

State of Florida

Division of Emergency Management



Invitation to Bid # ITB-DEM-18-19-029 Satellite Voice and Data Services for Very Small Aperture Terminal Systems (“VSAT”)

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. Any protest must be timely filed with the Division of Emergency Management's Agency Clerk.

Procurement Officer: Tara Walters
Florida Division of Emergency Management
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100
Phone: 850-815-4606
Email: Tara.Walters@em.myflorida.com

1) INTRODUCTION

The State of Florida, Division of Emergency Management (“FDEM” or “Division”) is soliciting bids from qualified vendors to provide equipment, service and maintenance for Satellite voice and data services for our Very Small Aperture Terminal Systems (“VSAT”). Please see the Exhibit A, Scope of Work for additional contract requirements.

Legal Authority:

Section 252.35(2)(a)6 requires the Division to “establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and can communicate emergency response decisions.”

2) SCHEDULE OF EVENTS

Provided below is a list of critical dates and actions. These dates are subject to change. Notices of changes (addenda) will be posted on the Florida Vendor Bid System at www.myflorida.com (click on “**BUSINESS**”), then click on “Doing Business with the State”, under “Everything for Vendors and Customers”, click on “Vendor Bid System (VBS)”, then click on “Search Advertisements” under this bid number. It is the responsibility of all potential bidders to monitor this site for any changing information prior to submitting your bid. Times below are realized as standard Tallahassee, FL time.

<u>ACTION / LOCATION</u>	<u>DATE</u>	<u>TIME</u>
ADVERTISE ITB THROUGH VBS	03/18/2019	
DEADLINE FOR TECHNICAL QUESTIONS:	03/25/2019	12:00PM
POSTING OF TECHNICAL QUESTIONS/ANSWERS:	03/28/2019	5:00PM
BIDS DUE: 2555 Shumard Oak Blvd. Tallahassee, Florida 32399-2100	04/04/2019	2:00PM
PUBLIC OPENING: Open to the Public Only names of vendors will be announced. 2555 Shumard Oak Blvd. Tallahassee, Florida 32399-2100	04/04/2019	2:30PM
POSTING OF INTENDED AWARD:	04/09/2019	5:00 PM

3) CONTACT PROVISION

As required by section 287.057(23), Florida Statutes, the Division highlights the following provision:

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 office 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.

4) SPECIAL ACCOMMODATIONS

Any person with a qualified disability requiring special accommodations at a pre-bid conference, public meeting, and/or opening shall contact the contact person at the phone number, e-mail address or fax number provided on the title page at least five (5) working days prior to the event. If you are hearing or speech impaired, please contact this office by using the Florida Relay Services which can be reached at: 1 (800) 955-8771 (TDD).

5) MYFLORIDAMARKETPLACE

Since July 1, 2003, State Agencies have been using the State of Florida's web-based electronic procurement system, MyFloridaMarketPlace ("MFMP"). Bidders must be actively registered in the MFMP system by the date and time of the bid opening or they will be considered non-responsive. All prospective bidders that are not registered should go to: <https://vendor.myfloridamarketplace.com/> to complete on-line registration, or call 1 (866) 352-3776 for assisted registration.

6) FLORIDA DEPARTMENT OF FINANCIAL SERVICES W-9 INITIATIVE

The Florida Department of Financial Services ("DFS") requires all vendors that do business with the state to submit an electronic Substitute Form W-9. Vendors must submit their W-9 forms electronically at: <https://flvendor.myfloridacfo.com> to receive payments from the state. Contact the DFS Customer Service Desk at (850) 413-5519 or FLW9@myfloridacfo.com with any questions.

7) AUTHORIZED TO DO BUSINESS IN THE STATE OF FLORIDA

In accordance with sections 607.1501, 605.0902, and 620.1902, Florida Statutes, foreign corporations, foreign limited liability companies, and foreign partnerships must be authorized to do business in the State of Florida. "Foreign Corporation" means a corporation for profit incorporated under laws other than the laws of this state. Such authorization should be obtained by the bid due date and time, but in any case, must be obtained prior to execution of the contract. For authorization, contact: Florida

Department of State, Division of Corporations, Tallahassee, Florida 32399, (850) 245-6051. Online-filing is available at: <http://www.sunbiz.org>.

8) SCRUTINIZED COMPANIES – TERMINATION BY THE DIVISION

The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 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, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

9) QUESTIONS & ANSWERS

Any technical questions arising from this invitation to Bid must be forwarded, in writing, to the procurement agent identified below. Questions must be received no later than the time and date reflected on the Schedule of Events. The Division's written response to written inquiries submitted timely by bidders will be posted on the Florida Vendor Bid System at: <http://www.myflorida.com/apps/vbs> no later than the time and date reflected in Section 2, Schedule of Events. To access the Vendor Bid System (click on "BUSINESS", then click on "Doing Business with the State", listed under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", then click on "Search Advertisements"). It is the responsibility of all potential bidders to monitor this site for any changing information prior to submitting their bid.

BIDDERS ARE STRONGLY ENCOURAGED TO RAISE ANY QUESTIONS OR CONCERNS THEY MAY HAVE REGARDING THIS ITB, INCLUDING THE PROPOSED CONTRACT TERMS AND CONDITIONS, DURING THE OPEN QUESTION PERIOD.

WRITTEN TECHNICAL QUESTIONS should be submitted to:

Tara Walters, Purchasing Manager
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399-2100
Tara.Walters@em.myflorida.com

Questions regarding administrative aspects of the bid process should be directed to the Procurement Manager in writing or by phone #: (850) 815-4606.

10) ORAL INSTRUCTIONS / CHANGES TO THE INVITATION TO BID (ADDENDA)

No negotiations, decisions, or actions will be initiated or executed by a bidder as a result of any oral discussions with a State employee. Only those communications which are in writing from the Division will be considered as a duly authorized expression on behalf of the Division. Notices of changes (Addenda) will be posted on the Florida Vendor Bid

System at: <http://www.myflorida.com/apps/vbs>. It is the responsibility of all potential bidders to monitor this site for any changing information prior to submitting your bid.

11) DIVERSITY ACHIEVEMENT

The Division encourages the recruitment and utilization of minority, women, and veteran businesses. The Division, its vendors, suppliers, and consultants shall take all necessary and reasonable steps to ensure that minority, women, and veteran businesses have the opportunity to compete for and perform contract work for the Division in a non-discriminatory environment.

- (a) As defined by section 288.703(1), Florida Statutes, a certified minority business enterprise is a business which received certification from the certifying organization or jurisdiction in accordance with sections 287.0943(1) and (2), Florida Statutes.
- (b) Pursuant to section 287.057(11), Florida Statutes, if the Division receives two equal responses and one response is from a certified minority business enterprise, then the Division shall award the contract to the certified minority business enterprise.
- (c) As defined by section 295.187(3), Florida Statutes, a certified veteran business enterprise is an independently owned and operated business that:
 1. Employs 200 or fewer permanent full-time employees;
 2. Together with its affiliates has a net worth of \$5 million or less or, if a sole proprietorship, has a net worth of \$5 million or less including both personal and business investments;
 3. Is organized to engage in commercial transactions;
 4. Is domiciled in this state;
 5. Is at least 51 percent owned by one or more wartime veterans or service-disabled veterans; and
 6. The management and daily business operations of which are controlled by one or more wartime veterans or service-disabled veterans or, for a service-disabled veteran having a permanent and total disability, by the spouse or permanent caregiver of the veteran.
- (d) In accordance with section 295.187(4)(a), Florida Statutes, the Division, when considering two or more bids, at least one of which is from a certified veteran business enterprise, which are equal with respect to all relevant considerations, including price, quality, and service, shall award such procurement or contract to the certified veteran business enterprise.

