



NICOLE "NIKKI" FRIED
COMMISSIONER

Submit Bids to:
Florida Department of Agriculture and Consumer Services
407 South Calhoun Street - Mayo Building, Room SB-8
Tallahassee, FL 32399-0800

Telephone: (850) 617-7181

Page 1 of 20 Pages

BIDS NO. **ITB/FFS-19/20-16**

AGENCY MAILING DATE:

AUGUST 2, 2019

WILL BE OPENED **AUGUST 16, 2019 @ 2:15 P.M. (EST)**
and may not be withdrawn within 90 days after such date and time

NOTICE OF INTENDED AWARD POSTING WILL BE ON OR ABOUT AUGUST 19, 2019

BID TITLE: **POTTING SOIL**

VENDOR NAME	AUTHORIZED SIGNATURE (MANUAL)
VENDOR MAILING ADDRESS	
CITY - STATE - ZIP	AUTHORIZED SIGNATURE (TYPED) TITLE
TELEPHONE: ()	
I certify that this Proposal is made without prior understanding, agreement, or connection with any corporation firm, or person submitting a proposal for the same materials, supplies or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this Proposal and certify that I am authorized to sign this Proposal for the Proposer and that the Proposer is in compliance with all requirements of the Request for Proposal including but not limited to, certification requirements. In submitting a Proposal to an agency for the State of Florida, the Proposer offers and agrees that if the Proposal is accepted, the Proposer will convey, sell, assign or transfer to the State of Florida all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the State of Florida. At the State's discretion, such assignment shall be made and become effective at the time the purchasing agency tenders final payment to the Proposer.	

GENERAL INSTRUCTIONS TO RESPONDENTS

- Definitions.** The definitions found in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:
 - "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.
 - "Procurement Officer" means the Buyer's contracting personnel, as identified in the Introductory Materials.
 - "Respondent" means the entity that submits materials to the Buyer in accordance with these Instructions.
 - "Response" means the material submitted by the respondent in answering the solicitation.
 - "Timeline" means the list of critical dates and actions included in the Introductory Materials.
- 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.
- 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.
 - 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://www.myflorida.com/apps/vbs/vbs_www_search_r2_criteria_fm. 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.

GENERAL CONTRACT CONDITIONS

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

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.

*** DOES NOT APPLY TO THIS AGENCY. PLEASE REFER TO SUBMISSION INSTRUCTIONS IN THE BID DOCUMENT.**

**** DOES NOT APPLY TO THIS AGENCY. PLEASE REFER TO SPECIAL CONDITIONS IN THE BID DOCUMENT.**

(PUR 1001 - 60A-1.002(7), F.A.C.)

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 which is available at the following: <https://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.

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.

****THIS CONDITION DOES NOT APPLY TO THIS AGENCY.***

(PUR 1000 - 60A-1.002(7), F.A.C.) 11/06

INVITATION TO BID

**FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
FLORIDA FOREST SERVICE**

SPECIAL TERMS, CONDITIONS AND SPECIFICATIONS

PURPOSE

The Florida Department of Agriculture and Consumer Services (FDACS or Department) seeks to obtain competitive bids for the outright purchase and delivery of compressed bales of potting soil, as specified herein, to be delivered to the Florida Forest Service, Andrews Nursery, 9850 NW 42nd Court, Chiefland, Florida.

BID OPENING

The bid opening will be at 2:15 p.m. on August 16, 2019. The location of the bid opening is the Florida Department of Agriculture and Consumer Services, Bureau of General Services, 407 S. Calhoun Street, Mayo Building, Room SB-8, Tallahassee, Florida 32399-0800.

ADDITIONAL QUANTITIES

The Department reserves the right to and may purchase additional quantities of the items listed herein. Orders shall be made by Department purchase order and shall be made within twelve (12) months of award of this bid. The bidder shall hold firm their price during this period. Additional quantities ordered shall be subject to the same terms, conditions and pricing of the initial bid response.

ESTIMATED QUANTITIES

These estimated quantities are given only as a guideline for preparing your bid and should not be construed as representing actual quantities to be purchased under this contract.

RENEWAL

This contract may be renewed by mutual agreement on a yearly basis for a period of up to three (3) one-year periods after the initial contract or for a period no longer than the original contract, whichever period is longer, at the same prices, terms and conditions. Renewal shall be subject to the same terms and conditions set forth in the original contract. Renewals shall be contingent upon satisfactory performance evaluations by the agency. Renewal costs may not be charged by the contractor.

