information Regarding Litigation or Regulatory Action: Provide a statement fully describing any investigatory or regulatory action that has been undertaken and/or filed against your company or any of your affiliated subcontractors (that will be associated with performing any of the duties or responsibilities contemplated by this ITN) in the last three years. Additionally, describe any litigation that has been filed against your company or such subcontractors in which the damages sought are above \$500 million. If an action has been filed, identify the court, administrative tribunal, or agency before which the action was instituted, the applicable case or file number, and the status or disposition for such reported action. If no litigation or regulatory action has been taken against your firm or subcontractors, provide a statement to that effect.

A regulatory investigation, dispute, action, or other litigation shall be a basis for rejection of a Response if the Department determines that such a circumstance poses any risk that the Respondent may be compromised in its ability to perform the services sought in the ITN, or

would tend to undermine the public trust, or would cause a lack of confidence in the propriety of the Respondent, or would otherwise result in a perceived detriment to the State.

3.4.6 Information and Data Security and Confidentiality.

(a) The Contractor, its employees, subcontractors and agents shall comply with all the Department's policies, procedures and guidelines governing security including AP&P 4-03, Information Technology Security Policy (CSIRT), to be provided by the Contract Manager upon request. The Contractor shall provide immediate notice to the Department in the event it becomes aware of any security breach and any unauthorized transmission of State Data or of any allegation or suspected violation of security procedures of the Department. Except as required by law or legal process and after notice to the Department, the Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its employees, subcontractors or agents in the course of performing the services. The Contractor shall not be required to keep confidential information that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's confidential information or information that is otherwise obtainable under state law as a public record.

(b) Loss of Data. In the event of loss of any State Data or record where such loss is due to the negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Department at the Contractor's sole expense, in addition to any other damages the Department may be entitled to by law or the Contract.

(c) Data Protection. No State Data or information will be transferred or stored offshore or out of the United States of America.

Access to Departmental data shall only be available to the approved and authorized staff, including remote/offshore personnel, that have a legitimate business need. If that need changes, then access shall be removed promptly. The Contractor shall encrypt all data transmissions. Remote data access must be provided via a trusted method such as SSL, TLS, SSH, VPN, IPSec or a comparable protocol approved by the Department.

The Contractor agrees to protect, indemnify, defend and hold harmless the Department from and against any and all costs, claims, demands, damages, losses and liabilities arising from or in any way related to Contractor's breach of data security or the negligent acts or omissions of the Contractor related to this subsection.

The parties will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. The Contractor will protect, by password or encryption software compatible with the State's, all electronic documents and web-based information that is confidential and exempt from the State's Public Records Act. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Department. The Contractor shall not divulge to third

parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or the Department. Each party will limit disclosure of the other party's Confidential Information to employees and subcontractors who must have access thereto in order to fulfill the purposes of this Contract. The Contractor shall ensure all access is promptly terminated for every Provider staff upon completion of assignments. Disclosure to, and use by, a Subcontractor is permissible where:

1. Use of a Subcontractor is authorized under this Contract,
2. Such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and
3. The Contractor obligates the Subcontractor in a written Contract to protect the Department's Confidential Information in confidence. At the Department's request, any employee of the Contractor and of any Subcontractor having access or continued access to the Department's Confidential Information may be required to execute an acknowledgment that the employee has been advised of the employee's obligation to protect such Confidential Information from unauthorized use or disclosure.

3.4.7 No Advertising or Endorsements

The Contractor's services to the Department may be generally stated and described in the Contractor's professional resume. The Contractor may not give the impression in any event or manner that the Department recommends or endorses the Contractor.

3.4.8 Functional Equivalents and Substitutions

The Respondent shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Department shall determine in its sole discretion whether a product is acceptable as an equivalent.

Minimum Qualifications for acceptance of substitutions:

- The substitute item shall meet or exceed the applicable requirements and specifications set forth in this ITN.
- Any substitute item shall be compatible with the existing deliverables at the time the substitute is proposed for use.
- The substitute item or service shall have the capacity and performance characteristics equal to or better than those of the item it is to replace.
- The substitute item or service shall offer the same or increased functionality as the item it is to replace.
- The substituted item must be approved, in advance, by the Department.

With any commodity offered as an equivalent, the Respondent must certify that it has consulted with the manufacturer and can represent it is not scheduled to be discontinued by the manufacturer within the next year; and if the manufacturer does discontinue the commodity, the Respondent shall certify that it will replace such part at no cost to the Department.

ATTACHMENT A-1

Cost/Price Proposal Sheet

State Treasury's Disbursement Paying Accounts

No fees may be paid for services not priced on this form. The following prices are quoted for these services during the initial term and renewal term:

Deliverable	Estimated Annual Volume	Price Per Unit or service	Total Estimated Annual Cost of Deliverable
FLAIR interface and other Implementation tasks	n/a	\$	n/a
Price per warrant paid	6,818,185	\$	\$
Price per warrant imaged	6,818,185	\$	\$
Price per Compact disk of images produced	2,241	\$	\$
Price per wire received	787	\$	\$
Price per wire originated	561	\$	\$
Price per ACH item originated	7,421,298	\$	\$
Price per ACH item returned	13,382	\$	\$
Price per deposit item	349	\$	\$
Price per deposit item (non-encoded)	117,903	\$	\$
Price per checks paid	437		\$
Monthly maintenance fee per account	12	\$	\$
Monthly account proprietary access	12	\$	\$
Exit Transition	n/a	\$	n/a
TOTAL FIXED PRICE FOR Disbursements and EFT Program	\$	\$	\$

I certify that this Response is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Response for the same materials, supplies or equipment, or services and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this Response and certify that I am authorized to sign this Response for the Respondent and that the Respondent is in compliance with all requirements of the ITN, including but not limited to, certification requirements.

RESPONDENT NAME: _____

(Company)

RESPONDENT ADDRESS: _____

(City/State/Zip)

RESPONDENT PHONE: _____

RESPONDENT E-MAIL CONTACT: _____

AUTHORIZED REPRESENTATIVE:

(Printed) _____

AUTHORIZED SIGNATURE: _____

Exhibit A

WARRANT AND ACH ACTIVITY

	July 2008 through June 2009	July 2009 through June 2010	July 2010 through June 2011
Number of Warrants Paid	6,445,547	8,532,976	6,818,185
Number of Warrants Imaged	6,445,547	8,532,976	6,818,185
Number of CDs Produced	1,995	3,147	2,241
Number of Wires Received	886	854	787
Number of Wires Originated	328	410	561
Number of ACH Items Received	0	187	252
Number of ACH Items Originated	14,291,811	26,310,485	18,925,275
Number of ACH Items Returned	11,943	22,082	19,401
Number of Deposits	311	341	349
Number of Deposit Items (Non-encoded)	70,049	86,899	117,903
Number of Checks Paid	494	365	437
Monthly Account Maintenance (\$5 per account/6 accounts)	360	360	360
Monthly Account Proprietary Access (\$35 per month)	420	420	420

**** Volume of warrants paid for FY 2011-2012 has drastically been reduced due to 443.11 (1) (a) F.S. Volume for first six months of 2011-2012 fiscal year was 1,836,549.

ATTACHMENT A-2

Cost/Price Response for Payment Functions Optional to the Department

Respondent should complete this Cost/Price Response for payment functions discussed in Section 2.4 in the Statement of Work.

Note: Estimated Quantities for each Payment Type have been listed below by the Department. Estimated Quantity is based on a combination of historical data and future expectations. Respondents should complete the “Initial Term Fee Price Per Transaction” Column for the type of services being proposed in response to this ITN. Respondents may respond with a price for ACH Transactions only or both State Warrants and ACH Transactions.

Initial Term Fee

Deliverable for Section 2.X, as defined in Attachment C, SOW (Payment Type)	Estimated Quantity	Initial Term Fee Price per Transaction	Total Initial Term Fee
State Warrants	2,616,000	\$	\$
ACH Transactions	12,450,000	\$	\$
TOTAL FIXED PRICE FOR OUTSOURCING PAYMENT FUNCTIONS	15,066,000	\$	\$

Renewal Term Fee

Deliverable for Section 2.X, as defined in Attachment C, SOW (Payment Type)	Estimated Quantity	Renewal Term Fee Price per Transaction	Total Renewal Term Fee
State Warrants	2,616,000	\$	\$
ACH Transactions	12,450,000	\$	\$
TOTAL FIXED PRICE FOR OUTSOURCING PAYMENT FUNCTIONS	15,066,000	\$	\$

Mandatory Acknowledgment Form for Attachment A-2

I certify that this Response is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Response for the same materials, supplies or equipment, or services and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this Response and certify that I am authorized to sign this Response for the Respondent and that the Respondent is in compliance with all requirements of the ITN, including but not limited to, certification requirements.

RESPONDENT NAME: _____

(Company)

RESPONDENT ADDRESS: _____

(City/State/Zip) _____

RESPONDENT PHONE: _____

RESPONDENT E-MAIL CONTACT: _____

AUTHORIZED REPRESENTATIVE:
(Printed) _____

AUTHORIZED SIGNATURE: _____

DATE: _____

ATTACHMENT B

Identical Tie Response Certification (OPTIONAL)

Preference shall be given to the vendor, in the event of identical tie Responses, who (check the applicable block) certifies one or more of the following:

- ____A. The response is from a certified minority-owned firm or company;
- ____B. A veteran business certified according to s. 295.187, F.S.
- ____C. A Florida-based business having at least one of the following characteristics:
 - 1) Fifty-one percent of the company is owned by Floridians; or
 - 2) Employs a workforce for this project or contract that is at least 51% Floridians; or
 - 3) More than 51% of business assets of the company, excluding bank accounts, are located in Florida.

____D. The response is from a Florida-domiciled entity

____E. The commodities are manufactured, grown, or produced within this state;

____F. Foreign manufacturer with a factory in the State employing over 200 employees working in the State.

____G. Businesses with drug-free workplace programs. Whenever two (2) or more solicitation Responses which are equal with respect to price, quality and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a solicitation Response received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie solicitation Responses will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under solicitation a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees, as a condition of working on the commodities or contractual services that are under contract, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any State, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

I certify that this firm complies fully with the above-selected requirements. (If item E above is selected, subsections “1” through “6” have been met.)

Contractor's Name: _____

Authorized Signature: _____

ATTACHMENT C

Statement of Work Deliverables/Minimum Requirements

The Department is seeking a qualified financial institution to provide banking services related to the State of Florida's Electronic Funds Transfer (EFT), warrant disbursements, and their settlement. The Technical Specifications and Scope of Work in ITN section 2 contain the functional requirements that comprise the Department's statement of need (Statement of Need). This Statement of Work is intended to incorporate all requirements and deliverables necessary to carry out the functionalities described in the Statement of Need in ITN section 2.

I. Minimum Requirements

The specifications included in this section are intended to inform Respondents of the minimum expectations of the Department. Respondents may expand on the minimum requirements as specified:

A. General Requirements

1. **Implementation Deliverables:** This includes FLAIR interface implementation Project and associated Deliverables. The Department requires daily electronic transmission of warrant files to FLAIR requiring development of a FLAIR interface which the Department considers a Developed Material. The Department requires daily electronic transmission of EFT and Positive Pay files from FLAIR and a daily Returns and Changes file to FLAIR requiring development of multiple FLAIR interfaces which the Department considers a Developed Material.

Implementation Deliverables:

- Project Plan
- Test Plan
- Solution Architecture and Design document
- Production Implementation Guide
- Certificate of Completion

Implementation modifications and acceptance:

If Contractor fails to notify and obtain approval from the Department before commencing performance of activities relating to changes in the scope of the Project, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities.