- (e) Pursuant to section 295.187(4)(b), Florida Statutes, if a veteran business enterprise entitled to the vendor preference and one or more businesses entitled to a vendor preference provided by law submit bids which are equal with respect to all relevant considerations, including price, quality, and service, then the Division shall award the procurement or contract to the business having the smallest net worth.

For information on Certification Procedures for Vendor Preference programs, contact Thaddeus "Thad" Fortune, Certification Administrator, Office of Supplier Diversity at (850) 487-0915 or e-mail: Thad.Fortune@dms.myflorida.com

12) INTENDED AWARD

Starting with the lowest priced bid, the Division will evaluate bids and bidders until it determines that a responsible and responsive bidder submitted a responsive bid. The Division will award a contract to the responsive and responsible bidder who submits the lowest priced bid.

The Division reserves the right to require each bidder to demonstrate to the satisfaction of the Division that the items, materials, and services will perform in a completely acceptable manner. In the event the Division judges that the demonstrated performance is unsatisfactory, the Division may reject the bid. If applicable, the bidder must be prepared to demonstrate the services within fourteen (14) days after the bid opening date. Demonstration time and place is subject to agreement of the Division and the bidder.

The Division reserves the right to make award(s) by: individual item; group of items; all or none or a combination thereof; or, on a geographical district basis and/or on a statewide basis with one or more suppliers. Additionally, the Division reserves the right to reject any and all bids or waive any minor irregularity or technicality in bids received. When it is determined that there is competition to the lowest responsible bidder, evaluation of other bids is not required. Bidders are cautioned to make no assumptions, unless their bid has been evaluated as being responsive. All awards made as a result of this shall conform to applicable Florida Statute. If the Division is confronted with identical pricing or scoring from multiple vendors, the Division shall determine the order of award in accordance with Rule 60A-1.011 Florida Administrative Code.

13) CLARIFICATION

Before award, the Division reserves the right to seek clarifications and to request any information deemed necessary for proper evaluation of bids from all bidders deemed eligible for Contract award. Failure to provide requested information may result in rejection of the bid.

14) **PROTEST OF INVITATION TO BID SPECIFICATIONS**

Any person who is adversely affected by the contents of this Invitation to Bid must file a protest with: **Florida Division of Emergency Management, Agency Clerk, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100**

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post 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.

15) **UNAUTHORIZED ALIENS**

The employment of unauthorized aliens by any Contractor is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract. All contractors must e-verify the employment status of their employees and subcontractors to the extent permitted by federal law and regulation. The U.S. Department of Homeland Security website (e-verify) is available at: <http://www.dhs.gov>.

16) **RESERVATIONS**

The Division reserves the right to accept or reject any or all bids received and reserves the right to make an award without further discussion of the bids submitted. Therefore, the bidder should make sure that the bid package submitted is complete and accurate and submitted to ensure delivery on or before the bid opening time and date specified in this solicitation.

17) **ADDITIONAL TERMS & CONDITIONS**

No conditions may be applied to any aspect of the ITB by the bidder. Any conditions placed on any aspect of the bid documents by the bidder may result in the bid being rejected as a conditional bid. The only recognized changes to the Invitation to Bid (ITB) prior to bid opening will be written addenda issued by the Division.

18) **RESPONSIVENESS**

(a) **Vendor.** In order to qualify as a responsive vendor as that term is defined by section 287.012(27), Florida Statutes, a bidder must submit a bid that conforms in all material respects to this solicitation.

(b) **Bid.** In order to qualify as a responsive bid as that term is defined by section 287.012(26), Florida Statutes, a bid must conform in all material respects to this solicitation.

1. The Division shall not consider any bid that contains a material deviation from the terms of this solicitation. However, the Division reserves the

right to consider a bid that contains a minor deviation or irregularity so long as that minor deviation or irregularity does not provide a competitive advantage over the other bidders.

2. The Division shall not permit a vendor to amend a bid after the due date for submissions – even if to correct a deviation or irregularity.
3. Bids shall not be considered if not received by the Division on or before the date and time specified as the due date for submission.
4. All bids must be typed or printed in ink.
5. A bid may fail to qualify as responsive by reasons that include:
 - a. Failure to include a material form or addendum;
 - b. Failure to include material information;
 - c. Modification of the bid specifications;
 - d. Submission of conditional bids or incomplete bids; and,
 - e. Submission of indefinite or ambiguous bids.

(c) For the purposes of this procurement, the following errors or omissions may result in the rejection of a bid as nonresponsive:

1. Failure to submit Exhibits;
2. Submission of an incomplete Exhibits; and,
3. Conditional changes to Exhibits.

19) RESPONSIBLE BIDDER

In order to qualify as a responsible vendor as that term is defined by section 287.012(25), Florida Statutes, a bidder must demonstrate the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

20) PRESENTING THE BID

The Bid shall be limited to a page size of eight and one-half by eleven inches (8 ½" x 11"). Foldout pages may be used, where appropriate, but should not exceed five (5) percent of the total number of pages comprising the bid. Type size shall not be less than 10 point font. Sections of the Bid should be labeled accordingly and all pages sequentially numbered. Bindings and covers will be at the Bidder's discretion. Unnecessarily

elaborate special brochures, art work, expensive paper and expensive visual and other presentation aids are neither necessary nor desired.

The Division recognizes that existing financial reports, documents, or brochures, such as those that delineate the Bidder's general capabilities and experience, may not comply with the prescribed format. It is not the intent to have these documents reformatted and they will be acceptable in their existing form.

21) RESPONSES MUST INCLUDE THE FOLLOWING INFORMATION/FORMS

- (a) Transmittal letter – The transmittal letter must contain the identity of the individual(s) authorized to commit the Contractor to a contract and identity of the individual(s) who can be contacted regarding proposal content. An officer of the contractor must sign the letter;
- (a) Company Information - Provide a concise profile of your organization to include Ownership information, organization structure, relevant experience and unique qualifications;
- (b) Minimum Qualifications – Proof that vendor meets minimum qualifications as outlined in the Exhibit A, Scope of Work; and,
- (c) Exhibits B, Price Sheet and Exhibit C, Drug Free Workplace Certificate.
The bidder must complete the attached Exhibits B and C to submit its bid. The Price Sheet must be signed and dated by a representative who is authorized to contractually bind the bidder.