TECHNICAL SPECIFICATIONS

Item One

Quantity: 100 compressed bales with 110 cubic feet of potting soil per bale

Description: SOIL MIXTURE - Compressed bales of potting soil used to grow tree seedlings. This soil must be mixed and properly packaged to ensure that all bales meet the specifications listed below.

The only soil mixture that will be accepted is:

- A. 85% Canadian Peat Moss (screened for minimum stick content possible).
- B. 15% Perlite.
- C. pH range of 4.5 to 5.0 prior to the addition of the following amendments:

BID NUMBER: ITB/FFS-19/20-16

OPENING DATE: AUGUST 16, 2019 @ 2:15 P.M.

- Starter charge at 1 lb. per yard.
- Aquagrow 2000 G, or equivalent, wetting agent at 1 lb. per yard.
- Controlled release fertilizer (12-14 month release), Osmocote Plus 15-9-12 with micronutrient mix (or close equivalent) at 8.0 lbs. per yard (specify the exact product you are bidding, if different).
- No Calcimitic compounds.
- No Dolomitic compounds.

Bidders shall provide data sheet(s) with bid response that indicates compliance with the above specifications. Bids received without the required data sheets may be rejected.

DELIVERY

Delivery shall be completed within 45 days of receipt of Department purchase order. The successful bidder shall be responsible for delivering materials that are properly packaged and shrink wrapped and meet the specifications listed herein. Bid pricing shall include all delivery, handling and shipping charges to:

Florida Department of Agriculture and Consumer Services
Florida Forest Service
Andrews Nursery
9850 NW 42nd Court
(Intersection of US Alt. 27 & State Road 345, one mile east of Chiefland)
Chiefland, Florida 32626

SPECIAL CONDITIONS

PUBLIC RECORDS

Any documents submitted shall be considered public record pursuant to Chapter 119, Florida Statutes.

UNILATERAL CANCELLATION

The state shall have the right of unilateral cancellation for refusal by the contractor to 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 the contract.

INDEPENDENT CAPACITY OF CONTRACTOR

The contractor, its officers, agents and employees, in performance of this contract, shall act in the capacity of an independent contractor and not as an officer, employee or agent of the state.

INVOICING AND PAYMENT

Payment will be made upon delivery and/or satisfactory completion, by state government warrant. Invoices must be submitted in triplicate, and in sufficient detail, to allow for a proper pre-audit and post-audit thereof, to Florida Forest Service, Andrews Nursery, P.O. Drawer 849, Chiefland, Florida 32644. The Department will place the invoice in line for payment. Payment shall be made in accordance with Section 215.422, Florida Statutes, which states the contractor's rights and the state agency's responsibility concerning interest penalties and time limits for payment of invoices (**ATTACHMENT A, NOTIFICATION OF VENDOR OMBUDSMAN'S NAME AND TELEPHONE NUMBER**).

COOPERATION WITH THE INSPECTOR GENERAL

Pursuant to Section 20.055(5), Florida Statutes, the 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.

DRUG-FREE WORKPLACE

Preference shall be given to bids certifying a drug-free workplace has been implemented in accordance with Section 287.087, Florida Statutes. Whenever two or more equal bids are received by the state or by any political subdivision for the procurement of commodities or contractual services, the bid received from a business that certifies 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 (**ATTACHMENT B, DRUG-FREE WORKPLACE PROGRAM - BIDDER CERTIFICATION**). If applicable, please sign and return with your bid response.

CERTIFICATION REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS FOR EXPENDITURE OF FEDERAL FUNDS

Any person submitting a response to this bid **MUST** execute the enclosed form FDACS-01522, CERTIFICATION REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS FOR EXPENDITURE OF FEDERAL FUNDS and enclose it with his/her bid or proposal (**ATTACHMENT C, CERTIFICATION REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS FOR EXPENDITURE OF FEDERAL FUNDS**). The Certification for Lobbying is required by 7 CFR Part 3018 for expenditures \$100,000 and above. The Certification for Debarment and Suspension and Other Responsibility Matters is required by 7 CFR Part 3017 for expenditures \$25,000 and above.