The FLAIR interface must be fully operational before other services can commence. Therefore, for the FLAIR interface Deliverable as a Developed Material, Acceptance

of a Developed Material after Acceptance Testing but before the Deliverable has been put into production (Interim Acceptance) shall be considered provisional for invoicing and payment. Interim Acceptance shall not preclude the Department from later identifying deficiencies and declining to provide Final Acceptance on that basis. Further, prior Interim or Final Acceptance of a Deliverable shall not preclude the Department from later declining to accept a subsequent Deliverable that does not operate properly due to defects in the prior Accepted Deliverable. In this case, the prior Accepted Deliverable must be corrected prior to acceptance of the subsequent Deliverable.

Further, as to the FLAIR Interface Project, if a particular service or deliverable is inadvertently omitted or not clearly specified in the ITN Statement of Need or the final Statement of Work but determined to be operationally necessary and verified to have been performed by the agency within the 12 months before the execution of the contract, such service or deliverable will be provided by the Contractor through the identified contract-amendment process.

2. The Respondent will provide one hundred eighty (180) days written notice for Respondent's system changes that affect the State of Florida's systems. In the event the Respondent does not provide one hundred eighty (180) days written notice, the Department may assess a \$1,000 per day for each day less than one hundred eighty (180) days.
3. The Respondent will provide, within 30 days of execution of the contract and annually thereafter, documentation of internal controls related to the confidential information maintained pursuant to the provisions of Chapter 119, Florida Statutes for approval by the Department. In the event the Respondent does not maintain adequate internal controls and a breach of security concerning confidential personal information occurs, the Respondent will be liable for the administrative penalties, pursuant to the provisions of section 817.5681, Florida Statutes.

B. Electronic Payments

1. Electronically report to the Treasury the following:
 - a. Amount of warrants no later than 10:00 a.m. EST each day.
 - b. Amount of incoming and outgoing wire transfers 30 minutes from the initiation of the transfer. For every 24 hours that the wire has not gone out we will charge the overnight Federal Treasury Rate.
 - c. Amount of ACH debits paid no later than 7:00 am EST each day.
2. Execute wire transfers within 30 minutes after receipt of wire transfer instructions. For every 24 hours that the wire has not gone out the Department will charge the overnight Federal Treasury Rate. Daylight overdraft does not apply to Treasury accounts.
3. Provide current day data by 7:00 a.m. EST each day. If the warrants and/or ACH data information is not presented in the time specified for funding the Respondent will absorb the financial consequence and will not return the warrant NSF.
4. Any delay in the electronic payment processes outlined in this section of more than 24 hours may result in a \$5,000 per day fee assessed on the Respondent.

C. Accounts Management

1. Give immediate notification via an electronic report of such deposits related to 2.3.1.1 of the ITN Scope of Work.
2. Provide uninterrupted electronic access to Respondent proprietary software. This software shall include reporting, wire origination and ACH origination capabilities including ACH credits and debits. The proprietary software must provide that access to certain functionality is restricted based on user IDs. This software shall also include previous day and current day reporting and shall have download functionality. Maintenance will not occur without 48 hours notice, and shall not interfere with Treasury's regular course of business. If the Respondent cannot provide access to its proprietary software the contract will be terminated.
3. The Respondent shall provide copies of warrants at no charge when the image quality does not satisfy the needs of the Treasury or if an image is missing. If the Respondent will not provide images the invoice charges for this deliverable will not be accepted by the Department.
4. Furnish on a daily basis, electronic copy bank statements and supporting documents on all deposits, wire transfers, warrants and/or ACH debits paid. If statements are not provided daily the Department will not accept the invoice charges.
5. Provide all bank supplies at no additional charge to the Department and the DEO. If the Department is charged for these items the invoice will not be accepted.
6. Chargebacks will be posted to the account of original deposit unless otherwise instructed.

D. Warrant Negotiations

1. Provide CDs of all paid warrant images to the Department on a weekly basis. At a minimum, the CDs shall include warrant number, bank sequence number, paid date and amount to facilitate the search capability. CDs must include self loading software to view the images and provide index data to locate images. Additionally, all paid warrant images will be available on a secured website. If this deliverable is not provided to the Department the invoice will not be accepted.
2. The Respondent must provide upon request documentation of their internal control procedures related to the destruction and storage services. If internal control documentation cannot be presented to the Department the contract may be terminated.

E. Disaster Recovery

1. The Respondent will provide wire origination capabilities either by the web-based system, phone, fax or any other means that is mutually agreed upon. If not provided to the Department the contract may be terminated.

2. The Respondent will provide the order of succession for assigned officer and key staff that the Department works with in the regular course of business. If not provided to the Department the contract may be terminated.
3. The Respondent will provide a process for notifying the Department when the Respondent's ability to do business has been compromised within one (1) hour. If not provided to the Department the contract may be terminated.
4. The Respondent must have an established secure back-up system for wire transfer and report delivery if the web-based system is unavailable. This back-up must be functioning within 6 hours of the occurrence. In the event the Respondent does not provide a functioning back-up system within six (6) hours of occurrence, the department may assess \$50,000 for every three (3) hour interval until the back-up system is functioning.

F. EFT Origination

1. The Respondent will verify the accuracy of the ACH origination file totals and send confirmation back to A&A with the Respondent's representative's electronic signature. This is to be done immediately following receipt by the Respondent.
2. Maintain a detailed list of all transactions sent to the ACH as well as items to be posted to accounts at the Respondent ("on us items"). The list must contain the following: trace identification number and a differentiation between "on us" items or items sent to the FRB.
3. The Respondent will initiate ACH trace procedures and report the results back to the Department within twenty-four (24) hours.
4. Return item documentation will be communicated to the Department by facsimile or other electronic means as received. If sent by electronic means, the Respondent is required to encrypt the documentation to ensure confidentiality. The documentation will contain, at a minimum, payee name, amount, effective date, reason, individual identification number, trace numbers, and sending company ID number.
5. Provide a Notice of Changes and Consolidated Returns file on a daily basis for the previous day's activities to A&A and the DEO for their respective accounts. In the event the Respondent does not provide a daily file, the Department may assess a \$1,000 fee for each day the file is delayed.

G. Positive Pay with Payee Match and Perfect Presentment Services

1. The Respondent will provide Treasury with a cleaned file to present for payment. All errors will be corrected and Treasury will be notified daily of what was corrected in the pay file.
2. The Respondent will provide access to their proprietary software to view positive pay exceptions.
3. The Respondent will provide Treasury all positive pay exceptions without value limits.
4. Treasury will have access to view the positive pay by 10:00 a.m. EST. on the proprietary software.

5. The Respondent will provide Treasury with images of all positive pay items on the proprietary software.
6. The Respondent will provide a report of all paid items being transmitted to Treasury on a daily basis.
7. If the above items (1-6) are not provided to the Department, the Department will not accept the invoice for the service charges.

H. Analysis Credit for Remaining Balances

1. The Respondent will provide Treasury with monthly reports of analysis credit earned on the accounts.

I. Forgeries

1. Provide monthly status update reports including all debits and credits to our accounts for forgery claims. See Attachment G.
2. In the event that the Respondent does not find a solution for the Division the Respondent will absorb the financial obligation of the item in question.

J. Reporting

1. Provide a monthly report listing all the forged and improperly endorsed items processed and their status/resolution. This file will include warrant number, warrant type, payee, amount, credit advice date, amount collected, date collected, and the status information. The Respondent will work with Treasury personnel to verify that the report includes all the needed information according to Treasury. See Attachment G.
2. Provide a monthly analysis statement for all the accounts belonging to Treasury. The analysis statement will have all transaction detail for the accounts. The analysis statement will include the number of warrants paid, checks paid, ACH debits paid, ACH originations, wire transfers received, wire transfers originated and deposits processed.
3. Prepare and submit a monthly report of activity for the Re-employment Assistance account. The format for this report is show in Attachment H.
4. Provide a daily detailed listing of all warrants paid. The format of this report is shown in Attachment I.
5. Provide a daily report of all exception and return items processed by the Respondent on Treasury's behalf. Report specifications are included in Attachment J.
6. The Respondent will provide a Statement on Standards for Attestation Engagements Statement (SSAE) 16, on a yearly basis, no later than August 30th. The SSAE 16 will cover the State's fiscal year which ends June 30th. For any time during the fiscal year not covered in the SSAE16 the Respondent will provide a Bridge/Gap Letter from its independent auditors.

7. If the above items (1-6) are not provided to the Department, the Department will not accept the invoice for the service charges.

K. Payment Functions(Optional to the Department)

The Department requires the Contractor to offer to provide payment functions discussed in section 2.4, the Statement of Work section of the ITN.

According to the project schedule, provide a project plan, and carry out a approved project plan, for taking over the following functions upon the Department's request:

1. Perform services to print State warrants and/or provide electronic distribution of state funds via ACH transactions.
2. In the case of ACH, the Contractor will be responsible for establishing and maintaining payment authorizations for payees. The Department will provide the Contractor with initial ACH authorization files for all active authorizations upon initiation of the contract. The Contractor will be responsible for distributing funds to the recipients according to their payment authorizations and for ensuring the funds reach the intended recipients.
3. When State warrants are produced, at the Department's discretion and according to guidelines in the approved project plan, the Department must approve the warrant form used by the Contractor prior to its implementation. The Department reserves the right to require the Contractor to make warrant form changes at anytime during the life of the contract at no additional cost. The Contractor will be given a reasonable amount of time to make such changes (usually 30-60 days).
4. The Contractor will be responsible for providing daily detailed files back to the Department confirming how payments were distributed (via warrant or ACH). In addition, the Contractor will be required to provide a daily authorization file to the Department which contains all ACH authorizations related to state payments being made under the contract (e.g., payee IDs, names, bank account numbers, routing transit numbers, authorization status, etc.).
5. With the added duties, the Contractor will continue to be required to provide a secured website for Department staff and payees/vendors to view detailed payment information, remittances, etc.
6. The Contractor must offer to interview for employment any displaced Department staff resulting from the transfer of these payment function services to the Contractor.

Further, as to the these payment functions, if a particular service or deliverable is inadvertently omitted or not clearly specified within the scope of the Department's Statement of Need as to these services, but determined to be operationally necessary

and verified to have been performed by the agency within the 12 months before the execution of the contract, such service or deliverable will be provided by the contractor through the identified contract-amendment process.

L. Operational Continuity

1. Provide an Exit Transition Plan within the first six months of the Contractor's Contract effective date. Such plan shall include that the Contractor shall transfer to the state agency, at no cost, all public records in possession of the Contractor upon expiration of the retention period required by PUR 1000, paragraph 18, and destroy any duplicate public records that are exempt or confidential and exempt. All requested Contract related records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department. At a minimum, Contractor agrees to provide to the Department data definitions, table structure, the Department's data under its control, and any custom code required to allow the Department a smooth transition to in-house or substitute vendor implementation of similar functionality to that provided by Contractor. Contractor will process warrants for at least thirteen (13) months after the final warrant has been issued under this Contract.
2. In the event, the Contractor can no longer provide this service, the Contractor must submit a detailed transition and data return implementation plan with cost to continue this service within the Department or by its designee. The following criteria apply to closures, and return of data upon contract termination or events authorized under Contract sections 9 and 10:
 - (a) The Contractor(s) must immediately cease services and applying charges to any warrants paid and only apply charges for warrants paid based on the agreed upon final pricing.
 - (b) Supplemental process for return of data upon request, or upon final contract expiration or termination: In addition to the above reports and activities, upon closure, send copies to the Department.
3. Supplemental process for all other data, upon final contract expiration or termination:
 - (a) Return all data in the format to be determined in the final Statement of Work (e.g. Excel or Access via email) with all current information (see requirements in the Statement of Work) within 30 days. However, all data must be submitted to the Department within 30 days.
 - (b) Within 30 days issue all reports required by the Contract for each data returned. At the time the parties determine the format of the application, the Department will designate the format in which the Contractor will return the data with the source code sufficient to read it, or alternatively provide the data in a non-proprietary format.
4. Ensure that all access granted to physical or information system resources has been removed, thereby preventing unauthorized access. Ensure that all access has been removed and all Department devices and tools have been returned before closing out the Contract.

5. The Contractor shall provide no less than a 60 days' notice and provide a specific and detailed technical transition plan to the Department prior to any termination or data return. At a minimum, the technical transition plan shall include but not be limited to knowledge transfer for any technology support needed by the Department or its designee to continue services. In an effort to avoid any financial loss to the Department, the Contractor shall conduct such transition with the same degree of care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use.

II. Deliverables

Deliverable	Measure	Financial Consequence
Implementation (including but not limited to FLAIR interface, all data conversions)	Per Section I A 1	Per Section I A 1
Pay warrants	Warrants are paid daily. The statement of paid warrants will be reviewed daily for accuracy.	If not received the Department will not pay the invoice charge.
Image all warrants and provide on demand	Warrants are imaged as paid; if Treasury requests an image it must be provided for any requested warrant.	If not received timely the Department will not pay the invoice charge.
Provide three compact disks weekly of images all warrants paid	Three compact disks will be received by Treasury weekly.	In the instance where Treasury does not receive the disk invoice charges will not be paid.
Process receiving wires	Wires into the accounts will be received daily and monitored by the Treasury using the online statement.	In the instance where Treasury's accounts do not receive the wire as expected the Respondent will absorb the financial consequences and not return the warrant NSF.
Process wire originations	Wires are originated daily on the account. Treasury and	In the instance where a wire originated on Treasury's accounts is not delivered due to Respondent error the

Deliverable	Measure	Financial Consequence
	DEO will monitor the wire origination daily.	Respondent will absorb the financial consequences, and the Department will not pay the invoice charge.
ACH item received, originated, and returned	ACH items will be monitored daily by A&A and DEO.	In the instance where ACH items were not processed by the Respondent as required a \$1,000 fee will be charged for every 24 hours the ACH is delayed.
Process deposit items	Deposits to the account will be processed the same day and receive same day credit.	If this deliverable is not met by the Respondent the Respondent will absorb the financial consequences and not return an item NSF. Additionally, the Department will not accept the charges on the invoice.
Process non-encoded deposit items	Deposits to the account will be processed the same day and receive same day credit.	If this deliverable is not met by the Respondent the Respondent will absorb the financial consequences and not return an item NSF. Additionally, the Department will not accept the charges on the invoice.
Pay checks as presented	Checks paid on the accounts will be reconciled daily.	In the event that the Respondent does not pay the check presented on the account the Department will not accept the invoice charges.
Maintain the accounts	Treasury will routinely monitor the maintenance of the accounts.	In the event the Department determines that maintenance has not been properly performed on the account the contract may be terminated.
Provide access to proprietary software	Access to the proprietary software will be determined daily by the Department.	The Respondent has 24 hours to provide the Department access to the proprietary software. If the 24 hours has passed without access the contract may be terminated.
Payment Functions Project Plan (Optional to	Per Section I K	Per Section I K

Deliverable	Measure	Financial Consequence
the Department)		

III. Schedule for Deliverables

Schedule for Deliverables will be developed during negotiations.

IV. Sanctions for Non-Performance

Where Measures are not met Service Level credits or other liquidated damages will apply.

ATTACHMENT D

CONTRACT

PROVIDER CONTRACT

Between the Department of Financial Services and _____

THIS CONTRACT ("Contract") is entered into by and between the State of Florida, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0344 (hereinafter referred to as "Department") or its successor, and

(hereinafter referred to as "Contractor"), effective as of the last date signed below.

WHEREAS, the Department has determined that it is in need of certain services as described herein; and

WHEREAS, the Contractor, as an independent contractor of the Department, has the expertise and ability to faithfully perform such services.

NOW THEREFORE, in consideration of the services to be performed and payments to be made, together with the mutual covenants and conditions set forth, the parties agree as follows:

1. Services and Deliverables.

The Contractor agrees to render the Services or other units of deliverables as set forth in this Contract and its Attachments. The Contractor's performance shall be subject to all the terms, conditions, and understandings set forth in the ITN, the attachments to the ITN, and PUR 1000 and 1001 incorporated by reference into the ITN except as specifically modified by this Contract and the attachments to it. Contractor's suggestions in its Response or suggestions during negotiations regarding the use of current and emerging technologies and regarding policies and procedures as well as system features that may be used to improve security and control that are accepted by the Department in writing are included as deliverables in the Contract Statement of Work.

2. Delivery Schedule.

The services or other units of deliverables specified in Paragraph 1 above shall be delivered or otherwise rendered on behalf of the Department in accordance with the schedule in the Contractor's accepted Response and consistent with the ITN. The Contractor's performance shall be subject to all the terms, conditions, and understandings set forth in the ITN and the attachments to the ITN.

3. Term and Renewal.

This Contract shall begin on the date last signed and end 3 year(s) after the effective date. This Contract may be renewed, for a maximum of three years or the length of the

original term, whichever is greater, at the option of the Department according to Sec.1.8.3 of the ITN. The renewal price, or method for determining a renewal price, is set forth in the Contract price, attached hereto. No other costs for the renewal may be charged. Any renewal is subject to the same terms and conditions as the original contract and shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds. The Department shall have the right to unilaterally terminate or suspend the Contract, by providing the Contractor one hundred twenty (120) days written notice. The Contractor shall not perform any Services after it receives the notice of termination, except as necessary to complete the transition or continued portion of the Contract, if any. Contractor shall submit to the Department within 90 calendar days of termination a request for payment of completed Services. Requests submitted later than 90 calendar days after termination will not be honored and will be returned unpaid. (See PUR 1000 ¶ 21)

4. Payment.

(a) Subject to the terms and conditions established by this Contract and the billing procedures established by the Department, the Department agrees to pay the Contractor on a monthly basis for services rendered based upon these service charges and rates established on Attachment A of the Contractor's Response to the Invitation to Negotiate, as modified by the negotiated prices in any applicable Best and Final Offer. The Contractor's per month charges include compensation for all of the Contractor's resources for providing the Services and all pre-implementation activities. Notwithstanding the foregoing the Contractor will submit a final invoice for the implementation deliverable upon its completion and acceptance.

(b) Vendor Rights. Contractors providing goods and services to an agency shall be aware of the following time frames. Upon receipt, an agency has five (5) business days to inspect and approve the goods and services, unless the specifications, purchase orders or Contract specifies otherwise. An agency has 20 calendar days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 calendar days are measured from the date the invoice is received after the goods or services are received, inspected and approved. The Department is to approve the invoice in the state financial system within 20 calendar days.

If a payment is not available within 40 calendar days, a separate interest penalty, computed at the rate determined by the State of Florida Chief Financial Officer pursuant to section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the vendor. To obtain the applicable interest rate, please refer to <http://www.myfloridacfo.com/aadir/interest.htm>. Invoices returned to a Contractor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the State agency with the proper tax payer identification information documentation to be submitted before the prompt payment standards are to be applied. Interest penalties of less than one (1) dollar will not be enforced unless the Contractor requests payment. The invoice payment requirements do not start until a properly completed invoice is provided to the agency with the proper tax payer

identification information documentation to be submitted before the prompt payment standards are to be applied.

A Vendor Ombudsman has been established with the Department of Financial Services. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be reached at (850) 413-5516.

(c) Taxes. The Department is exempted from payment of Florida state sales and use taxes and Federal excise tax. The Contractor, however, shall not be exempted from paying Florida state sales and use taxes to the appropriate governmental agencies or for payment by the Contractor to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Contractor shall not use the Department's exemption number in securing such materials. The Contractor shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Contract. The Department will provide its tax exemption certification upon request. The Contractor shall provide the Department its taxpayer identification number upon request.

(d) Expenses. The Contract is a fixed price contract with invoicing after approval of each deliverable, and no separate expenses or travel will be paid.

(e) Payment Processing. All charges for services rendered or for reimbursement of expenses authorized by the Department in accordance with Paragraphs 3 and 4 shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed. All payments for professional services and authorized expenses, will be paid to the Contractor only upon the timely and satisfactory completion of all services and other units of deliverable such as reports, findings and drafts, which are required by Paragraphs 1 and 2 above and upon the written acceptance of said services and units of deliverables such as reports, findings and drafts by the Department's designated Contract Manager. Interim payments may be made by the Department at its discretion under extenuating circumstances if the completion of services and other units of deliverables to date have first been accepted in writing by the Department's Contract Manager.

(f) Contingency. If the terms of this Contract extend beyond the current fiscal year, the State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.

5. Acceptance.

The Department reserves the right to reject deliverables as outlined in the Minimum Requirements as incomplete, inadequate or unacceptable due in whole or in part to the Contractor's lack of satisfactory performance under the terms of this Contract. All of the Contractor's Deliverables/Minimum Requirements related to these services shall be submitted to the Department's Contract Manager for review and approval. The Department will accept each Deliverable when it meets the performance measures and requirements of the Contract. The Department, at its option, may allow additional time within which the Contractor may remedy the objections noted by the Department and the Department may,

after having given the Contractor a reasonable opportunity to complete, make adequate or acceptable said deliverables, including but not limited to reports, declare this Contract to be in default. All status reports must be submitted timely, showing tasks or activities worked on, attesting to the level of services provided, hours spent on each task/activity, and upcoming major tasks or activities. Failure to use the appropriate technical requirements as identified in the Statement of Work will result in automatic task rejection and may not be invoiced or paid until correction of the task. Failure to complete the required duties as outlined in the Statement of Work may result in the rejection of the invoice. Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable/minimum requirement does not foreclose the Department's remedies in the event those performance standards that cannot be readily measured at the time of delivery are not met.

6. Information, Data Security and Confidentiality.

(a) The Contractor, its employees, subcontractors and agents shall comply with all security procedures of the Department in performance of this Contract. The Contractor shall provide immediate notice to the Department in the event it becomes aware of any security breach and any unauthorized transmission of State Data or of any allegation or suspected violation of security procedures of the Department. Except as required by law or legal process, and after notice to the Department, the Contractor shall not divulge to third parties any confidential information obtained by the Contractor, its employees, subcontractors or agents in the course of performing the services. The Contractor shall not be required to keep confidential any information that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's confidential information or information that is otherwise obtainable under state law as a public record.

(b) Loss of Data. In the event of loss of any State Data or record where such loss is due to the negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Department at the Contractor's sole expense, in addition to any other damages the Department may be entitled to by law or the Contract. Further, failure to maintain security that results in certain data release will subject the Contractor to the sanctions for failure to comply with section 817.5681, F.S., together with any costs of the Department for responding to such a breach of security caused by the Contractor.

(c) Data Protection. No State Data as defined in Contract Exhibit B or information will be transferred or stored offshore or out of the United States of America. The Contractor may use offshore services for its other administrative activities, not associated with handling of State Data or access to the Department's network, Subject to Contract section 13, State Property Disposition, Confidential Information may be disclosed by the Contractor (a) to any directors, officers, employees, accountants, attorneys or agents of the Contractor or its affiliates for whom it is necessary or appropriate to know such information to effect the proper performance by the Contractor of its services hereunder, and (b) as required by applicable law, regulation or judicial or regulatory process, the rules of any stock exchange or regulatory or self-regulatory organization.

Access to State Data shall only be available to approved and authorized staff, including remote/offshore personnel, that have a legitimate business need. If that need changes, then access shall be removed promptly. The Contractor shall encrypt all data transmissions. Remote data access must be provided via a trusted method such as SSL, TLS, SSH, VPN, IPSec or a comparable protocol approved by the Department. Unless otherwise agreed by the Department in writing, Respondent and Subcontractors shall not (i) save any State Data on a laptop, personal computer, PDA or other portable computer or data storage device unless such device has “full disc” encryption, (ii) save any State Data on any USB/PIN drive, CD, DVD, or similar device, (iii) send any copies of State Data via email, (iv) obtain remote access to any State Data except through a secure, dedicated line or through a trusted method using current authentication and encryption technologies.

The parties will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. The Contractor will protect, by password or encryption software compatible with the Department’s, all electronic documents and web-based information that is confidential and exempt from the Florida Public Records Act. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Department. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or the Department.

(d) Export Control. The Contractor certifies that by entering into this contract, it is, and during the term will ensure it remains, in compliance with the U.S. export control laws.

(e) Supplemental Obligations Regarding Personal Information. In addition to Contractor’s other obligations under this Data Security section, in the case of any Personal Information contained in or constituting part of the Department Confidential Information or the State Data, the Contractor shall protect “personal identification information” as defined in s. 817.568 (1) (f), F.S. The Contractor will not use Personal Identification Information and identifying addresses and telephone numbers for any purpose other than the limited purposes authorized under the Contract.

(f) Authorization of Business Third Parties to Access State Data. The Department hereby authorizes the Contractor to provide access to Business Third Parties, and individuals directly or indirectly accessing the State Data on behalf of Business Third Parties, to the State Data and the Contractor represents that such access shall be in accordance with the following: (1) each Business Third Party shall respond affirmatively to nondisclosure requirements protecting the Department’s Confidential Information as set forth in an Nondisclosure Acknowledgment; (2) all Business Third Parties accessing the State Data shall be licensed as Named Users; (3) Business Third Parties are expressly limited to

screen access to the State Data; (4) in no circumstances may Business Third Parties have access to modify State Data; (5) in no circumstances shall Business Third Parties Use the State Data in their operations or management of the business of such Business Third Parties; and (6) such use shall not constitute an unauthorized exportation of any Confidential Information under U.S. Government laws and regulations.

7. Electronic Accessibility.

When the Department is to develop, procure, maintain, or use electronic and information technology, Bank shall ensure that, as to its products and services, the electronic and information technology allows employees of the Department with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by employees of the Department who are not individuals with disabilities. These require, e.g., screen enlargement and voice output, or have built-in screen reader or, that the products support assistive technology; increase in volume and/or alter the tonal quality or increase the signal-to-noise ratio; if speech input one alternative input mode also; not require fine motor control or simultaneous actions. See 36 CFR Part 1194 based on section 508 of the Rehabilitation Act Amendments, 29 USC Sec. 794. (see <http://www.section508.gov/>)

8. Insurance.

(a) During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, this includes the following types of insurance for anyone directly or indirectly employed by Contractor and the amount of such Insurance shall be the minimum limits as follows, unless otherwise approved by the Contract Manager:

- 1) Commercial general liability coverage, bodily injury, property damage, 100,000per occurrence/\$500,000 aggregate.
- 2) Automobile liability coverage, bodily injury, property damage, \$500,000Combined Single Limits.
- 3) Insuring clause for both bodily injury and property damage shall be amended to provide coverage on an occurrence basis.
- 4) Workers' compensation and employer's liability insurance covering all employees engaged in any Contract work, in accordance with Chapter 440, Florida Statutes. Such coverage may be reduced with the consent of the Contract Manager since certain subcontractors have potentially less exposure in liability than other subcontractors.
- 5) Fidelity Employee Insurance and Computer Crime Insurance naming the Department as joint loss payee as their interest may appear, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of the Contractor or its agents, acting alone or in collusion with others, in a minimum amount of \$1,000,000 per loss.
- 6) Errors and Omissions Liability Insurance, including Privacy and Internet/Network Liability, with a minimum limit of US\$1,000,000 per occurrence and in the aggregate, which can be satisfied by primary or excess professional limits, providing coverage for errors and omissions arising out of the performance or non-performance of the Services by the

Contractor and/or its Subcontractors. The Department will be added by endorsement or included under a blanket endorsement to this coverage as additional insureds on a primary and non-contributory basis.

Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

(b) Except as agreed in a separate writing, no self-insurance coverage shall be acceptable unless Contractor is licensed or authorized to self-insure for a particular coverage listed above in the state of Florida, or is an insured member of a self-insurance group that is licensed to self-insure in the State of Florida.

(c) Within 30 days after the execution date of any required insurance policy, or the date of any new or renewed policy, and from time to time during the Term upon the Department's request, the Contractor will furnish the Department with a current certificate of insurance showing coverage in at least the amounts required by section. In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage described above, the Contractor will be solely responsible for taking such action. The Contractor will provide the Department with contemporaneous notice and with such other information as the Department may request regarding the event.

(d) The Contractor will ensure that all Subcontractors, if any, maintain insurance coverages described above naming or endorsing the Contractor as an additional insured or loss payee, as applicable, or the Contractor will ensure that all Subcontractors, if any, are endorsed as additional insureds on the Contractor's insurance described in this section.

9. Termination.

(a) The Department may, in its sole discretion, terminate the Contract at any time by giving four (4) months written notice to the Contractor.

(b) All services performed by the Contractor prior to the termination date of this Contract shall be professionally serviced to conclusion in accordance with the requirements of the Contract. Should the Contractor fail to perform all services under the Contract, the Contractor shall be liable to the Department for any fees or expenses that the Department may incur in securing a substitute provider to assume completion of those services.

(c) As provided in section 287.058, Florida Statutes, the Department may terminate the Contract immediately in the event that the Department requests in writing that the Contractor allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, which are made or received by the Contractor in conjunction with the Contract, and the Contractor refuses to allow such access. However, nothing herein is intended to expand the scope or applicability of Chapter 119, Florida Statutes, to the Contractor. The Contractor shall not be required to disclose to the public any proprietary copyrighted trade secrets or other materials protected by law as pursuant to section 119.07, Florida Statutes.

(d) As provided in section 287.135, Florida Statutes, the Department may, at its option, terminate the Contract immediately in the event the Contractor as a company as defined in such statute, is found to have submitted a false certification as provided under s. 287.135 (5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (see <http://www.state.gov/s/ct>) or has been engaged in business operations in Cuba or Syria, if legally prohibited from doing so by Section 287.135, F.S.

(e) If at any time the Contract is canceled, terminated, or expires, and a contract is subsequently executed with a firm other than the Contractor, the Contractor has the affirmative obligation to assist in the smooth transition of Contract services to the subsequent contractor. The Contractor agrees to provide, for up to six (6) months after termination or until the subsequent provider is fully operational, whichever occurs first, all reasonable termination assistance requested by the Department to facilitate the orderly transfer of such services to the Department or its designees. Such termination assistance shall be at no additional charge to the Department if the termination is due to Contractor default and if associated with technology services shall not exceed Contractor's current maintenance rates for such services. Termination assistance and operational continuity is further defined in the Statement of Work and will be performed according to a contingency plan acceptable to the Department.

(f) The Department shall notify, in writing, the Contractor who fails to adhere to Contract terms and conditions. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notification will also provide that, should it fail to perform within the time provided, the Contractor will be found in default and removed from the Department's approved vendor list. If the Contractor defaults in the performance of any covenant or obligation contained in the Contract, including without limitation the minimum requirements contained in the Scope of Work, or in the event of any material breach of any provision of the Contract by the Contractor, the Department may, in its sole discretion, provide notice and an opportunity to cure the default rather than exercise the remedy of termination. If the default or breach is not cured within thirty (30) days after written notice is given to the Contractor specifying the nature of the alleged default or breach, then the Department, upon giving written notice to the Contractor, shall have the right to terminate the Contract effective as of the date of receipt of the default notice.

(g) After receipt of a notice of termination or partial termination, and except as otherwise directed by the Department, the Contractor shall stop performing services on the date, and to the extent specified, in the notice. The Contractor shall accept no further work or new services related to the affected Deliverables, and shall, as soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate any orders and/or subcontracts related to the terminated Deliverables and settle all outstanding liabilities and all claims arising out of such termination of orders and/or subcontracts, with the approval or ratification of the Department to the extent required, which approval or ratification shall be final for the purpose of this section.

(h) Non-Appropriation: The following provisions apply to termination for non-appropriation by the Department: failure to pay by reason of non-appropriation shall initiate a termination of Services. The Department shall terminate this Contract in part with respect to all Services for which a Non-Appropriation has occurred.

The termination shall be effective as of the last day for which funds were appropriated and the Contractor may then pursue its rights under this Contract. However, in the event that the appropriations has not been adopted, the Term for the State as to such Services for which a Non-Appropriation has occurred, will be deemed extended for thirty (30) days unless otherwise agreed by the parties, pending the enactment of such appropriations act and thereafter, payment for Services rendered. Subject to the Contractor's compliance with its obligations pursuant to section 10.2 below, upon the effective date of the termination, the Department shall pay to the Contractor from Legally Available Funds any payments and other amounts that are due and have not been paid at or before the end of its then current Fiscal Year with respect to this Contract.

10. Events of Default.

10.1 Termination by the financial institution:

If, and only if, the Department fails to pay the Contractor when due undisputed charges totaling at least two months' charges under the Contract and fails to make such payment within 30 days after receiving a notice of non-payment from the Contractor referencing this section and expressly stating the Contractor's intent to terminate the Contract if the past due amount is not paid within such 30 day time period, the Contractor may terminate the Contract as of a date specified in a separate written notice of termination given to the Department, but subject to the provisions of Contract section regarding the termination or exit transition services to be provided by the Contractor. For the avoidance of doubt, this section states the only circumstances in which, and the only grounds on which, the Contractor has the right to terminate the Contract prior to its expiration. The Contractor's termination notice will not be effective unless it references this Contract section and expressly states that the Contractor intends to pursue termination of the Contract if the Department's failure to pay undisputed amounts due and owing is not cured within the applicable cure period.

10.2 Provided such failure is not the fault of the Department or outside the reasonable control of the Contractor, the following events, acts, or omissions, shall include but are not limited to, events of default:

(a) Failure to pay any and all entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Contract;

(b) Failure to complete and maintain, within the timeframes specified between the Department and the Contractor, the applicable system installation, ongoing performance, maintenance, and provision of Services;

(c) The commitment of any material breach of this Contract by the Contractor, failure to timely deliver a material deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Contract;

(d) Employment of an unauthorized alien in the performance of the work;

(e) One or more of the following circumstances, uncorrected for more than thirty (30) days unless within the specified thirty (30) day period, the Contractor (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Contract:

(1) Entry of an order for relief under Title 11 of the United States Code;

(2) The making by the Contractor of a general assignment for the benefit of creditors;

(3) The appointment of a general receiver or trustee in bankruptcy of the Contractor's business or property;

(4) An action by the Contractor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation;

(5) Entry of an order revoking the certificate of authority granted to the Contractor by the State or other licensing authority;

(f) The Contractor makes or has made an intentional material misrepresentation or omission in any materials provided to the Department or fails to maintain the required insurance.

(g) If the Department determines that the services to be furnished do not meet the specified requirements for continued disclosure of legal proceedings, or that the qualifications, financial standing, or facilities are not satisfactory, the Department may terminate the Contract.

11. Liability and Indemnification.

(a) In addition to the provisions in PUR 1000 regarding liability, the following provisions apply: No provision in this Contract shall require the Department to hold harmless or indemnify the Contractor, insure or assume liability for the Contractor's negligence, waive the Department's sovereign immunity under the laws of Florida, or otherwise impose liability on the Department for which it would not otherwise be responsible. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Contract. The provisions of the ITN and its incorporated PUR 1000, section 20 shall apply but, for the avoidance of doubt, the limitations and exclusions of liability will not apply to exclude or limit the recovery of any damages required by Rule 60A-1.006, F.A.C., or attributable to any of the following:

- (1) fraud, intentional torts, willful misconduct (including intentional breach of contract), unlawful conduct, or gross negligence of or by the Contractor (or an entity or person for whom the Contractor is responsible);
- (2) the Contractor's (or an entity's or person's for whom the Contractor is responsible) violation of applicable law or regulation; or
- (3) the Contractor's cessation or abandonment of any Services without providing Exit Transition Services substantially in accordance with the Contract.

(b) The Department's maximum liability for any damages, regardless of form of action, shall in no event exceed the total cost of the contract to the Contractor for the relevant products or services giving rise to the liability, prorated over a three year term from the installation of products or the date of performance of the applicable services.

12. Liquidated Damages.

(a) Contractor acknowledges that its failure to meet an agreed upon deliverable performance standard or deadline for delivery of services will damage the Department but that by their nature such damages are impossible to ascertain presently and will be difficult to ascertain in the future. Accordingly, the parties agree upon a reasonable amount of liquidated damages which are not intended to be a penalty and are solely intended to compensate for unknown and unascertainable damages. Accordingly liquidated damages shall be assessed on the Contractor as specified in Attachment C, as to specific deliverables, and otherwise as follows:

(1) Accessibility

(i) Uptime - 99.7% per month

Any information technology system used to perform the services should be available at least 99.7% of the time in any given Operational Period Deliverable reporting period, excluding scheduled maintenance times identified in the Statement of Work. The Contractor will provide a periodic "site statistics report" (a copy of which is attached for reference) along with the Department's invoice. The report will be generated from a third party service that measures system uptime from multiple locations throughout the country. Should the Contractor fail to meet the 99.7% measure, the Contractor will apply a 2.5% Service Level Credit to that month's invoice to the Department.

(ii) Responsiveness

With regard to all online services, average page turnaround in any given reporting period according to the Statement of Work (Operational Period Deliverables), shall not exceed responsiveness standards as identified in the Statement of Work, and shall be commensurate with leading industry sites such as Yahoo.com and AltaVista.com. The Contractor will provide a periodic "site statistics report" (a copy of which is attached for reference) along with the Department's invoice. The report will be generated from a third party service that measures system availability from multiple locations throughout the country. Should the Contractor fail to meet the applicable average responsiveness standard measure, the Contractor will apply a 2.5% Service Level Credit to that period's invoice to the Department.

(2) Timeliness

(i) The Contractor(s) must assure that Operational Period Deliverable Services data is posted to databases and processed into reports in a timely manner. Timely provide all reports required by the Statement of Work. Respond to inquiries from the Department within the due dates identified in the Statement of Work for receipt of inquiry. In the event a quarterly sample of accuracy by the Department reveals more than 5% untimeliness of posting data to databases and processing data into reports, the Department will temporarily apply a 2.5% Service Level Credit to offset the invoices for the next periodic invoice calculation.

(ii) Any monetary losses due to non-performance in report formats, the validity of the information, reports not being received by due date or any other reporting requirements will be reimbursed at the same amount as the loss.

a. The Department will allow a three (3) month probationary period to establish reports. Thereafter, the Department will allow the reports to be late two (2) times per year. After the second tardy report, a fee will be charged to the Contractor in the amount of \$100 per each business day the report is not provided.

b. There will be a three (3) month probation period allowed to meet report format requirements. Thereafter, if reports do not meet required format, the Department will begin the termination of the Contract.

(3) Data Security and Recovery

(i) The Contractor shall maintain and secure adequate back-up files of all documentation and programs utilized to process data submissions. The Contractor shall develop data security procedures to ensure only authorized access to data submissions and databases by personnel for contracted activities. The Contractor shall develop data security procedures to ensure no unauthorized access to data submissions and databases by other individuals other than authorized by the Contract or designated representatives of the Department.

At the initiation of the contract, the Contractor shall meet or exceed requirements of the Department's Policy # 4-03, Information Technology Security Policy, a copy of which will be provided by the Contract Manager upon request. Further, failure to maintain security that results in data release will subject the Contractor to possible termination and to the administrative sanctions for failure to comply with section 817.5681, F.S. together with any costs to the Department resulting from a breach of security.

(ii) Technology/Systems Disaster Recovery

a. Any monetary losses due to non-performance from providing availability to the web-based system, the stability of the system, adequate safeguards to prevent unauthorized entry into the Department's account, and safeguards against potential loss due to Acts of God will be reimbursed at the same amount as the loss.

b. The Department will allow the web-based system to be down no more than 8 hours during the business hours of 7:00 a.m. to 8:00 p.m. Eastern time per year. If the web-based system is down more than 8 hours per year, the Department will reduce the payment to the Contractor in the amount of \$1000 per additional 30 minutes.

c. If there is a failure to perform a successful annual Disaster Recovery test after corrective actions taken according to the schedule agreed to in advance by the parties, then the Department shall be entitled to collect liquidated damages in the amount of fifty thousand dollars (\$50,000) for each Disaster Recovery test not timely implemented and successfully corrected within the timeframes required by the parties' agreed schedule.

(4) Audits and Data Retention

The Contractor will timely cooperate in completion of all audits and data retention required by the Statement of Work. Failure to meet data retention requirements related to the services will be considered a material breach of the Contract and cause for termination. If any Audit of Contractor's charges determines that Contractor has incorrectly invoiced SSRC, Contractor will issue, on the next invoice submitted to Department pursuant to this Contract, a credit or debit, as appropriate, to correct the inaccuracy.

(b) Nothing in this section shall be construed to make the Contractor liable for delays that are beyond its reasonable control in accordance with PUR 1000 ¶24. Nothing in this section shall limit the Department's right to pursue its remedies for other types of damages.

13. State property disposition.

(a) Title to all property furnished by the Department under this Contract shall remain in the Department, and the Contractor shall surrender to the Department all property of the Department prior to settlement upon completion, termination, or cancellation. The parties shall settle any transfers of property which may have been required to be furnished to the Department or which otherwise belongs to the Department; and the Contractor shall provide written certification to the Department that the Contractor has surrendered to the Department all said property.

(b) All Deliverables shall become and remain the Department's property upon receipt and acceptance. As between the parties, the Department data (State Data) will be and remain the property of the Department regardless of whether Contractor or the Department is in possession or control of the State Data. The State Data will be made available to the Department, upon its request, in the form and format reasonably requested by the Department. Contractor and its representatives will not sell, assign, lease, or otherwise dispose of any the State Data to third parties or commercially exploit the State Data other than for the benefit of the Department and State of Florida agencies as authorized by the Contract. Neither Contractor nor any of its representatives will possess or assert any lien or other right against or to any the State Data in any circumstances.

(c) Intellectual Property Rights: Unless otherwise agreed in writing, (i) intellectual property rights to preexisting Contractor property will remain with the Contractor (or its applicable licensor). The Contractor will, at its cost, obtain all necessary rights to ensure that the Department receives beneficial use of said property throughout the Term. In turn, the Department agrees to abide by all applicable third party licensing restrictions (including use restrictions) relative to such property that are disclosed to and accepted by the Department in writing, (ii) intellectual property rights to all property created or otherwise developed by the Contractor specifically for the Department will be owned by the Department and the State of Florida. Proceeds derived from the sale, licensing, marketing or other authorized commercial exploitation by the Contractor (or any Subcontractor or other company) of any such agency-controlled intellectual property right shall be handled in the manner specified by applicable state statute.

14. Contract Modification.

This Contract may be amended only by a written agreement between both parties subject to the provisions of chapter 287, Florida Statutes. If a particular service or deliverable is inadvertently omitted or not clearly specified but determined to be operationally necessary and verified to have been performed by the agency within the 12 months before the execution of the Contract, such service or deliverable will be provided by the Contractor through the contract amendment process.

15. Nonexclusive Contract.

This Contract is not an exclusive license to provide the services described in the ITN or the Contract. The Department may, without limitation and without recourse by the Contractor, contract with other vendors to provide the same or similar services. The Department retains the right to perform the service or activity, directly or with another contractor, if service levels are not being achieved.

16. Statutory Notices.

The Department shall consider the employment by any contractor of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Contract. An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a Response on a contract to provide any goods or services to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287, Florida Statutes.

17. Compliance with Federal, State and Local Laws.

The Contractor and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, worker's compensation, licenses and registration requirements. By signing this Contract, the

Contractor certifies that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List (See <http://www.state.gov/s/ct>) and is otherwise subject to s. 287.135, F.S. Provider shall retain records relating to the Contract and its performance for the longer of (3) three years after the expiration of the awarded Contract or the period required by the General Records Schedules maintained by the Florida Department of State (available at: http://dlis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm).

18. Background and employment eligibility verification.

(a) E-Verify employment eligibility verification

The Contractor is responsible for payment of costs if any, and retaining records relating to, employment eligibility verification, which records are exempt from Chapter 119, F.S., and which verification requires the following:

(1) The Contractor must participate in the federal E-Verify Program for Employment Verification under the terms provided in the “Memorandum of Understanding” with the federal Department of Homeland Security governing the program. The Contractor agrees to provide to the Department, within thirty days of hiring any new employees to perform work on the Contract, documentation of such enrollment in the form of a copy of the E-Verify “Edit Company Profile” screen, which contains proof of enrollment in the E-Verify Program. Information on “E-Verify” is available at the following website: http://www.dhs.gov/files/programs/gc_1185221678150.shtm

(2) The Contractor further agrees that it will require each subcontractor that hires new employees to perform work under this Contract to enroll and participate in the E-Verify Program. Participation in the E-Verify Program extends to the Contractor’s and subcontractor’s newly hired Florida employees and those employees hired to work directly on the Contract. The Contractor shall obtain from the subcontractor(s) a copy of the “Edit Company Profile” screen indicating enrollment in the E-Verify Program and make such record(s) available to the Department upon request.

(3) Compliance with the terms of this Employment Eligibility Verification provision will be an express condition of the Contract and the Department may treat a failure to comply as a material breach of the Contract.

(4) In the event legislation authorizes an alternative option as proof of legal status, the Contractor may use the process authorized by such legislation upon its passage.

19. Miscellaneous.

(a) This Contract, and any referenced or attached addendum embodies the entire agreement of the parties. There are no other provisions, terms, conditions, or obligations. This Contract supersedes all previous oral or written communications, representations or agreements on this subject. In any conflict between this Contract and any referenced or attached addendum the terms and conditions of this Contract shall take precedence and

govern. Acceptance of Service or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

(b) Any dispute concerning performance of the Contract shall be decided by the Department's designated Contract Manager, who shall reduce the decision to writing and send a copy to the Contractor at a previously provided address. In the event a party is dissatisfied with the dispute resolution decision, jurisdiction for any dispute arising under the terms of the Contract will be in the courts of the State of Florida, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Contract. (replaces PUR 1000 ¶31)

(c) The laws of the State of Florida and the Department's rules govern this Contract.

(d) The Contractor agrees that no funds received by it under this Contract will be expended for the purpose of lobbying the Legislature or a state agency pursuant to section 216.347, Florida Statutes, except that pursuant to the requirements of section 287.058(6), Florida Statutes, during the term of any executed contract between the Contractor and the state, the Contractor may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that contract.

(e) The Contractor is an independent contractor, and is not an employee or agent of the Department.

(f) All services contracted for, other than warrant services specifically approved by acceptance of the negotiated final Contract, are to be performed solely by the Contractor and may not be subcontracted or assigned without the prior written consent of the Department. The Department may refuse access to or require replacement of any Contractor employee, subcontractor or agent, for cause, including but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Department policy or other requirement. Such action shall not relieve Contractor of its obligation to perform all work in compliance with the Contract. The Department may reject and bar from any facility for cause any of Contractor's employees, subcontractors or agents.

(g) The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations regarding confidentiality, proprietary interests, and limitations of liability shall survive termination, cancellation or expiration of this Contract.

(h) The Contractor hereby agrees to protect, indemnify, defend and hold harmless the Department from and against any and all costs, claims, demands, damages, losses and liabilities arising from or in any way related to the Contractor's breach of this Contract or the negligent acts or omissions of the Contractor.

(i) The Department shall not be deemed to assume any liability for the acts, omissions to act or negligence of the Contractor, its agents, servants, and employees, nor shall the Contractor disclaim its own negligence to the Department or any third party.

(j) If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

(k) During the term of this Contract, Contractor shall not knowingly employ, subcontract with or sub-grant to any person (including any non-governmental entity in which such person has any employment or other material interest as defined in section 112.312 (15), Florida Statutes, who is employed by the State or who has participated in the performance or procurement of this Contract except as provided in section 112.3185, Florida Statutes.

20. Execution in Counterparts; Authority to Sign.

This Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

21. Contract Administration.

(a) The Department Contract Manager is Katherine Ward Adkins located at 200 E. Gaines Street, Tallahassee, FL 32399-0344, telephone number 850-413-2794, email address: Katherine.ward-adkins@myfloridacfo.com. Send payment invoice to: Department of Financial Services, Division of Treasury, 200 E. Gaines Street, Tallahassee, FL 32399-0344.

(b) The Contractor Contract Manager is _____ located at _____, telephone number _____, email address: _____.

(c) All written and verbal approvals referenced in this Contract must be obtained from the parties' Contract Managers designated in this section or designees. Notices required to be in writing must be delivered or sent to the intended recipient by hand delivery, certified mail or receipted courier and shall be deemed received on the date received or the date of the certification or receipt.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Contract.

Contractor Representative:
Title:

Department of Financial Services
Chief Financial Officer or Designee

Date: _____

Date: _____

EXHIBIT B
GLOSSARY OF TERMS AND ACRONYMS

Terms used in this Contract whether or not capitalized (including the Exhibits and any attachments thereto) without definition shall have the meanings ascribed below. Terms with the initial letter capitalized will have the same meaning as defined in the Invitation to Negotiate (ITN) unless otherwise defined in this Contract:

“**Acceptance**” means a written notification that a Deliverable has been reviewed and is judged by the Department to meet the specifications contained in the Services.

“**Acceptance Criteria**” means pre-defined performance requirements and essential conditions that project Deliverables are measured against before they are considered complete and acceptable. The criteria must be relevant, measurable, and specific.

“**Acceptance Testing**” means the testing of functionality and defined Deliverable.

“**Application**” means the system solution to be designed, constructed and deployed during the performance of the Project, including all application software, operating systems software, tools, utilities, hardware, equipment and related documentation and other materials comprising the integrated solution.

“**BAFO**” means a Respondent’s Best and Final Offer Response to Invitation to Negotiate DFS ITN # 11/12-12”, if applicable.

“**Baseline Software**” means the object code version of computer programs and any related documentation (excluding maintenance diagnostics), provided by the Contractor to the State (under reasonable and customary license terms and conditions acceptable to the Department, that is either (i) owned by the Contractor prior to the Effective Date, or (ii) owned by a third party, provided the Department has obtained the legal right from the original licensor to license such Baseline Software. Baseline Software also includes the source code version of Baseline Software where provided, and any modifications or enhancements to Baseline Software that are produced outside this Contract. Baseline Software also includes loadable micro code that enables the underlying equipment to function according to its published specifications.

“**Business Day**,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday.

“**Business Function Testing**” means the “start-to-finish” global testing of an entire business function. Business Function Testing tests business function cycles of the simulating real-life usage as closely as possible, and is based on the lifecycle of the core functions that the business function is expected to perform.

“**Business Hour**,” whether capitalized or not, shall mean 8 AM to 5 PM on all business days.

“**Calendar Day**,” whether capitalized or not, shall mean all days, including weekends and holidays.

“**Change Order**” has the meaning given in the ITN.

“**Client Interface**” means the mechanism by which a user interacts with an application, service or system. In the context of this document, the term generally means the way by which the user views, receives, sends, organizes or otherwise interacts with the environment/solution – but may also refer to the interaction between other system users (administrators and individuals with other roles) and the respective components of the solution.

“Confidential Information” means information in the possession or under the control of the State or the Contractor that is exempt from public disclosure pursuant to Section I, Section 24 of the Constitution of the State of Florida, the Public Records Law, Chapter 119 of the Florida Statutes, or to any other provision of State or Federal law that serves to exempt information from public disclosure.

“Contractor” or **“Provider”** means the business entity to which this Contract has been awarded and entered into by the Department.

“Contract Exhibits” means the Exhibits attached to, or referenced in, this Contract.

“Contract Manager” has the meaning given in Section 21. The Contract Manager for Treasury’s controlled disbursement and EFT Services will also verify completeness and quality of activities and tools, and provide validation that the resulting work products support the business objectives and goals of the Department. Further, the Contract Manager is to provide oversight to the project management processes as well as quality assurance of the deliverables and work products produced at various stages of the project.

“Cure Period” means the period of time associated with a Deliverable and specified in Exhibit A during which the Contractor is correcting deficiencies of a Deliverable identified by the Department.

“Default” has the meaning given in Contract Sections 9-10.

“Deficiency” or **“Defect”** means a problem with a Deliverable that does not meet the acceptance criteria including Deliverable Acceptance Criteria, or, if not stated in the Acceptance Criteria, then meeting the level of quality stated in this Contract or attachments; in the context of the Deliverables, material deficiency (whether or not capitalized) means a problem of such impact that a specific requirement is not operational (critical part), any situation including one that prevents use of the entire system or of its critical parts, late delivery that may interfere with the timely and proper completion of the Services, or any design, installation, testing, deployment or system restoration either (a) delayed such that it affects critical path or (b) not in accordance the specifications contained in the Department-accepted Project Plan, and according to the criteria identified in the Deliverable Acceptance Criteria.

“Deliverables” means all results, items and/or materials representing goods and Services, provided, prepared and delivered or to be delivered to the Department in the course of performance under this Contract of the Services by the Contractor. Deliverables shall be more specifically described in definable verifiable detail in the Statement of Work.

“Deliverable Acceptance Criteria” has the meaning described in the Measure column in Section II of the Statement of Work.

“Department” (DFS) means the Department of Financial Services, or its successor entity.

“Design Specification” means a Deliverable listed in Exhibit A that defines how all requirements identified in the ITN Requirements and augmented by the requirements confirmation phase will be met.

“**Desirable Conditions**” designated by the use of the words “should” or “may” in the ITN solicitation indicate desirable attributes or conditions, but are permissive in nature. Deviation from, or omission of, such a desirable feature, will not in itself cause rejection of a Response.

“**Developed Material**” means all software and other materials produced by the Contractor or its Subcontractors in the performance of the Project, including software program code, in both object code and source code forms, and all related materials, including designs, data models, database models, object models, program listings, flow charts, application manuals, technical manuals, training manuals, user manuals, and operating procedures. The term “Developed Materials” does not include any pre-existing software, such as Baseline Software or modifications thereto produced outside this Contract, but does include all modifications, enhancements and interfaces to either Baseline Software or other pre-existing materials that are created in the performance of the Project.

“**Division of Information Systems**” (DIS or Division) means a division within the Department of Financial Services that provides technological support for operations.

“**Effective Date**” means the last date this Contract is signed below by both parties.

“**Electronic Funds Transfer**” or “**EFT**” means an electronic payment method.

“**FRB**” means Federal Reserve Bank.

“**FLAIR**” means Florida Accounting Information Resource. This is the State of Florida’s current accounting system.

“**Fully Integrated**” or “**Seamlessly Integrated**” means two or more software components automatically sharing information and data with one another and interacting in order to complete processes that span such software components. Fully Integrated and Seamlessly Integrated also include the use of reasonable efforts to design and build a consistent look and feel for the user interfaces of various integrated components.

“**Fiscal Year**” (FY) runs from July 1st of one year to June 30th of the next calendar year.

“**Incident**” means each occurrence of an unplanned interruption to a Service, or failure of a Service to be in accordance with its requirements and specifications, including a failure of a configuration item that has not yet impacted Service (e.g., the failure of one disk from a mirror set).

“**Including**” means “including, without limitation,” wherever the word “including” appears in this Contract, whether or not such word is capitalized.

“**Installation Testing**” means testing that assures that the product has been effectively installed and is operational.

“**Integration Testing**” refers to the test phase that will test the overall integration of a Prepared Software Deliverable with previously delivered software Deliverables with which it interfaces. Integration Testing focuses on integration of all software Deliverable components, including but not limited to printing, reports, batch system, online system, remote system access, tapes, security and external interfaces.

“**ITN**” means Invitation to Negotiate, a formal procurement method under Chapter 287, Florida Statutes.

“**Key Performance Indicators**” (KPI) means the performance measures and associated standards that clarify expectations for the Services under this Contract and demonstrate the business value the Department receives from the Contractor; also see “Performance Standards.”

“**Laws**” means any statute, regulation, ordinance, rule, order, decree, mandate or requirement enacted, issued, promulgated or imposed by any governmental authority or recognized non-governmental regulatory body or industry standard setting organization at any level (e.g., municipal, county, state, or national or international) at any time.

“**Legally Available Funds**” means funds duly appropriated or otherwise legally available for the purpose of making payments under this Contract.

“**Malware**” means (i) program code or programming instructions intentionally designed to disrupt, disable, harm, interfere with or otherwise adversely affect computer programs, data files or operations; or (ii) other code typically described as malicious code or a virus, or by similar terms, including Trojan horse, worm, and backdoor.

“**Mandatory Requirements**” means that the Department has established certain requirements with respect to Responses to be submitted by ITN Respondents. The use of “must,” “will” (except to indicate simple futurity) or “shall” in the solicitation indicates compliance is mandatory. Failure to meet mandatory requirements will cause rejection of the Response or termination of the Contract.

“**Minor Irregularity**,” used in the context of the ITN solicitation and Contract, indicates a variation from the Response terms and conditions that does not affect the price of the Response or give the ITN Respondent an advantage or benefit not enjoyed by other proposers, or does not adversely impact the interests of the Department.

“**New Services**” means all services, functions, products and materials that are requested in writing by the Department to be provided by the Contractor, which are outside the scope of the Contractor’s responsibilities under the Statement of Work issued under this Contract that are in effect at the time the Department’s request is made.

“**Non-Appropriation**” means a Legislative act in which funds to enable the Department or to effect continued payment under this Contract are not appropriated or otherwise made available.

“**Objectives**” means the end results to be achieved by the project.

“**Operational Period Deliverables**” means any Deliverable that is to be placed into an operational environment, e.g., software or a sub-system (as distinct from Written Deliverables)

“**Party**” or “**Parties**,” whether or not capitalized, mean one or both parties to this Contract, unless the context requires otherwise.

“**Performance Standards**” means specific measurement indicators assigned to Contract tasks representing timeliness and quality of task output.

“Privacy Law” means any Law that relates to the confidentiality, security and protection of information that, either individually or when combined with other information, could be used to distinguish or trace an individual’s identity, such as their name, address, telephone number, social security number, date and place of birth, mother’s maiden name, account information, and/or biometric records, including information regarding an individual’s education, financial transactions, medical history, criminal history and employment history (sometimes referred to as “personally identifiable information”).

“Project” is a group of related functions or activities that spans multiple days, weeks, or months and builds cumulatively toward the achievement of defined target outcomes or objectives. A Project typically has multiple phases or life-cycle stages and involves written project plans with defined interim milestones and Deliverables to measure progress toward the achievement of its target outcomes or objectives.

“Project Completion” means Acceptance of the Final Closeout Deliverable, together with all post-implementation support identified in the initial Statement of Work for a maximum of 60 days after Installation Period go-live.

“Project Management” means the organization staffed by the State with support from the Contractor to oversee the performance of the Project.

“Project Plan” has the meaning given in Attachment C section K.

“Quality Assurance Testing” means testing performed by the Contractor that confirms that the Prepared Software Deliverable conforms in all respects to the Design Specification and that the Deliverable has been created in a workmanlike and professional manner. Quality Assurance Testing includes without limitation system testing, integration testing, volume/stress testing, business function testing, and regression testing.

“Reasonably Necessary” will be controlled by the Statement of Need, Attachment A to the ITN and Response together with any approved Change Orders. It will be presumed the Statement of Work as agreed will include all Deliverables to satisfy the Statement of Need.

“Regression Testing” means the continual re-testing of previously tested Prepared Software Deliverables to ensure that such Prepared Software Deliverables continue to operate correctly. Regression Testing is necessary to test components that may be affected by a change to another component.

“Requirements” means the specific business, functional, technical and other requirements of the Department to be achieved by or otherwise through the performance of the Services and the completion of the Project, which are set out in Exhibit A, Scope of Work.

“Respondent” means the entity that submits materials to the Department in accordance with the ITN. This may also be referred to as Vendor or Proposer. The solicitation response may be referred to as Proposal or Response.

“**Review Period**” or “**Review Cycle**” means a period of time associated with a Deliverable and specified in Exhibit A during which the Department is examining the Deliverable and determining if it is acceptable.

“**Scope**” describes at a high level what will and will not be included as part of the project. Scope defines the project’s overall boundaries and provides a common understanding of the project for the stakeholders and the project team. It is further defined by the requirements, deliverables, schedule, and supporting information contained in the Scope of Work.

“**Services**” means all of the services, functions, equipment, software and other products and materials (including Deliverables) to be performed or provided by the Contractor and any of its Subcontractors under this Contract, as such Services are described in this Contract and any Exhibits and as such Services evolve, are enhanced and change over the Term as contemplated by this Contract, and including any services or functions not specifically described in this Contract that are reasonably required for the proper performance and provision of the Services. The term “Services” also includes any unspecified service that is inherent to the proper delivery of a specified service.

“**Standards**” mean documents that stipulate minimum levels of performance and quality for goods and services, and optimal conditions and procedures for operation.

“**State**” means the state of Florida.

“**State Data**” means any data or information of or concerning the State or the Department(s) that is provided to or obtained by the Contractor or Contractor personnel in connection with the negotiation and execution of the Contract or the performance of the Contractor’s obligations under the Contract, including any such data and information that either (i) is created, generated, collected or processed by Contractor personnel in the performance of the Contractor’s obligations under the Contract, including data processing input and output, performance measurements, asset information, reports, third party service and product Contracts, and the Contractor’s charges to the Department, or (ii) resides in or is accessed through the Department’s operating environment or the Contractor’s Service delivery infrastructure; as well as any data and information derived from the foregoing.

“**State Review Period**” means the time period as described in the Deliverables Acceptance Criteria or at the Department’s discretion during which the Department is to complete its review and, as applicable, testing of a Deliverable for approval.

“**Statement of Work**” (SOW) is Attachment C in the ITN.

“**Statement of Need**” has the meaning given in Attachment C to the ITN.

“**Subcontractor**” means a company to which the Contractor delegates performance of a portion of the Services, but does not include independent contractors engaged by the Contractor solely in a staff augmentation role.

“**System Testing**” means all of the testing of Developed Material to be conducted by the Contractor prior to turning over the Deliverable to the Department for approval.

“**Task**” means a cohesive, individual unit of work that is part of the total work needed to accomplish a project.

“**Technical Testing**” includes: (1) testing of the hardware environment, network and communications environment, and peripherals (such as printers); (2) testing of the software environment (architectural and technical); (3) stress testing and benchmarking of the online applications; (4) execution at full volume of the batch applications to determine the batch window; and (5) testing of batch applications to validate that programs have sufficient startup, recovery, and restart logic. Technical Testing is conducted contemporaneously with Business Functionality Testing.

“**Unit Testing**” means using test conditions provided in the detailed specification to test the logic of a Prepared Software Deliverable component. During Unit Testing, additional test conditions may be defined to help ensure that all logic paths are tested, and test data is created to test the software as needed.

“**User Acceptance Testing**” (also referred to as “UAT”) means the testing of Prepared Software Deliverables to be carried out by the Department with the support and assistance of the Contractor to determine whether the Deliverables should be approved or accepted by the Department.

“**Vendor Bid System**” (VBS) refers to the State of Florida internet-based vendor information system at http://myflorida.com/apps/vbs/vbs_www.main_menu

“**Written Deliverable**” means any Deliverable that is a literary work or other written item identified as a Deliverable (whether delivered in electronic or printed form).

EXHIBIT C
CHANGE ORDER REQUEST FORM

This document must be completed and submitted to the appropriate Contract Manager to commence any change order.

Submitted by:

Date:

Describe the change being requested:

Identify by Requirement number the function most closely matching the functional requirements in the Statement of Need that is impacted:

Describe the reason for the requested change:
[include identification of duties of the parties associated with the need for the change]

Describe the impact, if any, on existing Deliverables and/or Milestones:

Describe additional or reduction in Work Products and/or Deliverables and/or Milestones required as a result of the requested change, if any:

Describe the impact, if any, to the existing Project Schedule.

Provide a revised Project Schedule, if appropriate:

State the estimated change, if any, to the project fees/expenditures.

Provide the rationale/methodology used to calculate any change:

Additional Comments:

FOR ENGINEERING CHANGES (No cost impact)

(Attach documents reflecting (a) the redistribution of costs and (b) the difference in price if any from the product or service offered with the Response); for schedule delays, only day for day schedule delay is available if the vendor did not cause delay.)

Approved or Disapproved: _____
DIVISION DIRECTOR: (Signature) (Date)

FOR CONTRACT CHANGES

(If adding costs, attach documentation reflecting (a) detailed quote for the new service or product and (b) why the proposed new function differs from the functional requirements in the Statement of Need).

If adding costs, the change is also contingent on the following approvals:

BUDGET OFFICE:

(Signature) (Date)

CONTRACT ADMINISTRATOR:

(Signature) (Date)

LEGAL:

(Signature) (Date)

The Change Order is legally binding upon proper execution by duly authorized representatives from each of the referenced parties on the date last executed herein.

Contractor State of Florida
Department of Financial Services

Signature: Signature:

Name: Name:

Title: Title:

Date: Date:

ATTACHMENT E

CLIENT REFERENCES

This form must be completed by the person giving the reference on the Respondent. For purposes of this form, the Respondent is the business entity that currently or has previously provided services to your organization, and is submitting a reply to a solicitation. Upon completion of this form, please return original to Respondent.

This business reference is for (Respondent's Name):

Name of the person providing the reference:

Title of person providing the reference:

Organization name of person providing the reference:

Telephone number of the person providing the reference:

Please identify your relationship with the Respondent (e.g., subcontractor, customer, etc.).

How many years have you done business with the Respondent?

Please provide

dates: _____

If a customer, please describe the primary service the Respondent provides your organization.

Did the Respondent act as a primary provider or as a subcontractor? _____

Do you have a business, profession, or interest in the Respondent's organization?

If yes, what is that interest?

Have you experienced any contract performance problems with the Respondent's organization? If so, please describe.

ATTACHMENT F
CONFIDENTIAL INFORMATION
NON-DISCLOSURE AGREEMENT

In connection with ITN No.: DFS TR ITN 11/12-12, the Florida Department of Financial Services (“DFS”) is disclosing to you confidential business information, technical information, restricted procedures and/or ideas (“Confidential Information”).

In consideration of any disclosure and any Confidential Information provided by DFS concerning ITN No.: DFS TR ITN 11/12-12, you agree as follows:

1. You will hold in confidence and not possess or use (except to evaluate, review, or respond in relation to the ITN) or disclose any Confidential Information except information you can document (a) is in the public domain through no fault of yours, (b) was properly known to you, without restriction, prior to disclosure by DFS, or (c) was properly disclosed to you by another person without restriction, and you will not reverse engineer or attempt to derive the composition or underlying information, structure or ideas of any Confidential Information. The foregoing does not grant you a license in or to any of the Confidential Information.
2. If you decide not to proceed with the proposed business relationship or if asked by DFS, you will promptly return all Confidential Information and all copies, extracts and other objects or items in which it may be contained or embodied.
3. You will promptly notify DFS of any unauthorized release of Confidential Information.
4. You understand that this statement does not obligate DFS to disclose any information, negotiate or enter into any agreement or relationship.
5. You acknowledge and agree that due to the unique nature of the Confidential Information, any breach of this agreement would cause irreparable harm to DFS or the State of Florida for which damages are not adequate remedies and that the DFS shall therefore be entitled to equitable relief in addition to all other remedies available at law.
6. The terms of this Agreement will remain in effect with respect to any particular Confidential Information until you can document that it falls into one of the exceptions stated in Paragraph 1 above.
7. This Agreement is governed by the laws of the State of Florida and may be modified or waived only in writing. If any provision is found to be unenforceable, such provision will be limited or deleted to the minimum extent necessary so that the remaining terms remain in full force and effect. The prevailing party in any dispute or legal action regarding the subject matter of this Agreement shall be entitled to recover attorneys’ fees and costs.

The Restricted Procedures will apply to the following information:

List of Confidential Information

- Warrant File Specifications
- Current MICR Line Encoding for state of Florida Warrants
- ACH Payroll Retiree Pre note file format
- Notice of Change and Returns file format
- Collections and Payroll file format
- Expense Payments EDI file format
- IAT file format
- Positive Pay file format

Acknowledged and agreed on _____, 2012:

By: _____
(Signature)

Name: _____

Title: _____

Florida Department of Financial Services (“DFS”)

By: _____
(Signature)

Name: _____

Title: _____

Attachment G
Forged Warrant and Improper Endorsement Status Report

Period Beginning: _____ to Ending: _____

Warrant Number	Warrant Type	Payee	Amount	Credit Advice Date	Amount Collected	Date Collected	If Uncollected, Status of Collection Efforts	If Not Collected, Status
xxxx	X	Xxx	xxxx.xx	mm/dd/yy	xxxx.xx	mm/dd/yy		
xxxx	X	Xxx	xxxx.xx	mm/dd/yy	xxxx.xx	mm/dd/yy		
xxxx	X	Xxx	xxxx.xx	mm/dd/yy	xxxx.xx	mm/dd/yy		

Attachment H
Re-employment Assistance Benefit Activity Report

Income -Expense Analysis, UC Fund					Bank		Month and year	
Benefit Payment Account								
					Location		State	
(As shown by the Books of the Depository bank)								
		Deposits to Account		Withdrawal from Account				
Day of Month	Daily Ledger Balance (omit cents)	No.	Amount (omit cents)	No.	Amount (omit cents)	Income Analysis		
		Prior Month Balance				Average Daily Ledger Balance		
1						Less: Average Daily Float		
2						Average Daily Collected Balance		
3						Less: ____% Reserve		
4						Average Daily Loanable Balance		
5								
6						Earning Value At ____ =		
7								
8						Expense Analysis		
9						Checks Deposited No.		
10						Checks on Account No.		
11						Checks on Account No.		
12						Checks on Account No.		
13						Other Costs		
14						Other Costs		
15						Other Costs		
16						Total Cost		
17								
18						Net Profit/Loss		
19								
20								
21								
22								
23								
24						Signature of Cashier		
25								
26								
27								
28						Date		
29								
30								
31								
Total	0.00		0.00		0.00			

Attachment I

Paid Warrant Detail Listing

Paid Date	Account Number	Sequence Number	Warrant Number	Year	Amount
mm/dd/yy	xxxx	xxxx	xxxx	xxxx	xxxx.xx
mm/dd/yy	xxxx	xxxx	xxxx	xxxx	xxxx.xx
mm/dd/yy	xxxx	xxxx	xxxx	xxxx	xxxx.xx

Attachment J

Warrant Verification Error Listing

Paid Date	Account Number	Warrant Number	Sequence Number	Error Description	Bank Amount	Issue Amount	Amount Difference	Warrant Number Captured	Warrant Number Corrected
mm/dd/yy	xxxx	xxxx	xxxx	xxxx	xxxx.xx	xxxx.xx	xxxx.xx	xxxx	xxxx
mm/dd/yy	xxxx	xxxx	xxxx	xxxx	xxxx.xx	xxxx.xx	xxxx.xx	xxxx	xxxx
mm/dd/yy	xxxx	xxxx	xxxx	xxxx	xxxx.xx	xxxx.xx	xxxx.xx	xxxx	xxxx

Attachment K
Fax Layout for Deletes and Reversals

FAX TO: **ABC Bank**
ACH Department
Fax Number (800) XXX-XXXX
DELETION / REVERSAL REQUEST

To Be Completed by Department of Financial Services:

Today's Date: _____

COMPANY INFORMATION

ACH ITEM INFORMATION

State of Florida
Company Name

See Following Pages
Individual's Name

Contact Name

Individual's Account Number

(850) 413-3048
Phone Number

Receiving Bank's Transit Routing #

Company ID #

Dollar Amount of Item

Signature

Effective Date of Item

Number of Deletes / Reversals Sent

Individual ID Number

To Be Completed By Financial Institution:

Number of Deletes / Reversals Processed: _____ Number of pages sent: _____

Financial Institution Representative's Signature

Date

Financial Institution Representative's Printed Name

Fax Verification of Completion to: EFT Section (850) 413-3048

ATTACHEMENT L

State of Florida PUR 1000 General Contract Conditions

Contents

1. Definitions.
2. Purchase Orders.
3. Product Version.
4. Price Changes Applicable only to Term Contracts.
5. Additional Quantities.
6. Packaging.
7. Inspection at Contractor's Site.
8. Safety Standards.
9. Americans with Disabilities Act.
10. Literature.
11. Transportation and Delivery.
12. Installation.
13. Risk of Loss.
14. Transaction Fee.
15. Invoicing and Payment.
16. Taxes.
17. Governmental Restrictions.
18. Lobbying and Integrity.
19. Indemnification.
20. Limitation of Liability.
21. Suspension of Work.
22. Termination for Convenience.
23. Termination for Cause.
24. Force Majeure, Notice of Delay, and No Damages for Delay.
25. Changes.
26. Renewal.
27. Purchase Order Duration.
28. Advertising.
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31. Dispute Resolution.
32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
35. Insurance Requirements.
36. Warranty of Authority.
37. Warranty of Ability to Perform.
38. Notices.

- 39. Leases and Installment Purchases.
- 40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).
- 41. Products Available from the Blind or Other Handicapped.
- 42. Modification of Terms.
- 43. Cooperative Purchasing.
- 44. Waiver.
- 45. Annual Appropriations.
- 46. Execution in Counterparts.
- 47. Severability.

1. Definitions. The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

(a) “Contract” means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) “Customer” means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The “Customer” may also be the “Buyer” as defined in the PUR 1001 if it meets the definition of both terms.

(c) “Product” means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) “Purchase order” means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

2. Purchase Orders. In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor’s order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.

3. Product Version. Purchase orders shall be deemed to reference a manufacturer’s most recently release model or version of the product at the time of the order, unless the Customer

specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

4. Price Changes Applicable only to Term Contracts. If this is a term contract for commodities or services, the following provisions apply.

(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

(b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.

(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

(d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

(e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

5. Additional Quantities. For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.

6. Packaging. Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

7. Inspection at Contractor's Site. The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

8. Safety Standards. All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

9. Americans with Disabilities Act. Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

10. Literature. Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

11. Transportation and Delivery. Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

12. Installation. Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace

the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

13. Risk of Loss. Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

14. Transaction Fee. The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering re-procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

15. Invoicing and Payment. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

16. Taxes. The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

17. Governmental Restrictions. If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

18. Lobbying and Integrity. Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after

the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dhis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

19. Indemnification. The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

20. Limitation of Liability. For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges

rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

21. Suspension of Work. The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

22. Termination for Convenience. The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

23. Termination for Cause. The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the

Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

24. Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

25. Changes. The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.

26. Renewal. Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the

contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

27. Purchase Order Duration. Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.

Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.

Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.

The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.

Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.

Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.

28. Advertising. Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other

promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

29. Assignment. The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.

30. Antitrust Assignment. The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

31. Dispute Resolution. Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

32. Employees, Subcontractors, and Agents. All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor

of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

33. Security and Confidentiality. The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

34. Contractor Employees, Subcontractors, and Other Agents. The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

35. Insurance Requirements. During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

36. Warranty of Authority. Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

37. Warranty of Ability to Perform. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

38. Notices. All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

39. Leases and Installment Purchases. Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

41. Products Available from the Blind or Other Handicapped. Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

42. Modification of Terms. The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for

payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

43. Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser.

State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

44. Waiver. The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

45. Annual Appropriations. The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

46. Execution in Counterparts. The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

47. Severability. If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

ATTACHMENT M
State of Florida
PUR 1001
General Instructions to Respondents

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1. Definitions. The definitions found in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

- (a) "Buyer" means the entity that has released the solicitation. The "Buyer" may also be the "Customer" as defined in the PUR 1000 if that entity meets the definition of both terms.
- (b) "Procurement Officer" means the Buyer's contracting personnel, as identified in the Introductory Materials.

- (c) "Respondent" means the entity that submits materials to the Buyer in accordance with these Instructions.
- (d) "Response" means the material submitted by the respondent in answering the solicitation.
- (e) "Timeline" means the list of critical dates and actions included in the Introductory Materials.

2. General Instructions. Potential respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly.

3. Electronic Submission of Responses. Respondents are required to submit responses electronically. For this purpose, all references herein to signatures, signing requirements, or other required acknowledgments hereby include electronic signature by means of clicking the "Submit Response" button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within MyFloridaMarketPlace. The respondent agrees that the action of electronically submitting its response constitutes:

- an electronic signature on the response, generally,
- an electronic signature on any form or section specifically calling for a signature, and
- an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.

4. Terms and Conditions. All responses are subject to the terms of the following sections of this solicitation, which, in case of conflict, shall have the order of precedence listed:

- Technical Specifications,
- Special Conditions and Instructions,
- Instructions to Respondents (PUR 1001),
- General Conditions (PUR 1000), and
- Introductory Materials.

The Buyer objects to and shall not consider any additional terms or conditions submitted by a respondent, including any appearing in documents attached as part of a respondent's response. In submitting its response, a respondent agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a response, shall be grounds for rejecting a response.

5. Questions. Respondents shall address all questions regarding this solicitation to the Procurement Officer. Questions must be submitted via the Q&A Board within MyFloridaMarketPlace and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline. Questions shall be answered in accordance with the Timeline. All questions submitted shall be published and answered in a manner that all respondents will be able to view. Respondents shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the MyFloridaMarketPlace site for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained within the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not

constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 19 of these Instructions.

6. Conflict of Interest. This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.

7. Convicted Vendors. A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list:

- submitting a bid on a contract to provide any goods or services to a public entity;
- submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submitting bids on leases of real property to a public entity;
- being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and
- transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.

8. Discriminatory Vendors. An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:

- submit a bid on a contract to provide any goods or services to a public entity;
- submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submit bids on leases of real property to a public entity;
- be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or
- transact business with any public entity.

9. Respondent's Representation and Authorization. In submitting a response, each respondent understands, represents, and acknowledges the following (if the respondent cannot so certify to any of following, the respondent shall submit with its response a written explanation of why it cannot do so).

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.

- The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
- The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
 - Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
 - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The product offered by the respondent will conform to the specifications without exception.
- The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the

true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

10. Manufacturer's Name and Approved Equivalents. Unless otherwise specified, any manufacturers' names, trade names, brand names, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Buyer's prior approval, the Contractor may provide any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Buyer shall determine in its sole discretion whether a product is acceptable as an equivalent.

11. Performance Qualifications. The Buyer reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by Respondent meet the Contract requirements. Respondent shall at all times during the Contract term remain responsive and responsible. In determining Respondent's responsibility as a Respondent, the agency shall consider all information or evidence which is gathered or comes to the attention of the agency which demonstrates the Respondent's capability to fully satisfy the requirements of the solicitation and the contract.

Respondent must be prepared, if requested by the Buyer, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the respondent for the production, distribution, and servicing of the product bid. If the Buyer determines that the conditions of the solicitation documents are not complied with, or that the product proposed to be furnished does not meet the specified requirements, or that the qualifications, financial standing, or facilities are not satisfactory, or that performance is untimely, the Buyer may reject the response or terminate the Contract. Respondent may be disqualified from receiving awards if respondent, or anyone in respondent's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts. This paragraph shall not mean or imply that it is obligatory upon the Buyer to make an investigation either before or after award of the Contract, but should the Buyer elect to do so, respondent is not relieved from fulfilling all Contract requirements.

12. Public Opening. Responses shall be opened on the date and at the location indicated on the Timeline. Respondents may, but are not required to, attend. The Buyer may choose not to announce prices or release other materials pursuant to s. 119.071(1)(b), Florida Statutes. Any person requiring a special accommodation because of a disability should contact the Procurement Officer at least five (5) workdays prior to the solicitation opening. If you are hearing or speech impaired, please contact the Buyer by using the Florida Relay Service at (800) 955-8771 (TDD).

13. Electronic Posting of Notice of Intended Award. Based on the evaluation, on the date indicated on the Timeline the Buyer shall electronically post a notice of intended award at http://fcn.state.fl.us/owa_vbs/owa/vbs_www.main_menu. If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected

by the decision shall file with the Buyer a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone.

14. Firm Response. The Buyer may make an award within sixty (60) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, the response shall remain firm until either the Buyer awards the Contract or the Buyer receives from the respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected.

15. Clarifications/Revisions. Before award, the Buyer reserves the right to seek clarifications or request any information deemed necessary for proper evaluation of submissions from all respondents deemed eligible for Contract award. Failure to provide requested information may result in rejection of the response.

16. Minor Irregularities/Right to Reject. The Buyer reserves the right to accept or reject any and all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Buyer determines that doing so will serve the State's best interests. The Buyer may reject any response not submitted in the manner specified by the solicitation documents.

17. Contract Formation. The Buyer shall issue a notice of award, if any, to successful respondent(s), however, no contract shall be formed between respondent and the Buyer until the Buyer signs the Contract. The Buyer shall not be liable for any costs incurred by a respondent in preparing or producing its response or for any work performed before the Contract is effective.

18. Contract Overlap. Respondents shall identify any products covered by this solicitation that they are currently authorized to furnish under any state term contract. By entering into the Contract, a Contractor authorizes the Buyer to eliminate duplication between agreements in the manner the Buyer deems to be in its best interest.

19. Public Records. Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any respondent claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption.

20. Protests. Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and 287.042(2) of the Florida Statutes and chapter 28-110 of the Florida Administrative Code. Questions to the Procurement Officer shall not constitute formal notice of a protest. It is the Buyer's intent to ensure that specifications are written to obtain the best value for the State and that specifications are written to ensure competitiveness, fairness, necessity and reasonableness in the solicitation process.

Section 120.57(3)(b), F.S. and Section 28-110.003, Fla. Admin. Code require that a notice of protest of the solicitation documents shall be made within seventy-two hours after the posting of the solicitation.

Section 120.57(3)(a), F.S. requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

Section 28-110.005, Fla. Admin. Code requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

21. Limitation on Respondent Contact with Agency During Solicitation Period. Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

Attachment N

Conflict of Interest Certification

Company or Entity Name _____

For the purpose of participating in the Invitation to Negotiate process and complying with the provisions of Chapter 112, Florida Statutes, and section 287.075 Florida Statutes (F.S.) the undersigned corporate officer states as follows:

Respondent (check the applicable block) certifies one or more of the following:

_____A. The persons listed below are current State employees who own an interest of five percent (5%) or more in the company/entity named above:

_____	_____
_____	_____
_____	_____

_____B. To the best of its knowledge, the Respondent or its employees, agents, or subcontractors, have not knowingly participated, through decision, approval, disapproval, or preparation of any part of a purchase request, investigation, or audit, in the procurement of commodities or contractual services by a state agency from an entity in which the contractor, or its employees, agents, or subcontractors, has a material interest, in accordance with section 287.075, F.S. According to section 112.312 (15), F.S., material interest means “more than 5 percent of the total assets”. Agent means any other entity or person acting on behalf of a Respondent.

The above information is true and correct to the best of my knowledge. Signed on this day of _____, 20__.

Signature

Print Name and Title