All bid price sheets and other documentation submitted in response to this solicitation must be executed and submitted in a sealed envelope. **Be sure to indicate the bid number, with the time and date of the bid opening, on the envelope used to return the bid as follows:**

Florida Division of Emergency Management
ITB-DEM-18-19-029
Satellite Voice and Data Services
April 4, 2019 at 2:00 PM
C/O: Tara Walters

22) “DRUG-FREE WORK PLACE” PREFERENCE

Whenever two or more bids which are equal with respect to price, quality, and service are received, the Division shall determine the order of award in accordance with Rule 60A-1.011 Florida Administrative Code, which includes a preference for bid responses that certify the business has implemented a drug-free workplace program in accordance with Section 287.087, F.S. The “Drug-Free Workplace Program Certification” must be completed and submitted with the bid response for this preference.

23) COPYRIGHTED MATERIAL

Copyrighted material will be accepted as part of a bid only if accompanied by a waiver that will allow the Division to make paper and electronic copies necessary for the use of Division staff and agents. It is noted that copyrighted material is not exempt from the Public Records Law, Chapter 119, Florida Statutes. Therefore, such material will be subject to viewing by the public, but copies of the material will not be provided to the public.

24) CONFIDENTIAL, PROPRIETARY OR TRADE SECRET MATERIAL

If Bidder considers any portion of the documents, data or records submitted in response to this bid to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, then the Bidder shall mark the document as "Confidential" and simultaneously provide the Division with a separate redacted copy of its response and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the Division's solicitation name, number, and the name of the Bidder on the cover, and shall be clearly titled "Redacted Copy." The Redacted Copy should only redact those portions of material that the Bidder claims are confidential, proprietary, trade secret or otherwise not subject to disclosure, under Chapter 119, Florida Statutes.

In the event of a request for public records to which documents marked as confidential are responsive, the Division will provide the Redacted Copy to the requestor. If a requester asserts a right to the Confidential Information, the Division will notify the Respondent that such an assertion has been made. It is the Bidder's responsibility to provide legal support for its position that the information in question is exempt from disclosure under chapter 119 or other applicable law. If the Division becomes subject to a demand for discovery or disclosure of the Confidential Information of the Respondent in a legal proceeding, the Division shall give the Bidder prompt notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law). The Bidder shall be responsible for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

By submitting a reply, the Bidder agrees that its failure to mark documents in accordance with the terms above constitutes a waiver of any and all claims of confidentiality and authorizes the Division to release all documents and information that is not marked in accordance with the terms above.

By submitting a reply, the Bidder agrees to protect, defend, and indemnify the Division for any and all claims arising from or relating to the Bidder's determination that the redacted portions of its reply are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

25) PUBLIC RECORDS.

If this Agreement involves a contract for services, and if the Contractor is acting on behalf of the Division, then the Contractor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Agreement. In accordance with section 119.0701(2), Florida Statutes, the contractor must:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

As required by section 119.0701(2)(a), Florida Statutes, the Division includes the following statement in at least 14-point boldfaced type:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: FLORIDA DIVISION OF EMERGENCY MANAGEMENT, PUBLIC RECORDS OFFICER, (850) 815-4156, 2555 SHUMARD OAK BLVD., TALLAHASSEE, FL 32399.

Pursuant to section 287.058(1)(c), Florida Statutes, the Division may unilaterally cancel a contract if the vendor refuses to allow public access to all non-exempt documents, papers, letters, or other material made or received by the contractor in conjunction with the contract.

26) FLORIDA ACCOUNTABILITY CONTRACT TRACKING SYSTEM (FACTS)

In 2011, the Florida Legislature amended section 215.985, Florida Statutes, relating to the Transparency Florida Act. The statutory amendment requires the Department of Financial Services (“DFS”) to: provide public access to a state contract tracking system; identify the information that must be made available on the system; and, require Florida state governmental entities to update data in the system. On March 1, 2012, DFS implemented a centralized web-based contract reporting system to increase transparency and accountability in government contracting in Florida. The system, known as Florida Accountability Contract Tracking System or FACTS, displays grant and contract procurement information, expenditure data, audit information, and contract document images. The link to the DFS FACTS public website is: <https://facts.fldfs.com>. Any contract resulting from this solicitation will be included in the FACTS system.

27) MAIL OR DELIVER BIDS: (DO NOT FAX or E-MAIL)

Florida Division of Emergency Management
C/O Tara Walters - ITB-DEM-18-19-029
Satellite Voice and Data Services
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399-2100

It is the bidder’s responsibility to assure that the bid is delivered to the proper place on or before the Bid Due date and time (See introduction Section 2 Schedule of Events). Bids which for any reason are not so delivered will not be considered.

By submitting a bid, the Bidder represents that it understands and accepts the terms and conditions to be met and the character, quality and scope of services to be provided.

28) MODIFICATIONS, RESUBMITTAL & WITHDRAWAL

Bidders may modify submitted bids at any time prior to the bid due date. Requests for modification of a submitted bid shall be in writing and must be signed by an authorized signatory of the bidder. Upon receipt and acceptance of such a request, the entire bid will be returned to the bidder and not considered unless resubmitted by the due date and time. Bidders may also send a change in a sealed envelope to be opened at the same time as the bid. The ITB number, opening date and time should appear on the envelope of the modified bid.

29) BID OPENING

The sealed bids will be opened by the Division's Procurement Office personnel at the date, time and location listed in the Schedule of Events. All bid openings are open to the public. The Division chooses not to announce vendor pricing at this bid opening. We will only announce the list of vendors who submitted a bid.

30) POSTING OF INTENDED AWARD

- (a) General. The Division's decision will be posted on the Florida Vendor Bid System at: <http://www.myflorida.com/apps/vbs> on the date and time listed in the Schedule of Events, and will remain posted for a period of seventy-two (72) hours. Any bidder who is adversely affected by the Division's recommended award or intended decision must file a written protest.
- (b) Request to Withdraw Bid. Requests for withdrawal will be considered if received by the Division, in writing, within seventy-two (72) hours after the bid opening time and date. Requests received in accordance with this provision will be granted by the Division upon proof of the impossibility to perform based upon obvious error on the part of the bidder.

31) CANCELLATION

All contract obligations shall prevail for at least one hundred and eighty (180) days after the effective date of the contract. For the protection of both parties, this contract may be cancelled in whole or in part after one hundred and eighty (180) days by either party giving thirty (30) days prior written notice to the other contract party. The contract may, also, be cancelled by the Division for nonperformance in accordance with Rule 60A-1.006(3), F. A. C.

32) ATTACHED TERMS & CONDITIONS

All responses are subject to the terms and conditions of this solicitation, which, in case of conflict, shall have the following order of precedence listed:

- Exhibit "A" – Scope of Work
- Exhibit "B" – Price Sheet
- Divisions Boilerplate Contractual Service Agreement
- Instructions to Respondents (PUR 1001)
- General Conditions (PUR 1000)
- My Florida Market Place Purchase Order Terms and Conditions
- Exhibit "C" - Drug-Free Workplace Program Certification

33) COOPERATION WITH THE INSPECTOR GENERAL

Pursuant to section 20.055(5), Florida Statutes, contractor and any subcontractors understand and will comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

34) ATTACHED FORMS PUR 1000, GENERAL CONTRACT CONDITIONS & PUR 1001 GENERAL INSTRUCTIONS TO RESPONDENTS

These are standard forms that the Division is required to include in all formal solicitations. The following paragraphs do not apply to this Invitation to Bid:

Paragraph 3, Electronic Submission – PUR 1001

Paragraph 4, Terms and Conditions – PUR 1001

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Exhibit A
Satellite Voice and Data Services
For Very Small Aperture Terminal Systems

Introduction:

Section 252.35(2)(a)6 requires the Florida Division of Emergency Management (“Division”) to “establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and can communicate emergency response decisions.”

The Division solicited and procured voice and data service, for Very Small Aperture Terminal (VSAT) systems. These systems are a hybrid of agency and vendor owned equipment. The current service is provided via multiple mobile dishes that are on AVL Technologies auto deploy and auto track bases; and a single fixed 2.2 Meter dish (4 and 6 Watt LNB). These dishes currently obtain service via Satellite AMC 21 (Transponder 17 - Ku-Band) at orbital location 125°W, covering North America, Latin America and the Caribbean.

The Contract Manager for the Division:

Benjamin Bass
Telecommunications Administrator
Statewide interoperability Coordinator
Office of the Director – ITM Bureau – Telecommunications Branch
Florida Division of Emergency Management
850-815-4765
Benjamin.Bass@em.myflorida.com

Scope of Work

The vendor shall accomplish the tasks outline below, meet the minimum system requirements and provide the identified equipment and services.

Task 1 - Network and General Requirements:

Upon issuance, and for the duration of the Purchase Order, the vendor shall:

- Have all equipment installed and operational on or before July 1, 2019, as to avoid any gap in service.
- Maintain a 24/7 Network Management / Operations Center in the continental US, that automatically provides uptime reports;
- Notify the Contract Manager within 30 minutes of any no notice network issues or outage;
- Notify the Contract Manager at least 4 days prior to any preplanned maintenance outages or bandwidth limitations;

- Maintain, and provide voice and data services via at least two geographically diverse uplinks with automatic failover/correction; one of which must be located outside the State of Florida;
- Provide service that is capable of connecting to a minimum of two satellites separated by 35 degrees or more;
- Provide centralized control of the VSAT network via a single Network Management System, that includes:
 - Remote commissioning and configuration (default templates),
 - Routing,
 - Software upgrades and verification,
 - Bandwidth adjustments,
 - Monitoring and reporting, including system status/statistics/alarms, link performance/reliability/availability, VSAT parameter change history, and bandwidth utilization;
- Provide customer access to a web-based interface providing real time details and user definable notifications on satellite terminal locations, deployment status, network usage, signal strength, etc.;
- Maintain a full time service center in the State of Florida;
- Install any necessary equipment and perform maintenance at Division identified locations in Tallahassee and Orlando;
- Have the ability to service units remotely, in the field;
- Provide Strong Authentication for the VSAT terminals, to include network mechanisms that ensure the VSATs in the network cannot be accessed by other VSATs in other Closed User Groups; and,
- Support DVB-S2 TRANSEC security.

Task 2 - Vendor Provided Equipment:

Upon issuance, and for the duration of the Purchase Order, the vendor shall: At no additional cost to the Division, provide equipment and configuration that provides the same functionality or greater being offered via the following current vendor provided equipment:

- Evolution® I-Direct X5 modem:
 - Dual mode operation DVB-S2/ACM/TDMA
 - AES 256-bit encryption
 - Automatic Beam Switching and Global NMS
- Evolution® X5 Satellite Router
- All ancillary hardware and supplies necessary to connect the vendor provided equipment with the agency equipment and provide the required system functionality.

Task 3 - Service Requirements:

Upon issuance, and for the duration of the Purchase Order, the vendor shall: Provide the following burstable levels of bandwidth, without data volume/capacity caps or limitations and with full unrestricted internet service:

- Level 1, Standby Service: 128 Kbps up X 512 Kbps down
- Level 2, Activation Service: 3 Mbps up X 1 Mbps down
- Level 3, Activation Service: 20 Mbps up X 5 Mbps down

The above service requirements shall be capable of supporting VOIP calls along with video conferencing if needed.

The standard service that shall be provided to each of the end-user systems is as follows:

- Up to 2 Logistics support (ALERT) trailer systems with a .96-meter dish on Level 1 Standby Service with internet;
- Up to 1 Fixed State EOC restoral backup system – 2.2-meter dish on Level 1 Standby Service with internet;
- Up to 2 EDICS – EDWARDS Interoperable Communications systems with .96-meter dishes on Level 1 Standby Service with internet;
- 1 trailer mounted systems with a .75-meter dish;

All end-user systems shall be capable of increasing the Level of Service to Level 2 or 3 as determined by the Division and as equipment will allow. The Division reserves the right to purchase dedicated bandwidth up to 20 Mbps up X 5 Mbps down.

- Vendor will allow for a minimum of 10 days a month per system for the use of bandwidth at no additional cost to the Division for use of the equipment.

The vendor shall allow the Division to increase or decrease bandwidth as needed and at the Division's discretion.

Task 4 - Annual Maintenance/Inspection and Repairs:

The vendor shall provide a no cost annual inspection of all equipment once a year for the life of the agreement. The date and time of the annual inspection will be coordinated with the Contract Manager. Furthermore, the vendor shall have the following response times, once notified of a system failure:

- Time to response during Non-activation – “Blue Sky”
 - Once notified of system failure on any Division owned VSAT terminal, the vendor must be on scene within three (3) working days to troubleshoot the issue of the affected VSAT terminal.
 - Within two (2) working days of the evaluation, the vendor shall provide a written quote of resolution/correction of the issues to the Contract Manager. No additional work shall be performed prior to a separate Purchase Order (PO) being issued.
- Time to response during a Disaster or Activation of the EOC – “Grey Sky”
 - Once notified of a system failure on any Division owned VSAT terminal, the vendor must be on scene within twenty-four (24) hours to troubleshoot the issue of the affected VSAT terminal.

- Within twelve (12) hours of the evaluation, the vendor shall provide a written quote of resolution/correction of the issues to the Contract Manager. No additional work shall be performed prior to a separate Purchase Order (PO) being issued.

We anticipate that the awarded vendor shall be responsible for all maintenance/repairs under \$35,000.

Written estimates shall reflect pricing from the Exhibit B, Price Sheet and must also include:

- Total cost of required parts (itemized),
- Shipping and handling,
- Environmental disposal fees if applicable,
- Estimated time needed to complete repair.

Additional Terms:

- The Division shall not be charged for repairs to vendor owned modem;
- All repairs shall be made by a qualified AVL service technician.

Performance Period:

The period of performance shall be for three (3) years upon execution of a Contractual Service Agreement. The Division's boilerplate Contract is attached for reference. The Contractor will receive a State of Florida Purchase Order at the beginning of each State fiscal year beginning July 1 through June 30, for the life of the Contract as follows:

Period 1: July 1, 2019 to June 30, 2020

Period 2: July 1, 2020 to June 30, 2021

Period 3: July 1, 2021 to June 30, 2022

The Purchase Order ("PO") will include this Scope of Work and will detail the required level of service at that time. Should the Division need to increase or decrease service, the Division Contract Manager will notify the vendor via phone or email and will issue a change order to the original PO or issue a new PO.

List of Vendor Responsibilities:

The vendor shall take all steps necessary to accomplish the tasks and provide the equipment and services as detailed in Exhibit A.

Minimum Qualifications:

Vendors must have experience providing similar service to state agencies or other governmental entities in order to demonstrate the capability to accomplish the tasks and provide the equipment and services as described within Exhibit A. Furthermore, vendors must have a certified AVL Technician on staff.

- Vendors shall provide a list of current customers within the State of Florida along with a contact name and number for each customer; and,

- Provide Certification of your AVL technician.

Method of Compensation:

One Purchase Order shall be issued for each identified performance period outlining the units of service. All service shall be prorated daily for each level of service and billed monthly; following the completion of each month of service. All Service rates shall be billed within 15 days. Monthly invoices shall be submitted to the Contract Manager at the email address above and a copy to: Invoice@em.myflorida.com

Financial Consequences for Non-Performance:

Failure to provide the required equipment and service shall result in financial consequences as follows:

Task 1:

- Interruption in service of the 24/7 Network Management / Operations Center during any given month shall result in a \$50 reduction of the monthly invoice for every hour that the service is not provided,

Task 2:

- Failure to provide the required fully functional equipment within 3 business days' notice from the Division or identification of need by the vendor during installation/maintenance, shall result in a charge of \$50 per day until rectified.

Task 3:

- Any unscheduled interruption in Level 1, 2 or 3 service, or failure to provide necessary changes in the level of service upon request shall result in a \$25 reduction of the monthly invoice, for every hour that the service is not provided.

Task 4:

- Failure to respond in the timeframes provided shall result in a 5% reduction of the monthly invoice for that month per each infraction.

**Exhibit B, Price Sheet
ITB-DEM-18-19-029**

Monthly Rates for Service - Set Pricing for Three (3) Years

Requirement	Monthly Rate
Level 1, Standby Service	
Level 2, Activation Service	
Level 3, Activation Service	

Diagnostic Rate: Hourly Rate for Normal business hours \$_____ (Mon-Fri, 8-5)
Hourly Rate After Hours/Holidays \$_____

Labor Rate: Hourly Rate for Normal business hours \$_____ (Mon-Fri, 8-5)
Hourly Rate After Hours/Holidays \$_____

Mileage Rate: \$_____

If the vendor anticipates that there will be any other fees associated with this contract, please indicate those fees in the space below. Once bids are received, no additional fees shall be added to the multi-year contract.

❖ **All pricing shall reflect set rates for a three-year term and shall not be increased during the life of the agreement.**

ACKNOWLEDGEMENT: By submitting a response, I certify that I have read and agree to abide by all terms and conditions of this solicitation and that I am authorized to sign for the proposer. I certify that the response submitted is made in conformance with all requirements of the solicitation.

Vendor: _____ FEID #: _____

Address: _____

Telephone #: _____ Email: _____

Authorized Signature: _____ Date: _____

Printed / Typed: _____ Title: _____

Exhibit C
Certification of Drug-Free
Workplace

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more proposals are received from respondents which are both certified minority businesses (as set forth above), and which are equal with respect to price, quality and service, the proposal 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 bids 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:

- A. 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.
- B. 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.
- C. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection A.
- D. In the statement specified in subsection A, notify the employees that as a condition of working on the commodities or contractual services that are under bid, 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, F.S., 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.
- E. 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.
- F. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

VENDORS SIGNATURE

DATE

**State of Florida
PUR 1001
General Instructions to Respondents**

Contents

1. Definitions.
2. General Instructions.
3. Electronic Submission of Responses.
4. Terms and Conditions.
5. Questions.
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7. Convicted Vendors.
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11. Performance Qualifications.
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20. Protests.
21. Limitation on Vendor Contact with Agency During Solicitation Period

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 vendor, 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 Vendor 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.

State of Florida
PUR 1000
General Contract Conditions

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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 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://dlis.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.

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

Contract Number: _____

ITN#, RFP#, ITB#, RFQ#: _____

CONTRACT

THIS AGREEMENT is entered into by and between the State of Florida, Division of Emergency Management, (hereinafter, "Division"), and _____ (hereinafter, "Contractor"), an entity duly authorized to conduct business in the State of Florida. In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. PURPOSE OF THE AGREEMENT

- A. The purpose of this Agreement is to provide products and/or services as described in the Scope of Work attached hereto as Exhibit "A" and made part hereof.
- B. No work shall commence until both parties have signed the Agreement.

2. TERM

- A. The term shall begin upon execution of the Agreement by both parties and, unless terminated earlier in accordance with the provisions of section 8 of this Agreement, shall end on _____.
- B. If the parties relied upon a State Term Contract in order to enter into this Agreement, then: (1) any renewal or extension shall not exceed the expiration of the underlying State Term Contract by more than twelve (12) months; and, (2) no renewal or extension shall occur if the underlying State Term Contract expires prior to the effective date of any renewal or extension.
- C. In accordance with section 287.057(13), Florida Statutes, and subject to the limitations outlined above in subparagraph 2.B. of this Agreement, the Division and the Contractor may renew this Agreement, in whole or in part, for a period that may not exceed three (3) years or the term of this Agreement, whichever is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. Additionally, any renewal: must be in writing and signed by both parties; is contingent upon satisfactory performance evaluations; and, is subject to availability of funds.

OR

- C. Because the procurement solicitation did not specify prices for renewal years, this Agreement, pursuant to section 287.057(13), Florida Statutes, may not be renewed for any period of time. Pursuant to Section 287.057(12), Florida Statutes, the Division may extend this Agreement for a period not to exceed 6 months. Any

extension is subject to the same terms and conditions as set forth in this Agreement. The Division may only extend this Agreement once, unless events beyond the control of the contractor cause the contractor's failure to meet the criteria for contract completion.

OR

- C. Because this Agreement resulted from an emergency procurement under section 287.057(3)(a), Florida Statutes, this Agreement may not be renewed. See Section 287.057(13), Florida Statutes.

OR

- C. Because this Agreement resulted from single source procurement under section 287.057(3)(c), Florida Statutes, this Agreement may not be renewed. See Section 287.057(13), Florida Statutes.

3. PERFORMANCE

- A. Time is of the essence with regard to each and every obligation of the Contractor. Each such obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.
- B. The Contractor shall immediately notify the Division in writing if its ability to perform is compromised in any manner during the term of this Agreement.
- C. The Contractor agrees to perform all tasks and provide deliverables as set forth in the Scope of Work and all contractual documents attached to this Agreement. The Division shall be entitled at all times to be advised, at its request, as to the status of work being done by the Contractor and of the details thereof. Coordination shall be maintained by the Contractor with representatives of the Division, or of other agencies interested in the project on behalf of the Division.
- D. If the Division determines that the performance of the Contractor is unsatisfactory, the Division will notify the Contractor of the deficiency to be corrected, which correction shall be made within a time-frame specified by the Division. The Contractor shall, within the time specified in the contractual documents after notice from the Division, provide the Division with a corrective action plan describing how the Contractor will address all issues of contract non-performance, unacceptable performance, and failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Division, the Contractor will be assessed a non-performance retainage equivalent to 10% of the total invoice amount or as specified in the contractual documents. The retainage will be applied to the invoice for the then-current billing period. The retainage will be withheld until the Contractor resolves the deficiency. If the deficiency is subsequently resolved, the Contractor may bill the Division for the retained amount during the next billing period. If the Contractor is unable to resolve the deficiency, the funds retained may be forfeited at the end of the agreement period.

- E. The Division reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of the Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
- F. Unless otherwise prohibited by law, the Division may require the Contractor to furnish, without additional cost to the Division, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Division shall determine the type and amount of security.
- G. Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
- H. 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, then the Contractor shall immediately notify the Division in writing, indicating the specific restriction. The Division reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Division.
- I. Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. 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; additionally, no extra charges shall be applied for boxing, crating, packing, or insurance. All containers and packaging shall become and remain the Division's property. All purchases are F.O.B. destination, transportation charges prepaid. A complete packing list must accompany each shipment. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. The Division assumes no liability for merchandise shipped to other than the specified destination. Items received in excess of quantities specified may, at the Division's option, be returned at the Contractor's expense. Substitutions are not permitted. The 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.
- J. Matters of inspection and acceptance are addressed in section 215.422, Florida Statutes. 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 Division 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 the Division rejects a product, the 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 Division shall have the right to dispose of it as its own property. The Contractor shall reimburse the Division for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

- K. Where installation is required, the Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated in this Agreement. The 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. The Contractor shall protect the site from damage and shall repair damages or injury caused during installation by the 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. The Contractor shall perform installation work so as to cause the least inconvenience and interference with the Division 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.

4. COMPENSATION AND PAYMENT

- A. The total funding amount of this Agreement for the purchase of commodities or the performance of services as described in Exhibit "A" of this agreement is shown in Exhibit "B".
- B. As required by section 287.0582, Florida Statutes, if this Agreement binds the Division for the purchase of services or tangible personal property for a period in excess of one fiscal year, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."
- C. The parties acknowledge that Agency payments required pursuant to the terms of this Agreement are subject to and contingent upon the review and approval of the Chief Financial Officer pursuant to his authority as set forth in Article IV, Section 4 of the Florida Constitution ("The chief financial officer shall serve as the chief fiscal officer of the state, and shall settle and approve accounts against the state, and shall keep all state funds and securities.") as well as section 17.03, Florida Statutes ("The Chief Financial Officer of this state, using generally accepted auditing procedures for testing or sampling, shall examine, audit, and settle all accounts, claims, and demands, whatsoever, against the state, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such amount as he or she allows thereon.").
- D. Travel expenses are not reimbursable unless specifically authorized in writing, and shall be reimbursed only in accordance with section 112.061, Florida Statutes.

- E. The Contractor will be paid upon submission of properly certified invoice(s) to the Division after delivery and acceptance of commodities or services is confirmed in writing by the Division. Invoices shall contain detail sufficient for a proper pre-audit and post audit thereof and shall contain any Purchase Order and the Vendor's Federal Employer Identification Number or Social Security Number.
- F. No payment requirements shall start until a properly completed invoice is provided to the Division, inspected, and approved. Invoices that must be returned to the Contractor due to preparation errors will result in a delay in payment.
- G. 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.
- H. The Contractors providing goods and services to the Division should be aware of the following time frames:
 - 1) Pursuant to section 215.422(1), Florida Statutes, an invoice submitted to the Division shall be recorded in the financial systems of the State, approved for payment by the Division, and filed with the Chief Financial Officer not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, except that in the case of a bona fide dispute the invoice recorded in the financial systems of the State shall contain a statement of the dispute and authorize payment only in the amount not disputed.
 - 2) Unless the procurement solicitation or this Agreement states otherwise, the Division has five (5) working days to inspect and approve commodities and services. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor's expense. Any resulting increase in cost will be charged against the Contractor.
 - 3) Pursuant to section 215.422(3)(b), Florida Statutes, the Division shall issue payment to the Contractor within forty (40) days after the invoice has been accepted. Failure to issue the warrant within forty (40) days may result in the Division paying interest at the rate established under subsection 55.03(1), Florida Statutes.
- I. Transaction Fee. The State of Florida, through the Department of Management Services (DMS), has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to subsection 287.057 (22), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which the Contractors shall pay to the State. On-line filing is available at <http://dms.myflorida.com/mfmp>. 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 self-report and pay the transaction fee pursuant to rule 60A-1.031 (2), Florida Administrative Code. By submission of these reports and corresponding payments, the Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Contractor shall receive a credit for any transaction fee paid by

the Contractor for the purpose 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 this Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. A CONTRACTOR'S DELINQUENCY IN PAYING TRANSACTION FEES MAY RESULT IN BEING EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

- J. The Contractor shall report and pay the transaction fee on a quarterly calendar basis using the Department of Management Service's Form PUR 3776, which is incorporated by reference. Any misrepresentation shall be punishable under law, including but not limited to: Chapter 817, Florida Statutes.
- K. The Contractor may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Division is responsible for all payments under the Agreement. The Division's failure to pay, or delay in payment, shall not constitute a breach of the Agreement and shall not relieve the Contractor of its obligations to the Division.
- L. A Vendor Ombudsman, whose duties include acting as an advocate for Vendors who may be experiencing problems in obtaining timely payment(s) from an Agency may be contacted at 850-413-5516 or by calling the State Comptroller's Hotline, 1-800-848-3792.
- M. The Division, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Division shall require a statement from the Chief Financial Officer of the Division that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.
- N. All refunds or repayments due to the Division under this Agreement shall be made payable to the order of the "Division of Emergency Management" and mailed directly to the attention of: **Cashier, Division Finance, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399**. The Contractor shall also notify the Division Program Manager (identified in section 13. A.) that it has issued a refund to the Division.

5. INDEMNITY AND PAYMENT FOR CLAIMS

- A. INDEMNITY. The Contractor shall be fully liable for the actions of its agents, employees, partners, assignees, or subcontractors and shall fully indemnify, defend, and hold harmless the State and the Division, and their officers, agents, and

employees, from suits, actions, damages, and costs, 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 the Contractor, its agents, employees, partners, or subcontractors; provided, however, 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 the Division.

Further, the Contractor shall fully indemnify, defend, and hold harmless the State 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 the Division's misuse or modification of the Contractor's products or the Division's operation or use of the Contractor's products in a manner not contemplated by the Agreement. 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 Division 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 for the Division the right to continue using the product, the Contractor shall remove the product, and refund to the Division the amounts paid in excess of a reasonable rental for past use. The Division 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 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 Division in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

Any Contractor which is a State agency or subdivision, as defined in section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortuous acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any Contractor to which sovereign immunity applies.

Nothing herein shall be construed as consent by a State agency or subcontractor of the State of Florida to be sued by third parties in any matter arising out of any contract.

- B. **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 contained in this agreement.

Unless otherwise specifically enumerated in this Agreement or resulting 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.

- C. PAYMENT OF CLAIMS. The Contractor guaranties the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Contractor or any subcontractor, in connection with the Agreement.
- D. LIABILITY INSURANCE. The Contractor shall carry and keep in force during the term of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$150,000.00 per person and \$300,000.00 each occurrence, and property damage insurance of at least \$150,000.00 each occurrence, for the services to be rendered in accordance with this Agreement.

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 liability and obligations under the Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.

- E. WORKERS COMPENSATION. The Contractor shall maintain Workers' Compensation insurance as required under the Florida Workers' Compensation Law.

6. COMPLIANCE WITH LAWS:

- A. The laws of the State of Florida shall govern this Agreement. The Division and the Contractor submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to this Agreement. Further, the Contractor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, Florida Statutes, and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. The Contractor hereby submits to venue in the county chosen by the Division, to wit: Leon County, Florida.
- B. The Contractor must be registered with the Florida Department of State, Division of Corporations. Online-filing is available at: <http://www.sunbiz.org>.
- C. The Contractor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or

received by the Contractor in conjunction with this Agreement. In accordance with section 119.0701(2), Florida Statutes, a vendor providing contractual services and acting on behalf of the Division must:

- 1) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- 2) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- 4) Meet all requirements for retaining public records and transfer, at no cost, to the public agency 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 from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

- D. Pursuant to section 287.058(1)(c), Florida Statutes, the Division may unilaterally cancel a contract if the vendor refuses to allow public access to all non-exempt documents, papers, letters, or other material made or received by the contractor in conjunction with the contract.
- E. The Contractor agrees that it shall make no statements, press releases, or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Division's Contract Manager or the Division's designated contact person and securing prior written consent. The Contractor shall maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to this Agreement and shall comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, Florida Statutes. The Contractor's confidentiality procedures shall be consistent with the most recent version of the Division's security policies, protocols, and procedures. The Contractor shall also comply with any applicable professional standards with respect to confidentiality of information.

- F. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor shall comply with Section 247A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Pursuant to Section 287.058(1), Florida Statutes, the provisions of Section 287.058(1)(a)-(c), and (i), Florida Statutes, are hereby incorporated by reference, to the extent applicable.
- G. The Contractor should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.
- H. 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.
- I. If regulated by the Florida Department of Business and Professional Regulation, the Contractor and its employees shall be bound by the standard of conduct provided in applicable Florida Statutes and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Contractor further covenants and agrees that when a former State employee is employed by the Contractor, the Contractor will require strict adherence by a former State employee to section(s) 112.313 and 112.3185, Florida Statutes, as a condition of employment for said former State employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Contractor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter for the work performed under this Agreement.
- J. A person or affiliate who has been placed on the convicted Contractor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals or replies on leases of real property 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 in excess of the threshold amount provided in section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months following the date of being placed on the convicted Contractor list.

- K. An entity or affiliate who has been placed on the discriminatory Vendor list may not submit a bid, proposal or reply on a contract to provide any goods or service to a public entity, may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals or replies on leases of real property to a public entity, may not be awarded or perform work as a Vendor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- L. The Division shall verify the Contractor and any subcontractor's against the Federal Excluded Parties List System to ensure the Contractor or subcontractor is not disbarred or excluded from receiving Federal contracts.
- M. The Contractor shall E-Verify the employment status of all employees and subcontractors to the extent permitted by federal law and regulation. The Division shall consider the employment by any Contractor of unauthorized aliens a violation of section 274A (e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. Furthermore, the Contractor agrees to utilize the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all new employees hired during the term of this Agreement for the services specified in this Agreement. The Contractor shall also include a requirement in subcontracts that the subcontractor shall utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement.
- N. Pursuant to section 216.347, Florida Statutes, the Contractor shall not expend any State funds for the purpose of lobbying the State Legislature, the Judiciary, or an Agency.
- O. In accordance with section 20.055(5), Florida Statutes, the Contractor shall cooperate fully with the Inspector General in any investigation, audit, inspection, review, or hearing conducted pursuant to the Inspector General's statutory authority. Additionally, upon request of the Inspector General or any 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 this Agreement. The Contractor shall retain such records for the longer of: (1) three years after the expiration of the Purchase Order; or, (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>). 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.

- P. 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.
- Q. The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 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, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

7. COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

- A. All plans, specifications, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived from them shall be the exclusive property of the Division without restriction or limitation on their use and shall be made available, upon request, to the Division at any time during the performance of such services and/or upon completion or termination of this Agreement.
- B. The Contractor shall not copyright any material and products or patent any invention developed under this Agreement. Any and all patent rights and any and all copyright accruing under or in connection with the performance of this Agreement are hereby reserved to the State of Florida. If the Contractor brings to the performance of this Agreement a pre-existing patent or copyright, the Contractor shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.
- C. If any discovery or invention arises or is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with this Agreement, the Contractor shall refer the discovery or invention to the Division for a determination whether patent protection will be sought in the name of the State of Florida. Any and all patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Contractor shall notify the Division.

Any and all copyrights accruing under or in connection with the performance under this Agreement are transferred by the Contractor to the State of Florida.

- D. Within thirty days (30) of execution of this Agreement, the Contractor shall disclose all intellectual properties relevant to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Contractor shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under subsection C, have the right to all patents and copyrights which occur during performance of the Agreement.

8. SUSPENSION OF WORK AND TERMINATION OF THE AGREEMENT

- A. **SUSPENSION.** The Division may in its sole discretion suspend any or all activities under this Agreement, at any time, when in the best interests of the State to do so. The Division 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 (90) days, or any longer period agreed to by the Contractor, the Division shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or, (2) terminate the Agreement. Suspension of work shall not entitle the Contractor to any additional compensation.
- B. **TERMINATION FOR CONVENIENCE.** This Agreement may be terminated by the Division in whole or in part at any time in the best interest of the Division. The Contractor shall not furnish any product after it receives the notice of termination (whether for convenience or for cause), except as necessary to complete the continued portion of the Contract, if any. If this Agreement is terminated before performance is completed, then the Contractor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Division and shall be turned over promptly by the Contractor. The Contractor shall not be entitled to recover any cancellation charges or lost profits.
- C. **TERMINATION FOR CAUSE.** The Division may terminate the Agreement if the Contractor fails to: (1) deliver the product within the time specified in the Agreement or any extension; (2) maintain adequate progress, thus endangering performance of the Agreement; (3) honor any term of the Agreement; (4) timely cure a default; or, (5) 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 Agreement 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 Division. The rights and remedies of the Division in this clause are in addition to any other rights and remedies provided by law or under the Contract.

9. REMEDIES

- A. Any dispute concerning performance of this Agreement shall be decided by the Division'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 Division a petition for administrative hearing. The Division'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.
- B. In the event the Contractor fails to satisfactorily perform or has failed to adhere to the terms and conditions under this Agreement, the Division shall, upon fifteen (15) calendar days written notice to the Contractor and upon the Contractor's failure to cure within those fifteen (15) calendar days, exercise any one or more of the following remedies, either concurrently or consecutively:
- 1) Withhold or suspend payment of all or any part of a request for payment.
 - 2) Require that the Contractor refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
 - 3) Exercise any corrective or remedial actions, to include but not be limited to:
 - a) Requesting additional information from the Contractor to determine the reasons for or the extent of non-compliance or lack of performance;
 - b) Issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;
 - c) Advising the Contractor to suspend, discontinue or refrain from incurring costs for any activities in question; or,
 - d) Requiring the Contractor to reimburse the Division for the amount of costs incurred for any items determined to be ineligible.
- C. Pursuing any of the above remedies will not keep the Division from pursuing any other rights or remedies which may be otherwise available under law or in equity. If the

Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Contractor, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Contractor.

- D. 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 this Agreement.
- E. 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 Division 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 Division. 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 the Division, in which case the Division may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Division 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.

10. EMPLOYEES, ASSIGNMENT, AND SUBCONTRACTS

- A. **INDEPENDENT CONTRACTOR.** The Contractor and its employees, agents, representatives, assignees, and subcontractors are not employees or agents of the Division and are not entitled to the benefits of State of Florida employees. The Division shall not be bound by any acts or conduct of the Contractor or its employees, agents,

representatives, assignees, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under this Agreement.

- B. **ALL EMPLOYEES, SUBCONTRACTORS, AND AGENTS.** All Contractor employees, assignees, subcontractors, or agents performing work under this Agreement shall be properly trained technicians who meet or exceed any specified training qualifications and shall have all current licenses and permits required for all of the particular work for which they are hired by the Contractor. Upon request, the Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, assignees, subcontractors, or agents performing work under this Agreement must comply with all security and administrative requirements of the Division and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, assignee, 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 the Division's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Agreement. The State may reject and bar from any facility for cause any of the Contractor's employees, assignees, subcontractors, or agents. The Division and the State shall take all actions necessary to ensure that Contractor's employees, assignees, 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, assignees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.
- C. **CONVICTED AND DISCRIMINATORY VENDORS.** In accordance with sections 287.133 and 287.134, Florida Statutes, an entity or affiliate who is on the Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, sub-contractor, or consultant under this Agreement.
- D. **WARRANTY 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 or discriminatory vendor lists, or on any similar list maintained by any other state or the federal government.
- E. **ASSIGNMENT.** The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under this Agreement without the prior written consent of the Division. In the event of any assignment, the Contractor remains secondarily liable for performance of this Agreement, unless the Division expressly waives such secondary liability. The Division may assign this Agreement with prior written notice to Contractor.

F. **SUBCONTRACTS.** The Vendor shall not subcontract any work under this Purchase Order without the prior written consent of the Agency. The Vendor is fully responsible for satisfactory completion of all subcontracted work.

11. MODIFICATION OF CONTRACT

This Agreement contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Division and the Contractor. This Agreement may only be modified or amended upon mutual written agreement of the Division and the Contractor. No oral agreements or representations shall be valid or binding upon the Division or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Division. The Contractor may not unilaterally modify the terms of this Agreement 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 Division'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.

12. MONITORING

The Contractor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division or its agents, employees, or designee, including the Florida Chief Financial Officer, or Florida Auditor General. In the event the Division determines that a limited scope audit of the Contractor is appropriate, the Contractor agrees to comply with any additional instruction provided by the Division to the Contractor regarding such audit. The Contractor further agrees to comply and cooperate with any inspection reviews, investigation or audits deemed necessary by the Florida Chief Financial Officer or Florida Auditor General.

Records of costs incurred by the Contractor under terms of this Agreement shall be maintained by the Contractor and made available upon request to the Division at all times during the period of this Agreement. Copies of these documents and records shall be furnished to the Division upon request. Records of costs incurred shall include the Contractor's general accounting records and the project records, together with supporting documents and records of the Contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Division for a proper audit of project costs.

13. NOTICE AND CONTACT

A. Pursuant to section 287.057(14), Florida Statutes, the Division's Contract Manager "shall be responsible for enforcing performance of the contract terms and conditions and [shall] serve as liaison with the [C]ontractor." Additionally, the Contract Manager for the Division shall:

- 1) Monitor and document Contractor performance; and,

2) Review and document all deliverables for which the Contractor requests payment.

B. The Division's Contract Manager is _____.

C. All notices required under the Agreement shall be delivered to the following:

For DIVISION (Contract Manager)	For CONTRACTOR
2555 Shumard Oak Boulevard	
Tallahassee, Florida 32399	
Tele:	
Email:	Email:

14. MISCELLANEOUS

- A. All services shall be performed by the Contractor to the satisfaction of the Division who shall decide all questions, difficulties and disputes of any nature that may arise under this Agreement, the prosecution and fulfillment of the services under it and the character, quality, and value thereof; and the decision upon all claims, questions and disputes shall be final and binding upon all parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and Amendments(s) shall be entered into by the parties in accordance with the changes.
- B. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Division at all times during the period of this Agreement and for five (5) years after completion of the work pursuant to this Agreement. Copies of these documents and records shall be furnished to the Division, its agents, employees or designee, including agents of other State agencies or the Federal government upon request. Records of costs incurred shall include the Contractor's general accounting records and the project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Division for a proper audit of project costs.
- C. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.
- D. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- E. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.
- F. Should a court determine any provision of this Agreement is invalid, the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the provision held to be invalid.

- G. If this Agreement is the result of a formal solicitation (Invitation to Bid, Request for Proposal or Invitation to Negotiate), the Department of Management Services Form(s) PUR1000 and PUR1001, included in the solicitation, are incorporated herein by reference and made part of the Agreement.

Otherwise, the Contractor is subject to the terms and conditions as outlined in Form PUR 1000, incorporated by reference and made part of this Agreement.

- H. The Division may require the Contractor and its employees, agents, representatives and subcontractors to provide fingerprints and be subject to such background screen as determined by the Agency and conducted by the Florida Department of Law Enforcement or the Federal Bureau of Investigation. The cost of the background screen(s) shall be borne by the Contractor. The Division may require the Contractor to exclude the Contractor's employees, agents, representatives or subcontractors based on the background screening results.
- I. 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.
- J. 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-Division purchases are independent of the agreement between Division and the Contractor, and the Division shall not be a party to any transaction between the Contractor and any other purchaser.

As provided in Section 287.042(16)(a), Florida Statutes, other state agencies may purchase from the resulting contract, provided that the Department of Management Services has determined that the contract's use is cost-effective and in the best interest of the State. Upon such approval, the Contractor may, at its discretion, sell these commodities or services to additional agencies, upon the terms and conditions contained herein.

- K. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- L. The Division 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 this Agreement. The Division 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 Division may solicit separate bids to satisfy them.
- M. The following exhibits are incorporated and made a part of this Agreement. In case of discrepancy in any of the provisions of these exhibits with this Agreement, the

provisions of this Agreement shall govern. In case of discrepancy among the exhibits, the exhibits are listed in governing order as follows:

- Exhibit "A" –
- Exhibit "B" –
- Exhibit "C" –

15. CONTRACT TERMS REQUIRED BY FEDERAL LAW.

A. Equal Employment Opportunity. During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract

may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Copeland "Anti-Kickback" Act

- 1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- 2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- 3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

- #### C. Contract Work Hours and Safety Standards.
- In accordance with 40 U.S.C. 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

- D. Clean Air Act and the Federal Water Pollution Control Act. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).
- E. Suspension and Debarment.
- 1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - 2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - 3) This certification is a material representation of fact relied upon by the Division. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - 4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- F. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

CONTRACTOR

DIVISION OF EMERGENCY MANAGEMENT

By: _____
(Authorized Signature) (Date)

By: _____
(Authorized Signature) (Date)

(Print/Type Name)

(Print/Type Name)

Title: _____

Title: _____

Federal Tax ID# _____