THE FLORIDA BASED BUSINESS PREFERENCE

When commodities are to be procured using state funds, pursuant to Section 287.084, Florida Statutes, the lowest responsible and responsive bidder whose principal place of business is located within the state of Florida is entitled to a preference over the lowest responsible and responsive bid submitted by a bidder whose principal place of business is located outside of this state. The preference will be determined as follows:

- a) If the lowest bid is submitted by a bidder whose principal place of business is located outside of the state of Florida, and that state or political subdivision grants a preference to vendors whose principal place of business is with that state or political subdivision, the preference given to the lowest bidder whose principal place of business is within the state of Florida shall be equal to that granted in the other state or political subdivision.
- b) If the lowest bid is submitted by a bidder whose principal place of business is located outside the state of Florida, and that state does not grant a preference to bidders having a principal of business in that state, the preference granted to the lowest responsible and responsive bidder having a principal place of business within the state of Florida shall be five percent (5%).
- c) A vendor whose principal place of business is outside of the state of Florida must accompany any written bid, proposal or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts. **Failure to submit this letter will result in disqualification of the bid.**

FLORIDA VETERAN BUSINESS ENTERPRISE OPPORTUNITY ACT PREFERENCE

Pursuant to Section 295.187(4), Florida Statutes, a state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, 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. Proof of certification pursuant to Section 295.187(5), Florida Statutes, shall accompany the bid. **Failure to submit proof of certification will result in non-application of the preference.**

SCRUTINIZED COMPANIES AND PROHIBITED BUSINESS ACTIVITIES

Pursuant to Section 287.135, Florida Statutes, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of any amount if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.

When goods or services to be provided are \$1 million or more, Section 287.135, Florida Statutes, requires the Contractor to certify that it is not 1) on the Scrutinized Companies with Activities in Sudan List; 2) on the Scrutinized Companies; with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, or 3) engaging in business operations in Cuba or Syria.

In order for your bid to be considered responsive, **ATTACHMENT D, CERTIFICATION REGARDING SCRUTINIZED COMPANIES**, must be completed and included in your bid package. The list may be found at <https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/GlobalGovernanceMandates.aspx>. The Department may immediately terminate any contract, as a result of this bid, for cause if the contractor is found to have submitted a false certification.

AWARD OF IDENTICAL (TIE) BIDS

In the event that identical bids are received, preference shall be given to the bid certifying a drug-free workplace has been implemented in accordance with Section 287.087, Florida Statutes. Award shall be determined by using the number of valid vendor complaints on file or by lot; except that the bid/proposal, which relates to commodities manufactured within this state, shall be given preference. The bid of any foreign manufacturer, with a factory in the state employing over 200 employees working in the state, shall have preference over the bid of any other foreign manufacturer.

PUBLIC ENTITY CRIMES

A person or affiliate, who has been placed on the convicted vendor list following a conviction for a public entity crime; may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids 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 36 months from the date of being placed on the convicted vendor list.

EMPLOYMENT OF UNAUTHORIZED ALIENS

Pursuant to Executive Order 96-236, effective October 1, 1996, the following standard provision shall apply to any contract awarded as a result of this Invitation to Bid (ITB):

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.

DISCRIMINATION

An entity or affiliate, who has been placed on the discriminatory vendor list, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not award or perform work as a contractor, supplier, subcontractor or consultant under contract with any public entity and may not transact any business with any public entity.

ANNUAL APPROPRIATIONS

The state of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

DISQUALIFICATION OF BIDDERS

More than one bid from an individual, firm, partnership, corporation or association, under the same or different names, will not be considered. Reasonable grounds for believing that a bidder is interested in more than one bid for the same work will cause the rejection of all bids in which such bidders are believed to be interested.

If there is reason to believe that collusion exists among the bidders, any or all bids will be rejected. No participants in such collusion will be considered in future bids for the same work. Falsifications of any entry made on the bidder's offer will be deemed a material irregularity and will be grounds for rejection.

REJECTION OF BIDS

The Department reserves the right to reject any and all bids, when such rejection is in the interest of the state of Florida, and to reject the bid of a bidder who the Department determines is not in a position to perform the contract.

LATE BIDS

Bids received by the Department after the bid opening time and date will be rejected as untimely and will not be opened. A late bid notice will be sent to the bidder upon the posting of award notice with instructions for its return. Unclaimed late bids will be destroyed after 45 days. Offers from vendors listed on the Department's posted award notice are the only offers received timely in accordance with the Department's bid opening time and date.

BIDDING INSTRUCTIONS

In addition to signing, thereby acknowledging the General Instructions to Respondents (PUR 1001) and the General Contract Conditions (PUR 1000) attached to the bid, each bidder must complete the attached Bid Price Sheet in its entirety. By affixing a manual signature to the Bid Price Sheet, the bidder states that he/she has read all the provisions of the bid package and agrees to the terms, conditions and specifications contained therein. **BID RESPONSES BY FAX WILL NOT BE ACCEPTED BY THE DEPARTMENT. BIDS MUST BE SUBMITTED IN A SEALED ENVELOPE AS SPECIFIED HEREIN.**

BID PRICE SHEET

Bidder shall provide a **firm fixed unit price for the item** as specified herein. Pricing shall include shipping, delivery and any costs associated with the bid. The Department will not accept any other costs not included in the bid price.

EVALUATION AND AWARD

The Department reserves the right to award to the lowest responsive bidder based upon the **firm fixed total price for the item** as specified herein. Awards will be combined where such award is advantageous to the state. As the best interest of the state may require, the Department reserves the right to reject any and all bids or waive any minor irregularity or technicality in bids received. When it is determined 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. Any further clarification, if necessary, will be by written addendum. All other provisions of the awards paragraph, General Conditions, shall prevail. The Department reserves the right to award, or not award, contract(s) based on the availability of funds.

INTERPRETATIONS/DISPUTES

Any questions concerning conditions and specifications shall be directed in writing to the purchasing office for receipt no later than 10 days prior to the bid opening. No interpretation shall be considered binding unless provided in writing by the Department's purchasing director in response to requests in full compliance with this provision. Any person, who is adversely affected by the agency's decision or intended decision, shall file with the agency a Notice of Protest in writing within 72 hours after the posting of the notice of decision or intended decision. Protests must be filed with the Agency Clerk, Florida Department of Agriculture and Consumer Services, The Holland Building, 600 South Calhoun Street, Tallahassee, Florida 32399. With respect to a protest of the terms, conditions and specifications contained in a solicitation, including any provision governing the methods for ranking bids, proposals or replies, awarding contracts, reserving rights or further negotiation or modifying or amending any contract, the Notice of Protest shall be filed in writing within 72 hours after the posting of the solicitation. The formal written protest shall state with particularity the facts and law upon which the protest is filed.

POSTING OF BID TABULATIONS

Tabulations with recommended award(s) will be posted for review by interested parties on the Florida Bid System located at http://www.myflorida.com/apps/vbs/vbs_search_r2.criteria_form. Tabulations will remain posted for a period of seventy-two (72) hours. 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. Failure to file the proper bond at the time of filing the formal protest will result in denial of the protest.

QUESTIONS

Questions regarding bidding procedures may be directed to:

Carmelita Graham
Florida Department of Agriculture and Consumer Services - Purchasing Office
407 South Calhoun Street, SB-8 Mayo Building
Tallahassee, Florida 32399-0800
Telephone: (850) 617-7181
Email: Bids@FreshFromFlorida.com

*****IMPORTANT NOTICE*****

Pursuant to Section 287.057(23), Florida Statutes, 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.

No negotiations, decisions or actions shall be initiated or executed by the bidder as a result of any discussions with any purchaser or departmental employee. Only those communications, which are in writing from the Department's purchasing office, may be considered as a duly authorized expression on behalf of the purchaser. Also, only communications from the bidders, which are in writing and signed, will be recognized by the purchaser as duly authorized expressions on behalf of the bidder.

Any questions, correspondence or contact with the Department initiated by the bidder after the bid opening date and prior to posting of intended award must be directed to the purchasing office, attention purchasing director. Department personnel will not discuss bids or proposed contract activities with bidders during the bid evaluation period. The Department will not accept any revisions or additions to any bid after the bid opening date.

BID PRICE SHEET

<u>Item Number</u>	<u>Description</u>	<u>Firm Fixed Unit Price</u>	<u>Estimated Quantity</u>	<u>Firm Fixed Total Price</u>
1	Soil Mixture as specified herein (110 cubic feet per bale)	\$ _____ Per Bale	X 100 Bales =	\$ _____

By affixing signature to this BID PRICE SHEET, bidder acknowledges reading and agrees to accept all terms, provisions and conditions contained in this Invitation to Bid.

BIDDER NAME: _____

SIGNATURE (MANUAL): _____

SIGNATURE (PRINTED): _____

ADDRESS: _____ CITY: _____

STATE: _____ ZIP: _____ PHONE NUMBER: _____

FEID/SSN: _____ EMAIL ADDRESS: _____

*BIDDER PRINCIPAL PLACE OF BUSINESS: _____

NOTE:** *If outside of the state of Florida, attach a written opinion of an attorney, per Section 287.084, Florida Statutes, and "THE FLORIDA BASED BUSINESS PREFERENCE" section of the bid document. **Failure to submit this letter will result in disqualification of the bid.

*** Please submit two (2) copies of all bid documents, including Bid Price Sheet. ***

ATTACHMENT A

STATE OF FLORIDA

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

**NOTIFICATION OF VENDOR OMBUDSMAN'S NAME
AND TELEPHONE NUMBER**

Vendors providing goods and services to an agency should be aware of the following time frames. Upon receipt, an agency has five (5) working days to inspect and approve the goods and service, unless the bid specifications, purchase order or contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

If a payment is not available within 40 days, a separate interest penalty of .02740 percent per day will be due and payable, in addition to the invoice amount, to the vendor. Payments to health care providers for hospital, medical or other health care services, shall be made not more than 35 days from the date eligibility for payment is determined, and the daily interest rate is .03333 percent. Interest penalties of less than one (1) dollar will not be enforced unless the vendor requests payment. Invoices which have to be returned to a vendor because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the agency.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payments(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Services Consumer Hotline at 1-877-693-5236 or (850) 413-3089.

ATTACHMENT B



NICOLE "NIKKI" FRIED
COMMISSIONER

Florida Department of Agriculture and Consumer Services
Bureau of General Services
DRUG-FREE WORKPLACE PROGRAM - BIDDER CERTIFICATION

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, which are equal with respect to price, quality and service, are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid 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:

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

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

VENDOR'S SIGNATURE

ATTACHMENT C



NICOLE "NIKKI" FRIED
COMMISSIONER

Florida Department of Agriculture and Consumer Services
Division of Administration

CERTIFICATION REGARDING LOBBYING;
DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS
FOR EXPENDITURE OF FEDERAL FUNDS LOBBYING

As required by 7 CFR Part 3018, for persons entering into a contract, grant or cooperative agreement over \$100,000 involving the expenditure of Federal funds, the undersigned certifies for itself and its principals that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal grant or cooperative agreement;
(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress, in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

PRINTED NAME/TITLE OF REPRESENTATIVE

CONTRACT / PURCHASE ORDER NUMBER

SIGNATURE OF REPRESENTATIVE / DATE

DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

As required by 2 CFR Part 417, for persons entering into a contract, grant or cooperative agreement over \$25,000 involving the expenditure of Federal funds, the undersigned certifies for itself and its principals that:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; 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;
(c) Are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State, or local) with commission of any offenses enumerated in paragraph (b) of this certification; and
(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

PRINTED NAME/TITLE OF REPRESENTATIVE

CONTRACT / PURCHASE ORDER NUMBER

SIGNATURE OF REPRESENTATIVE / DATE

ATTACHMENT D



NICOLE "NIKKI" FRIED
COMMISSIONER

Florida Department of Agriculture and Consumer Services
Division of Administration

CERTIFICATION REGARDING SCRUTINIZED COMPANIES

Certification Regarding Scrutinized Companies that Boycott Israel List and Engage in a Boycott of Israel	
<p>I, _____ (Enter Name of Authorized Representative), as the authorized representative of _____ (Enter Legal Name of Contractor), (the "company") hereby certify that, the company has reviewed Section 287.135, Florida Statutes, and certify the company:</p>	
<ol style="list-style-type: none"> Is not listed on the Scrutinized Companies that Boycott Israel list or Does not participate or engage in a boycott of Israel. 	
<p>The List of Scrutinized Companies that Boycott Israel can be located on the State Board of Administration of Florida's website at https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/GlobalGovernanceMandates.aspx</p>	
<p>I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the Company to civil penalties, attorney's fees and other penalties and consequences as provided by Section 287.135, Florida Statutes.</p>	
Signature of Authorized Representative:	Date:

Certification Regarding Scrutinized Companies List And Business Operations in Cuba/Syria	
<p>I, _____ (Enter Name of Authorized Representative), as the authorized representative of _____ (Enter Legal Name of Contractor), (the "company") hereby certify that, the company has reviewed Florida Laws Chapter 2018-52 (revising Section 287.135, Florida Statutes) and Section 287.135, Florida Statutes, and certify the company:</p>	
<ol style="list-style-type: none"> Is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and Does not have business operations in Cuba or Syria. 	
<p>The Scrutinized List of Prohibited Companies can be located on the State Board of Administration of Florida's website at https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/GlobalGovernanceMandates.aspx</p>	
<p>I understand that Section 287.135, Florida Statutes, prohibits Florida state agencies from contracting for goods or services over \$1,000,000, with companies on either List or that are engaged in business operations in Cuba or Syria, and that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the Company to civil penalties, attorney's fees, and other penalties and consequences as provided by Section 287.135, Florida Statutes.</p>	
Signature of Authorized Representative:	Date: