

**TITLE PAGE  
STATE OF FLORIDA  
DEPARTMENT OF LEGAL AFFAIRS  
OFFICE OF THE ATTORNEY GENERAL**



**INVITATION TO NEGOTIATE  
ITN DLA-2019.01  
SERVICE OF PROCESS**

**Respondent Name:** \_\_\_\_\_

**Respondent Mailing Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

**Phone:** (     ) \_\_\_\_\_ **Fax Number:** (     ) \_\_\_\_\_

**E-Mail Address:** \_\_\_\_\_

**Federal Employer Identification Number (FEID):** \_\_\_\_\_

**BY AFFIXING MY SIGNATURE ON THIS REPLY, I HEREBY STATE THAT I HAVE READ THE ENTIRE ITN TERMS, CONDITIONS, PROVISIONS, SPECIFICATIONS AND ALL ITS ATTACHMENTS, INCLUDING THE REFERENCED PUR 100 AND PUR 1001. I hereby certify that my company, its employees, and its principals agree to abide by all of the terms, conditions, provisions, and specifications during the competitive solicitation and any resulting Contract, including those contained in the Sample Contract.**

Signature of Authorized Representative: \_\_\_\_\_

Printed (Typed) Name and Title: \_\_\_\_\_

\*An authorized representative is an officer of the respondent's organization who has legal authority to bind the respondent's organization to the provisions of the replies. This usually is the President, Chairman of the Board or owner of the entity, Document establishing delegated authority must be included with the reply if signed by other than authorized representative.

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- |                       |   |
|-----------------------|---|
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## **SECTION 1. PURPOSE AND GENERAL INFORMATION**

### **1.1 Purpose (Specific Goals and Objectives)**

The purpose of this Invitation to Negotiate (ITN) is to seek competitive, responsive replies and pricing on behalf of the State of Florida, Department of Legal Affairs, Office of the Attorney General, hereafter referred to as the OAG, for the provision of Service of Process services for the OAG and the Florida Elections Commission.

### **1.2 Definitions**

<b>BAFO</b>	Best and Final Offer
<b>CONTRACT</b>	The formal written agreement that will be entered into between the OAG and the CONTRACTOR.
<b>CONTRACTOR</b>	The Respondent(s) with whom the State executes a contract to provide the required commodities/services. Contractor as used herein may include one or more Contractors.
<b>ITN</b>	This Invitation to Negotiate, (ITN DLA 2019-01, Service of Process).
<b>MINOR IRREGULARITY</b>	As used in the context of this solicitation, indicates a variation from the ITN terms and conditions which does not affect the price of the Reply, or give the Respondent an advantage or benefit not enjoyed by all other Respondents, or does not adversely impact the interests of the OAG.
<b>OAG</b>	The State of Florida, Department of Legal Affairs, Office of the Attorney General.
<b>PROCUREMENT OFFICER</b>	Sole point of contact during the ITN process.
<b>PROGRAM AREA REQUESTOR</b>	The person(s) who initiates the Request for Service.
<b>RESPONDENT</b>	A firm or person who submits a proposal to the OAG in response to the ITN.
<b>REPLY</b>	The complete written response to the ITN (technical and cost proposals), including all information and material submitted by a Respondent in response to this ITN.
<b>STATE</b>	State shall be synonymous with state of Florida and its various agencies and other governmental subdivisions.
<b>SUBCONTRACTOR</b>	Any firm or person other than an employee of a Respondent who performs any services required by the Contract awarded as a result of this ITN for compensation, upon OAG approval.
<b>VBS (VENDOR BID SYSTEM)</b>	The system which allows all state agencies to advertise solicitations on MyFlorida.com, hosted by the OAG of Management Services. It also permits registered Vendors to receive automatic email

	notification of solicitation advertisements, addenda to solicitations, and exceptional purchases. The state of Florida's internet-based vendor information system at: <a href="http://vbs.dms.state.fl.us/vbs/main">http://vbs.dms.state.fl.us/vbs/main</a> menu
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**1.3 PUR 1001 – General Instructions to Respondents**

<http://dms.myflorida.com/index.php/content/download/2934/11780/version/6/file/1001.pdf>

The State of Florida General Instructions to Proposers (PUR 1001) are hereby referenced and incorporated in their entirety into this ITN. This is a downloadable document at the hyperlink above. Please download and save this document to your computer for further review. Potential Respondents to the solicitation are encouraged to carefully review all materials contained herein and prepare responses accordingly. There is no need to return this document (PUR 1001) back to the OAG.

**1.4 Procurement Officer and Restriction on Communications**

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. Section 287.057(23), Florida Statutes

The Procurement Officer is the sole point of contact for the OAG pursuant to Section 287.057(23), Florida Statutes.

Requests for clarification, with the exception of scheduled conferences and meetings with the OAG's negotiating team, should be identified by placing this ITN DLA-2019.01 number in the subject line of all emails and directed to the Procurement Officer for this ITN who is:

**Chari Wester, General Services Manager  
Florida Office of the Attorney General  
107 West Gaines Street, Collins Building  
Tallahassee, Florida 32301  
Email: [chari.wester@myfloridalegal.com](mailto:chari.wester@myfloridalegal.com)**

**1.5 Schedule of Events**

The following time schedule will be strictly adhered to in all actions relative to this ITN, unless modified by the OAG by addendum to this ITN. No liability to the OAG will result from such deviations. All required Vendor actions must be completed by the date and time in the schedule.

EVENT	LOCATION	DATE/TIME
ITN Released/Posted	<a href="http://www.vbs.dms.state.fl.us/vbs/main_menu">http://www.vbs.dms.state.fl.us/vbs/main_menu</a>	11/27/2018
Questions Submitted	To Procurement Officer at <a href="mailto:chari.wester@myfloridalegal.com">chari.wester@myfloridalegal.com</a>	12/4/2018 by 5:00pm, Eastern Time(E)
Anticipated Answers to Questions	<a href="http://vbs.dms.state.fl.us/vbs/main_menu">http://vbs.dms.state.fl.us/vbs/main_menu</a>	12/11/2018 by 5:00pm, Eastern Time (E)
*Replies Due and Opened	Office of the Attorney General, Bureau of General Services, Purchasing, Collins Building, 107 West Gaines Street, Tallahassee, Florida 32301. Replies should be addressed to the Procurement Officer, Chari Wester, as specified in Section 1.4. *All timely Replies will be opened at the Collins Building, Room #226, 107 West Gaines Street, Tallahassee, FL 32301. The public may attend the opening, but may not review any Responses at that time in accordance with Section 119.071(1)(2), Florida Statutes. Only the names of all Respondents and the names of any firms submitting “no response” will be read aloud.	<b>DUE</b> – 01/03/2019 by 2:30pm, Eastern Time (E).
Opening of Price Sheets	Office of the Attorney General, Bureau of General Services, Purchasing, Collins Building, 107 West Gaines Street, Tallahassee, Florida 32301. Price/Rate Sheets may not be reviewed by the public at this time.	Anticipated Date of 1/4/2019
Evaluation of Replies	Team Members will begin their individual evaluations.	Anticipated Date of 01/09/ 2019.
Demonstrations/Negotiations	Collins Building, 107 West Gaines Street, Tallahassee, FL 32301. TBD.	Anticipated Date(s) – Week of 1/21/2019
BAFOs	Submitted to Procurement Officer by email as specified in Section 6.5	Anticipated Date(s) of 01/25/2019
Intent to Award/Posted	<a href="http://www.vbs.dms.state.fl.us/vbs/main_menu">http://www.vbs.dms.state.fl.us/vbs/main_menu</a>	Anticipated Date of 01/28/2019

Contract Start Date		Anticipated Date of 02/08/2018
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**All Respondents are hereby notified that the meetings noted with an asterisk above (\*) are public meetings open to the public and may be electronically recorded by any member of the audience. Although the public is invited, no comments or questions will be taken from either the Respondents or other members of the public.**

**1.6 Questions**

*This provision takes precedence over General Instruction #5 in PUR 1001.*

All questions regarding the content of this ITN, must be received in writing by email to the Procurement Officer identified in Section 1.4, above, within the time indicated in Section 1.5, Schedule of Events. Verbal questions or those submitted after the period specified in the Schedule of Events will not be addressed.

Answers to questions submitted in accordance with the ITN Schedule of Events will be posted on the MyFlorida.com VBS website. Respondents are asked to use the following format when submitting questions:

<b>VENDOR NAME ITN DLA-2019.01</b>	
QUESTION	OAG'S ANSWER

**1.7 Accessibility for Disabled Persons**

If a special accommodation is needed, please advise no later than five (5) working days prior to the event for which the accommodation may be needed. Contact the Procurement Officer named in Section 1.4 of the ITN.

**SECTION 2. SPECIAL CONDITIONS**

**2.1 Responsive and Responsible (Mandatory Requirements)**

Respondents must complete and submit the following mandatory information or documentation as part of its Reply. Any Reply which does not meet these requirements or contain this information will be deemed non-responsive.



1. Replies must be received at the location and date and time specified in Section 1.5, Schedule of Events.
2. The Title Page must be signed and returned with the Technical Reply.
3. **Price/Rate Sheet – Attachment B**, must be completed, signed and submitted in a separate sealed envelope at the same time the Technical Reply is submitted.

## 2.2 Costs of Developing and Submitting Reply: Ownership

Neither the OAG nor the state of Florida is liable for any of the costs incurred by a Respondent in preparing and submitting a Reply. All Replies become the property of the OAG upon receipt and will not be returned to the Respondents once opened. The OAG shall have the right to use any and all ideas or adaptations of ideas contained in any Replies received in response to this ITN. Selection or rejection of the Reply will not affect this right.

## 2.3 Addenda

Any and all addenda to this ITN will be posted on the VBS with an Addenda Acknowledgement Form. The Addenda Acknowledgement Form, issued with each posting shall be signed by an individual authorized to bind the Respondent, dated and included in the Respondent's Reply. It is the vendor's responsibility to monitor the VBS for any solicitation notifications.

## 2.4 Legal Requirements

Applicable provisions of all federal, state, county, and local laws and administrative procedures, regulations, or rules shall govern the development, submittal and evaluation of all Replies received in response hereto and shall govern any and all claims and disputes which may arise between persons submitting a Reply hereto and the OAG. Lack of knowledge of the law or applicable procedures, regulations or rules by any Respondent shall not constitute a cognizable defense against their effect.

## 2.5 Identical Scoring of Responses

If during this ITN process, the OAG encounters identical or tied scoring, the tie will be resolved in accordance with Florida Administrative Code Rule 60A-1.011, which may include certification that a drug free workplace has been implemented. Respondents may execute and return **Drug Free Workplace Certification, Attachment H**, to be considered in the event of identical scoring or exact tie.

## 2.6 Conflict of Interest and Disclosure

The award hereunder is subject to the provisions of Chapter 112, Florida Statutes. Respondents must disclose with their Replies whether any officer, director, employee, or agent is also an officer or an employee of the OAG, the state of Florida, or any of its

agencies, whether executive, judicial, or legislative. All firms must disclose the name of any state officer or employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Respondent's firm or any of its branches or affiliates. All Respondents must also disclose the name of any employee, agent, lobbyist, previous employee of the OAG, or other person, who has received or will receive compensation of any kind, in seeking to influence the actions of the OAG in connection with this procurement.

## **2.7 Taxes**

The OAG is generally exempt from all federal, state, and local taxes and no such taxes shall be included in the price of the Contract. The OAG shall have no responsibility for the payment of taxes which become payable by Contractor or its subcontractors in performance of the Contract.

## **2.8 Proposal Tenure**

All Replies are binding for 180 days following the proposal opening date.

## **2.9 Non-Exclusive Rights**

The right to provide the commodities and services which will be granted under the Contract shall not be exclusive. The OAG reserves the right to contract for and purchase commodities and services from as many firms as it deems necessary without infringing upon or terminating the Contract.

## **2.10 Contract**

The Contract between the OAG and the Contractor shall incorporate in this ITN, any addenda to this ITN, and the Respondent's (Contractor's) Reply. In the event of a conflict in language among any of the documents referenced herein, the provisions and requirements of the Contract will govern.

If at any time a Contract is canceled, terminated, or expires, and a new Contract is subsequently executed with a firm other than Contractor, Contractor has the affirmative obligation to assist in the smooth transition of Contract services to the subsequent Contractor.

## **2.11 Assignment of the Contract**

A Contract awarded pursuant to this ITN is not assignable except with the prior written approval of the OAG. Monies which become due thereunder are not assignable except with the prior written approval of the OAG, and the concurrence of the Chief Financial Officer of the State of Florida. In the event of such approval, the terms and conditions hereof shall apply to and bind the party or parties to whom a Contract is assigned as fully and completely as the Contractor is thereunder bound and obligated. No assignment, if

any, shall operate to release the Contractor from its liability for the prompt and effective performance of its obligations under the Contract.

## **2.12 No Third-Party Rights**

The Contract awarded pursuant to this ITN is for the benefit of the OAG and the Contractor and not for the benefit of any other third party or person.

## **2.13 Copyrighted Material**

Copyrighted material will be accepted as part of a Technical Reply only if accompanied by a waiver that will allow the OAG to make paper and electronic copies necessary for the use of OAG staff and agents. It is noted that copyrighted material is not exempt from the Public Records Law, Chapter 119, Florida Statutes.

## **2.14 Confidential and Trade Secret Privileged Materials**

Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from Section 119.07(1), Florida Statutes, and Section 24(a), Article I of the Florida Constitution, until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

The Respondent must include any materials it asserts to be exempt from public disclosure under Chapter 119, Florida Statutes, in a separate bound document labeled Attachment D, Confidentiality Agreement, ITN DLA-2019.01. The Respondent must identify the specific provision of the Florida Statutes that authorizes exemption from the Public Records Law. Any claim of confidentiality of materials the Respondent asserts to be exempt from public disclosure and placed elsewhere in this ITN will be considered waived by the Respondent upon submission, effective after opening.

If the OAG is served with a public records request for disclosure of solicitation-related materials designated "Confidential Material" and placed in a separate bound document by the Respondent pursuant to this section of the ITN, the OAG will promptly notify the Respondent about the request. The Respondent will be responsible for taking adequate, appropriate and timely legal action through filing the appropriate motion or objection in response to the request for disclosure. The OAG will provide disclosure of materials designated "confidential" and delivered in a separate bound document if the Respondent fails to take adequate, appropriate and timely action to protect the materials it designated as "confidential" from disclosure.

The Respondent will protect, defend, and indemnify the OAG for claims, costs, fines, and attorney's fees arising from or relating to its designation of solicitation-related materials as "confidential."

## **2.15 Silence of Specifications**

The apparent silence of specifications set forth in this ITN and the Contract to any details, or the omission by Respondent of a detailed description, concerning any point, will be regarded as meaning that only the best commercial practices are to prevail and that only materials and workmanship of first quality are to be used. All interpretations of this ITN shall be made upon the basis of this statement.

## **SECTION 3. CONTRACT TERMS**

The following terms and conditions will be included within the contract resulting from the award of this ITN. Respondents must become familiar with the OAG's **Sample Contract, Attachment A** hereto, which contains administrative, financial and non-programmatic terms and conditions mandated by federal and state law and, administrative code rules. Use of the sample contract is mandatory for this contract and terms and conditions contained in the sample contract are non-negotiable.

### **3.1 Term of Contract**

The Contract shall be in effect for an initial term of three years, beginning on or about February 8, 2019 or the date it is fully executed by the parties, and terminate on February 7, 2022.

The OAG reserves the right to renew the contract resulting from this solicitation for up to three one-year renewals. Renewal of this contract shall be in writing, at the renewal pricing specified in the Contract, and shall be subject to the terms and conditions set forth in the existing contract. All renewals are contingent upon satisfactory performance by the Contractor, the availability of funds, and subject to annual appropriations by the Florida Legislature.

## **SECTION 4. SCOPE OF WORK**

### **4.1 Background**

All attempts from a process server must be listed and detailed. Executed service must be clear and detailed on all Affidavit or Proof of Service Forms. The Contractor shall provide the OAG, on an as-needed basis, all services necessary to affect service of process, in accordance with applicable laws of the state of Florida, including Chapters 39 and 48, Florida Statutes, Florida Rules of Civil Procedure, Florida Rules of Juvenile Procedure and the laws of any other jurisdiction outside of the State of Florida, when applicable, in the following defined service areas:

**Service Area 1:** Within the state of Florida

**Service Area 2:** Within the United States, including its territories and commonwealths

**Service Area 3:** Outside of the United States, its territories, and commonwealths

International service of process, for **Service Area 3**, as defined above, will be issued, served, and filed with the courts in accordance with the requirements established on a case by case basis and agreed upon by both the Contractor and the OAG in writing **PRIOR** to attempting service of process. The OAG expects service of process in **Service Area 3** to be affected in accordance with all applicable laws and treaties.

#### 4.2 **General Processes and Types of Service to be Provided**

The OAG shall request service of process from the Contractor via email, designating the OAG Program Area Requestor to whom the invoice will be sent, providing the name, address, and other relevant information of the individual on whom process is to be served, in order for the Contractor to perform services under the Contract, including multiple addresses at which the individual may be located, if known, and indicating the type and level of service required by the OAG; **Routine Service**, **Expedited Service**, or **Priority Service**.

- a. **Routine Service** – Routine service of process must be issued, served, and filed with the courts, in accordance with the requirements of the particular court involved (currently e-file), within fourteen (14) calendar days of notification by the OAG that the documents are ready for service (unless extended by the OAG in writing). The Contractor shall in all cases attempt service within three (3) calendar days from receipt of such service documents, excluding Sundays and legal holidays officially recognized by the applicable jurisdiction.
- b. **Express Service** - Express service of process must be issued, served, and filed with the courts, in accordance with the requirements of the particular court involved (currently e-file), within seven (7) calendar days of notification by the OAG that the documents are ready for service, excluding legal holidays officially recognized by the applicable jurisdiction. The Contractor shall in all cases attempt service within two (2) calendar days from receipt of such service documents, excluding Sundays and legal holidays officially recognized by the applicable jurisdiction.
- c. **Priority Service** - Priority service of process must be issued, served, and filed with the courts, in accordance with the requirements of the particular court involved (currently e-file), within three (3) calendar days of notification by the OAG that the documents are ready for service (unless extended by the OAG in writing). The Contractor shall in all cases attempt service within one (1) calendar day from receipt of such service documents, excluding Sundays and legal holidays officially recognized by the applicable jurisdiction.

### 4.3 Service Requirements

Services will be provided by experienced certified Process Servers who are duly commissioned by the applicable certifying entity, and who are either employed by the Contractor or acting as subcontractors to the Contractor. The Contractor will ensure all certified Process Servers meet all requirements for the location in which process is being served. All Process Servers must possess the ability to effect service of process at federal and state prisons as well as local jails, work camps, Indian Reservations, military installations, domestic violence shelters, homeless shelters, and substance abuse treatment centers. Provision of service of process as listed in this **SECTION 4.**, as more fully described in **Subsection 4.2**, above, will result in no additional charges or fees to the OAG.

#### **The Contractor will:**

1. Ensure the individual who serves or attempts service will testify at any required hearings if requested by the OAG at no additional cost to the OAG.
2. Ensure service is attempted in accordance with any direction provided by the OAG as to time and place, including any court house, and any jail, prison, or other detention or correctional facilities located within the state of Florida.
3. Ensure and acknowledge that all program areas of the OAG reserve the right to utilize the local law enforcement agencies to provide service of process as needed.
4. Ensure that when, within a county in the state of Florida, a county sheriff must provide service instead of the Contractor, the Contractor must first notify the OAG program area service requestor for approval **before any attempt is made.**
5. Ensure the process server attempts service at the court/hearing in accordance with the directions from the OAG program area service requestor if so requested in order to secure service of an individual.
6. Ensure if the individual is not able to be served due to the provision of an incorrect address and/or an address that does not exist, that detailed information regarding this incorrect/non-existent address shall be provided to the OAG program area requestor via email within twenty-four (24) hours to allow for any corrected address information obtained by the OAG to be provided.
7. Ensure the process server makes a minimum of five (5) separate service attempts to serve the individual within the time period established for the type of service requested by the OAG, after receipt of a request for service of process from the OAG. The service attempts must take place at addresses or employer locations provided by the OAG if necessary to effectuate service, or at other addresses obtained by the Contractor, including nights and weekends, excluding Sundays and legal holidays officially recognized by the

applicable local jurisdiction. The Contractor shall attempt service, while making the minimum five (5) attempts, using at least two (2) different service options, as defined below, chosen from the ones listed herein; each attempt must be a minimum of ten (10) hours apart from any other attempt; and attempts must take place on at least two (2) different dates:

- Service Option 1: 8:00am – 5:00pm Monday through Friday**
- Service Option 2: 5:00pm – 10:00pm Monday through Friday**
- Service Option 3: 8:00am – 10:00pm Saturday**

8. Ensure that service attempt locations shall include, but are not limited to:
  1. Serving during employment hours at the individual's place of employment;
  2. Outside employment hours to include Saturdays at the individual's place of residence.
  3. At any other address when multiple addresses are provided; and
  4. At any other location identified by the Contractor.
9. Ensure that the process server attempts service in compliance with the following:

**Service Restrictions and Additional Conditions:**

- a. **Sunday Service:** Service of process is prohibited on Sundays; no service of process actions taken under this Contract shall take place on Sunday.
- b. **For Service Area 2** requests for service on individuals outside of this state, service shall be made in the same manner as service within this state, by any officer authorized to serve process in the state where the person is served. No order of court will be required.
- c. **For Service Area 3** requests for service on individuals outside of the United States, service may be required to conform to the provisions of the "Hague Convention" on the service abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. The OAG expects such international service to be affected in accordance with all applicable laws and treaties. No order of court will be required.
- d. **Spousal Substitute Service:** Substitute service may be made on the spouse of the individual to be served at any place in the county, if the cause of action is not an adversary proceeding between the spouse and the individual to be served, if the spouse requests receipt of such substitute service, and if the spouse and the individual to be served are residing together in the same dwelling. In all instances, substitute service shall be made according to all applicable rules and statutes, especially Section 48.031(2), Florida Statutes, providing the name of the person served to the OAG on the Affidavit or Proof of Service Form, without need for prior approval from the OAG.

**Please Note: Substitute service is not to be used in any action for termination of parental rights or in actions involving injunctive relief.**

10. Ensure that when service cannot be made at the address(es) provided by the OAG Program Area Requestor, and the Contractor uses its own location sources or makes contact with person(s) providing additional address(es) for the individual to be served, the Contractor will attempt service at the additional address(es) without additional charge to the OAG. If the Contractor is still unsuccessful, the process shall be returned as non-served without additional charge to the OAG. The Contractor shall provide the OAG Program Area Requestor with an Affidavit or Proof of Service Form, containing details and service addresses for all service attempts. If the individual being served is served in a public place, the Contractor must attempt to obtain a valid mailing address from the individual being served and provide that information in the Affidavit or Proof of Service Form.

11. Ensure the preparation and provision of the notarized Affidavit or Proof of Service Form, acceptable to the OAG and the courts, within seven (7) calendar days from the date of service. If a court date/hearing is scheduled, and the OAG Program Area Requestor provides such information to the Contractor, the Contractor must provide the Affidavit or Proof of Service Form and documentation to the courts, **no later than 72 hours prior to that date or hearing provided on the service of process information.** All non-served Affidavit or Proof of Service Forms shall include information required by law and information relating to the attempted service (e.g.; moved, left no forwarding address; relocated out-of-state; deceased; incarcerated; etc.; together with any forwarding or current address or contact information learned during the service attempts). All original Affidavit or Proof of Service Forms shall be filed with the Clerk of Court of the process issuing county. The Contractor shall be required to furnish the original Affidavit or Proof of Service Form to the Clerk of Court of the process issuing county and email the OAG program area requestor proof of the documents being e-filed with a copy of the e-filing.

12. The Contractor shall provide the OAG with a notarized Affidavit or Proof of Service Form, containing service addresses for all service attempts. All attempts must be documented on the notarized Affidavit or Proof of Service Form, regardless of the type of Affidavit or Proof of Service Form generated, i.e. Affidavit or Proof of Service Form of Service, Affidavit or Proof of Service Form of Non-Service, or any other type(s) of Affidavit or Proof of Service Forms approved by the OAG and generated by the Contractor. All current Contractor generated Affidavit or Proof of Service Forms shall be submitted as examples, to the OAG under **Tab 9 of the submitted Reply.**

13. Ensure that a request for an extension on service is made to allow service attempts beyond the fourteen (14) calendar days requirement on Routine Service from date of receipt of documents.



Requests for time extensions for all types of service will be made to both the OAG's Program Area Requestor and Contract Manager via electronic mail containing the reason(s) for the extension request, and latest expected date to complete service efforts, successful or unsuccessful.

#### **4.4 Request for Cancellation of Service**

Should the OAG choose to discontinue service efforts regarding any particular service request, the Contractor shall be notified in writing via electronic mail, as soon as possible. The Contractor will immediately notify effected process servers to cease all service attempts. The Contractor shall ensure that each process server involved with the cancelled service request promptly returns all service documents by a reasonable method of delivery.

Service which is canceled after an attempt of service has been made, but prior to effected service, shall be paid 50% of the applicable flat service fee. Service (routine, express or priority) which is canceled prior to any attempt to effect service shall NOT be charged to the OAG and the Contractor will receive no fees for the cancelled service request.

#### **4.5 Communication with the OAG**

The Contractor will meet or communicate regularly with the OAG Contract Manager, and any other applicable staff as requested by the OAG, to discuss processes, performance, and issues that may arise during the term of this contract.

The Contractor will cooperate fully with any data collection and evaluation activities, performance analysis, contract monitoring activities, quality assurance reviews, or audits carried out by the OAG in connection with the requirements and services performed under this Contract.

The Contractor shall respond to any and all requests made by the OAG pursuant to **Section 4.6**, (listed below) within two business days after the date the request is made.

#### **4.6 Other Terms and Conditions**

Requests for service of process can be initiated under this contract either by the OAG or any Florida licensed attorney, law firm, or other governmental entity that is under contract with the OAG to represent the OAG in legal matters, and the services will be provided by the Contractor, who shall perform service of process at the rates specified in **Price/Rate Sheet, Attachment B**. In these instances where the requests for service of process are initiated by one of the group other than the OAG, the entity making such a service request will pay for its own service requests, upon receiving an invoice from the Contractor.

## **4.7 Technical Specifications**

### **4.7.1 Objective/Purpose Regarding All Proposed Service of Process System Solutions**

The OAG is seeking one Respondent to propose an established, demonstrably successful, secure website and fully electronic online service of process system capable of meeting all requirements contained in this ITN. The OAG intends to make a single award. However, the OAG reserves the right to award to one Respondent or multiple Respondents based upon service types and/or service areas, or to make no award, as determined to be in the best interest of the State. Replies will only be considered from Respondents normally engaged in providing and performing Service of Process services as described herein. The OAG reserves the sole right to determine a Respondent's ability to perform in accordance with the specifications, terms and conditions of this ITN.

### **4.7.2 Secure Website and Online Service Requirements**

The Respondent shall demonstrate that it has a service of process system using a secure website and other online features that will be available to the OAG immediately upon execution of the awarded Contract, continuously accessible to the OAG program areas. The service of process system accessed via an online, secure website shall have at a minimum, the following features and functions:

- a) Uniform ordering;
- b) Tracking and billing procedures acceptable to the OAG for each user;
- c) The ability to transmit data to the OAG electronically using Secure File Transfer Protocol (SFTP) or SSH using Secure Copy Protocol (SCP);
- d) The ability to scan documents into PDF format and make them readily available through its online, secure internet website(s) to the OAG as needed and upon request;
- e) The ability to provide Excel or CSV formatted reports of performance as well as pending activity information contained on the website that includes, at a minimum, the status of all OAG service requests;
- f) The ability for the OAG's Bureau of Finance & Accounting to have a global view of all OAG activities related to the Contract;
- g) The ability for each Program Area Requestor who has requested service of process services under the Contract to view each individual service request activity, as well as all activity related to that specific unit's universe of service requests made to date under the Contract;
- h) The ability for the Program Area Requestor to view all activities related to his/her service of process requests;
- i) The ability to upload and download electronic documents in most common file formats, especially in PDF format;

- j) The ability to track any and all jobs in its system containing all the necessary information to effect service of process;
- k) The ability to ensure the system does not require duplicate actions/entries;
- l) The ability to ensure the secure website and online system can be viewed and tested by the OAG;
- m) The ability to generate automatic electronic notifications via email;
- n) Service status information should be available every day of the year to the OAG through the Contractor's secure website and online service of process system, except for scheduled system maintenance downtime, and be able to provide access to its own secure website to enable uploads and downloads of documents by both parties;
- o) The ability to generate and provide its secure website password(s) and email addresses for OAG use; and
- p) The ability to track jobs in its system that provides the following information:
  - 1. Request Status;
  - 2. Served or non-served;
  - 3. Reference number (i.e. authorization number); and
  - 4. Tracking number
- q) The ability to look up or sort the requests in the system by the following:
  - 1. Name of person to be served;
  - 2. Authorization number;
  - 3. OAG case number or other OAG assigned number;
  - 4. Any applicable service time frames;
  - 5. Dispatched data; and
  - 6. Invoice data
- r) The ability to select individual requests that directs the OAG staff to specific activity as follows:
  - 1. Notes of special events, including dates such as attempted service of process;
  - 2. Messages and/or notes sent from the OAG including dates;
  - 3. The ability to print service documentation from the system;
  - 4. Contains a "notes field" for each OAG request that is accessible and editable by both the OAG's and the Contractor's staff;
  - 5. Contains a "notes section" in the service of process request submission area; and
  - 6. Contains an additional "notes section" for general communication between the OAG and the Contractor.

### 4.7.3 Technical Liaison

Upon executing the Contract, the Contractor will designate a technical liaison to interact and communicate with the OAG concerning the secure website and online service of process system and advise the OAG Information Technology Department about any pertinent, technical issues that may arise during the performance of the Contract. Further, the technical liaison will promptly work together with the OAG Information Technology Department to resolve technical issues, provide updates, and implement system changes as necessary. The Contractor must also provide a financial account liaison for communication with the OAG's Bureau of Finance and Accounting, concerning any billing issues that may arise during the Contractor's performance of the Contract.

### 4.7.4 Invoice Procedures and Reports

The Contractor will respond to the OAG's generated monthly reports and invoices set in accordance with the specifications in this ITN and **Section 4, Scope of Work**, put forth in this ITN. The OAG must have a Contractor that promptly and successfully communicates with the Bureau of Finance and Accounting of the OAG on a consistent, regular basis, and as requested. Therefore, the parties will work in conjunction in the following fashion to address all service of process requests and related invoices generated by the Contractor, using the following processes:

1. The OAG will generate a monthly report of the total number of successful and unsuccessful process service requests and deliver to the Contractor no later than the 5<sup>th</sup> calendar day, or the first working day following the 5<sup>th</sup> calendar day, whichever comes first, of the month following the invoicing month.
2. An Excel file containing a template for the "monthly invoice" and any additional reports documentation, will be emailed to the Contractor within five business days after the effective date of the Contract.
3. The Contractor shall review the provided reports for correctness and send a completed invoice to the OAG no later than the 10<sup>th</sup> calendar day, or the first working day following the 10<sup>th</sup> calendar day, whichever comes first, of each month along with any other agreed upon reports using the Excel template provided by the OAG.
4. All invoices must be billed to the OAG Program Area, under the Contractor's name.
5. The OAG will review each monthly invoice along with substantiating documentation, and if necessary, the OAG will email an initial denial report to the Contractor concerning discrepancies contained in any monthly invoice and substantiating report or documentation.

6. Within 30 calendar days thereafter, the Contractor may refute a denial report findings and email rebuttal documentation to substantiate the earning of payment to the OAG's Contract Manager or designee. Thereafter, if any invoice discrepancies remain, the Contract Manager or designee, along with the Contractor will make diligent efforts to resolve the discrepancies within a 30-calendar day period after the OAG's review of the rebuttal.

7. The Contractor's invoice shall be in Excel format, using the provided template, and include, at a minimum, the following:

1. Contractor's Name;
2. Contract Number;
3. The OAG's associated billing account number;
4. The Contractor's invoice account date;
5. The service fee(s), if applicable and/or agreed to in the Contract;
6. Total numbers of completed successful service of process and full attempted unsuccessful services; and
7. Contractor designee printed name, signature, and date.

8. The Contractor's report for invoices shall be in Excel format, using the provided template, and include, at a minimum, the following data fields:

1. Account Number;
2. Private Vendor Activity Number;
3. Respondent Name (last name, first name);
4. Other Party Name (last name, first name); and
5. Date request assigned to Contractor.

*Attempts -*

- 1<sup>st</sup> attempt;
- 2<sup>nd</sup> attempt;
- 3<sup>rd</sup> attempt;
- 4<sup>th</sup> attempt;
- 5<sup>th</sup> attempt;
- Was service successful; Yes/No?
- 72 Hour Hearing Requirement successful; Yes/No?
- Substitute Service; Yes/No?
- Contractor internal tracking number;
- Service of process fee;
- County where request was served or attempted; and
- State where request was served or attempted.

9. The Contractor shall arrange for and coordinate its right to receive electronic direct

deposit payments through the Florida Department of Financial Services in order to receive payments for invoices from the OAG. [http://www.myfloridacfo.com/aadir/direct\\_deposit\\_web/Vendors.htm](http://www.myfloridacfo.com/aadir/direct_deposit_web/Vendors.htm)

10. The Contractor shall submit the final invoice and substantiating report after the conclusion or termination of the contract term, **Section 4, Scope of Work.**

#### **4.7.5 Performance Measures and Financial Consequences**

**Pursuant to section 287.058, the Contract must contain performance measures which specify the required minimum level of acceptable service to be performed and financial consequences that will apply if the Contractor fails to perform in accordance with the stated performance measures. The following performance measures and corresponding financial consequences will apply:**

1. Service of Process shall be performed in accordance with the standards specified in **Section 4, Scope of Work**, put forth in this ITN. Failure to meet these standards will result in the imposition of financial consequences.

- a. Failure to perform the requested service of process as specified in the contract for Process Servers, shall result in the imposition of a 5 percent reduction on the monthly invoices amount for the first 10 failures to perform as specified in a given month.
- b. An additional one percent reduction will be assessed per service of process not performed as specified for each process over the initial 10 in a given month.

2. Invoices shall be provided in accordance with the standards outlined in Section 4.7.4, Invoice Procedures and Reports, of this ITN. Failure to perform as specified (i.e., submission of non-compliant invoices) will result in the imposition of the following financial consequences:

- a. All financial consequences assessed for non-compliant invoices will be collected by applying the assessed consequences as credits in favor of the OAG to either a pending invoice for services or subsequent invoices submitted by the Contractor for payment under the Contract.

**Additional performance measures and financial consequences may be established based on final determination of tasks and deliverables.**

#### **4.7.6 Corrective Action Plan (CAP)**

The OAG may impose a Corrective Action Plan (CAP) in accordance with the provisions of the Contract, if the OAG identifies performance deficiencies, **Section 4, Scope of**

**Work. Use of a CAP does not eliminate the imposition of financial consequences for failure to perform as specified, or any other remedy available at law.**

#### **4.7.7 Compensation Rates**

The Contractor will perform service of process and adhere to the prices as stated in **Price/Rate Sheet, Attachment B**, at the awarded rates.

The Contractor shall bill the flat rate set forth in the **Price/Rate Sheet, Attachment B**, **regardless of the number of attempts made.**

For Service Areas 1 and 2, each request for service of process shall be based on a single county service area and pricing shall be based upon a flat fee, regardless of the number of attempts (up to 5) and number of locations attempted within said county. All possible locations within a single county should be attempted before attempting service in a second county. **If the individual could not be served within a single county, then two flat rate charges can be billed in order to reflect service activities were conducted in two counties.**

## **SECTION 5. INSTRUCTIONS FOR PREPARING ITN SUBMITTAL**

### **5.1 Reply - Two Parts**

The Respondent shall submit its **Technical Reply and Price/Rate Sheet, Attachment B**, hereafter referred to as the ITN Reply, by the date and time set forth in **Section 1, 1.5, Schedule of Events**, in the following manner:

- a. The Technical Reply shall be submitted in a separate sealed envelope/box and labeled **Technical Reply, ITN, and will include Respondent's Technical Reply and Attachments C, D, E F and G**. **No price or rate information should be contained in the Technical Reply.**
- b. The **Price/Rate Sheet, Attachment B**, shall be submitted at the same time as the Technical Reply; however, in a separate envelope and labeled, **Price/Rate Sheet, ITN DLA-2019.01.**

**Respondent must use the Price/Rate Sheet, Attachment B, included in this ITN.**

### **5.2 Copies of ITN Replies**

Respondents shall deliver an **ORIGINAL AND EIGHT (8) COPIES** of its ITN Reply, including responses to the Technical Reply and Price/Rate Sheet to the OAG no later than the date and time listed in accordance with **Section 1.5, Schedule of Events**. In addition,

the Reply should contain an electronic version of the Technical Reply in a single Adobe.PDF document file format on portable media. An original Reply must contain originals of all documents required to be submitted by Respondents, joint Respondents, and Substantial Subcontractors, if any.

### **5.3 Reply Delivery (MANDATORY REQUIREMENT)**

It is the Respondent's responsibility to ensure that its ITN Reply is delivered by the proper time at the location identified in **Section 1,1.5, Schedule of Events**. ITN Replies which, for any reason are not received timely, will not be considered. Late ITN Replies will be declared non-responsive and will not be scored. Unsealed or unsigned ITN Replies transmitted electronically, facsimile transmission or other means are not acceptable and will be declared non-responsive and will not be scored. No Reply to this ITN may be altered after the submission due date and time.

### **5.4 Execution of Reply (MANDATORY REQUIREMENT)**

Each ITN Reply (see Title Page) must contain the company name and F.E.I.D. or social security number and the original signature of an authorized representative of the Respondent. Each ITN Reply must be typed. Each ITN Reply should be submitted with Respondent's name and page number on each page.

### **5.5 Technical Reply**

The objective of the Technical Reply is to demonstrate the Respondent's ability and readiness to successfully deliver the services requested and effect process of service in accordance to the ITN. In order to assist the OAG in reviewing the Technical Replies, each Technical Reply shall be prepared utilizing the following format and headings:

Table of Contents

**TAB 1** Transmittal Cover Letter (see 5.5.1)

**TAB 2** Executive Summary (see 5.5.2)

**TAB 3** Respondent/Subcontractor Experience & Qualifications (see 5.5.3)

**TAB 4** Approach and Methodology (see 5.5.4)

**TAB 5** Reporting (see 5.5.5)

**TAB 6** Quality Assurance (see 5.5.6)

**TAB 7** References (see 5.5.7)

**TAB 8** Forms (Examples) currently utilized by the Respondent

Example of Invoice Form(s)

Example of ALL Affidavit or Proof of Service Form(s) generated by the Respondent

Example of any other forms/documentation utilized by the vendor in the course of effecting service of process



### **5.5.1 Transmittal Cover Letter**

This cover letter is mandatory and serves as the document covering transmittal of the Reply. The letter must clearly indicate the person signing the Technical Reply is authorized to bind the Respondent legally in a contractual obligation. The Transmittal Cover Letter shall include the items below:

- a. Identify firm name;
- b. Identify firm address;
- c. Identify firm telephone number;
- d. Identify name and title of authorized representative submitting the Technical Reply;
- e. Identify any and all joint proposing firms and/or subcontractors and;
- f. In the event that **Section 2.6** of the ITN, Conflict of Interest and Disclosure, is applicable, then this, too, must be addressed.

### **5.5.2 Executive Summary**

The Respondent shall include an Executive Summary no longer than three (3) single sided pages in length, that demonstrates the Respondent's overall understanding of the OAG's service of process requirements as set out in detail in **SECTION 4, Scope of Work**, of the ITN, and summarizes the significant features of the services offered by the Respondent. For Replies that include a subcontractor(s), the same information should be provided for the subcontractor(s).

### **5.5.3 Respondent/Subcontractor Experience and Qualifications**

The Respondent shall describe its qualification for, and experience in providing services similar in nature to those described in this ITN, as well as any proposed subcontractor's experience and qualifications, if applicable. Include specific information such as:

- a. Respondent's experience with providing service of process within parameters similar to those set forth in **Section 4, Scope of Work**.
- b. Number of years Respondent has been providing service of process.

### **5.5.4 Approach and Methodology**

The purpose of this section is to identify the methods and tools that will be used to successfully affect service of process that meets the needs of the OAG program areas in accordance with **Section 1.1.1, Purpose**, while governing, managing, tracking and ensuring the success of the Contract.

The Respondent shall describe its ability and proposed approach to ensuring a smooth and timely service of process including, but not limited to the various types of services effected and forms used, e.g., Affidavit or Proof of Service Forms and Return of Service Forms utilized by the vendor, Invoice forms and required certifications. The Respondent shall

identify key Contract staff members and provide the OAG with sufficient information to evaluate the management approach, and relevant training and experience of the staff members to be assigned to work the Contract.

### **5.5.5 Reporting**

The Respondent shall describe its approach to ensuring all process service timelines and all requirements set forth in **Section 4, Scope of Work**, put forth in this ITN, are met and all work is performed in a timely manner. The Respondent shall indicate which Contract staff members shall be responsible for preparing invoices to be submitted to the OAG, as well as those responsible for completing reports and what type of oversight or review shall be conducted by Contract management staff members.

### **5.5.6 Quality Assurance**

The Respondent shall describe its approach to ongoing quality assurance including, at a minimum, the following:

- a. Respondent's existing or proposed internal quality control policies;
- b. A detailed description of how the Respondent's existing or proposed quality assurance system conducts quality assessment and any internal review of process servers;
- c. A description of the process for resolving problems as they arise, between the Respondent and the OAG; with a timeframe for Replies; and
- d. How performance improvements will be identified and initiated.

### **5.5.7 Experience/References**

The Respondent and its proposed subcontractor(s) if applicable, shall provide references from other state agencies and/or firms for whom the Respondent has performed service of process, that will demonstrate at least five or more years of continuous experience in effecting service of process services. **Business Reference Form, Attachment E.**

## **SECTION 6. EVALUATION OF TECHNICAL AND PRICE REPLY AND ITN NEGOTIATION**

### **6.1 Evaluation Criteria**

The OAG will evaluate replies against all evaluation criteria set forth in Section 6.2 in order to establish a competitive range of replies reasonably susceptible of award. The maximum points possible for the total reply submission is: **150**

### **6.2 Evaluation of Technical Replies**

The OAG will appoint an Evaluation Team consisting of at least five persons who collectively have experience and knowledge in the program areas and service

requirements for the services sought in this ITN. Each Evaluator shall complete the evaluation and scoring of the Technical Replies, including all components contained in Reply to **Section 4, Scope of Work**, in this ITN, in accordance with the criteria set forth in this section and the mandatory requirements. Each evaluator, working independently, will award a numerical score using whole numbers to assess the merits of content of each Respondent’s Technical Reply. Respondents must have a minimum technical score of 100 points out of the possible 150 points to be eligible for negotiations. **The minimum score does not guarantee that a Respondent will be asked to negotiate.**

EVALUATION CRITERIA	MAXIMUM POINTS AVAILABLE
<b>1. Section 4, Scope of Work</b>	
a. Service Requirements of the Contractor reflected in <b><u>Section 4, 4.3</u></b>	40 Points
b. Technical Specifications reflected in <b><u>Section 4, 4.7</u></b>	40 Points
<b>2. Section 5, Instructions for Preparing ITN Submittal</b>	
a. Reply-Two parts as reflected in <b><u>Section 5, 5.1</u></b>	20 Points
b. Technical Reply as reflected in <b><u>Section 5, 5.5</u></b>	40 Points
c. Experience/References as reflected in <b><u>Section 5, 5.7</u></b>	10 Points
<b>TOTAL POSSIBLE POINTS</b>	<b>150 Points</b>

### 6.3 Price/Rate Sheets Evaluation

**Price/Rate Sheets will not be “scored,” but will be used for negotiation purposes.**

The OAG will take the following steps upon opening **Price/Rate Sheets**:

1. Confirm the Price/Rate Sheet has price rates listed to effect service of process for the OAG, using the **Price/Rate Sheet Form, Attachment B**, the OAG provides in this ITN.
2. Confirm the **Price/Rate Sheet Form, Attachment B**, includes a fixed price for each item listed.
3. Confirm that prices are fixed, clear and unambiguous.

### 6.4 Concurrent Negotiations and Process

The OAG will appoint a Negotiation Team consisting of a minimum of three staff

persons who collectively have experience and knowledge in the program areas and service requirements for the services sought in this ITN.

The OAG will schedule negotiations at its discretion and will be held concurrently. Negotiations may continue until an agreement is reached or all replies are rejected. Negotiations do not guarantee award of a contract.

**The Respondents participating in the negotiations should be cognizant of the fact that the OAG, upon completion of each step, reserves the right to finalize the negotiation process at any time, when determined by the OAG that such selection would be in the best interest of the State and the OAG.**

Demonstrations: Respondents must have a minimum of 100 points out of a possible 150 total points for the technical score to be eligible to proceed to negotiation (and demonstration). **See Section 6, 6.2.** All participants in the negotiations will conduct a live demonstration at the OAG's headquarters, located at the Collins Building, in Tallahassee, Florida. Each of the Respondents must conduct these live demonstrations using only those components that are part of the proposed Service of Process system solution through staff members sufficiently familiar with all aspects of the solution for effective service of process. The primary focus will be on adequately demonstrating the system functionalities of the Respondent's proposed solution as responsive to the requirements of this ITN and answering all questions from the OAG concerning the proposed solution. The exact schedule and agenda for these demonstrations will be provided well in advance of the dates for the demonstrations after completion of the seventy-two (72) hour posting period.

**NOTE – Negotiation sessions are not open to the public.**

Each participating Respondent must have a representative present during negotiation meetings who is authorized to make binding decisions on behalf of the Respondent. It is the Respondent's sole responsibility to coordinate all persons needed to ensure it is appropriately represented during scheduled negotiations. The Negotiation Team may

- 1) Require any or all of the Respondents to provide written BAFO's;
- 2) Require any or all of the Respondents to address services, prices, or conditions offered by any other Respondents;
- 3) Decline to conduct any further negotiations with any of the Respondents;
- 4) Re-open negotiations with any of the Respondents and
- 5) Request pricing options or models different from the initial Price/Rate Sheet submission. This information may be used in negotiations to determine the best pricing solution to be used in the Contract.

## **6.5 Best and Final Offer (BAFOs)**

At the conclusion of negotiations, the Negotiation Team may request BAFOs from one or more Respondents that participated in negotiations. Respondents must submit BAFOs by

e-mail to the OAG Procurement Officer listed in **Section 1, 1.4, Procurement Officer and Restriction of Communication**. Failure of a Respondent to submit a BAFO by the specified time listed in **Section 1, 1.5, Schedule of Events**, will be eliminated from further consideration.

## 6.6 Contract Award

The Negotiation Team will determine which Response constitutes the greatest overall value to the State based upon the requirements of this ITN and make a recommendation. The recommendation for award will be submitted in writing, including a short statement explaining the basis for the selection. The recommendation will explain how the Respondent's performance measures and price(s) will provide the best value to the State. The award recommendation will be submitted to the Attorney General as agency head, or designee. Upon approval by the Attorney General or designee, the OAG will post for a period of seventy-two (72) hours, excluding weekends and holidays, the intent to award on the Vendor Bid System (VBS) website at, [http://vbs.dms.state.fl.us/vbs/main\\_menu](http://vbs.dms.state.fl.us/vbs/main_menu).

## 6.7 Protests

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

Only documents delivered by the U.S. Postal Service, a private delivery service, or in person (8:00 a.m. – 5:00 p.m., Eastern Time) will be accepted. Documents received after hours will be filed the following business day. **No filings may be made by email or by any other electronic means.** All filings must be made with the Agency Clerk ONLY and are only considered "filed" when stamped by the official stamp of the Agency Clerk. It is the responsibility of the filing party to meet all filing deadlines.

**Do not send replies to the Agency Clerk's Office. Send all replies to the Procurement Officer and address listed in the Schedule of Events, Section 1.5.**

**The Agency Clerk's mailing address is:**

Agency Clerk,  
Florida Department of Legal Affairs,  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, Florida 32399-1050  
Telephone No. (850) 414-3626

**The Agency Clerk's physical address for hand deliveries is:**

Agency Clerk, Department of Legal Affairs  
107 West Gaines Street  
Tallahassee, Florida 32399

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DRAFT

**Attachment A**

**SAMPLE CONTRACT FOR  
SERVICE OF PROCESS**



**BETWEEN  
THE STATE OF FLORIDA  
Department of Legal Affairs  
Office of the Attorney General  
AND  
CONTRACTOR**

## **SAMPLE CONTRACT**

This Contract is between the STATE OF FLORIDA, Office of the Attorney General, Department of Legal Affairs (OAG), an agency of the state of Florida with offices at The Capitol, PL-01, Tallahassee, Florida 32399-1050, and NAME OF CONTRACTOR, (the Contractor), and jointly referred to as the parties.

The Contractor responded to the OAG's ITN DLA-2019.01, "Service of Process." The parties enter into this Contract in accordance with the terms and conditions of the solicitation.

The General Contract Conditions (PUR 1000) form is a downloadable document incorporated in this solicitation, which contains general contract terms and conditions that will apply to any contract resulting from this ITN, to the extent they are not otherwise modified by this Contract.

The terms of this contract over any conflicting terms of the PUR1000. Paragraph 31 of PUR 1000 does NOT apply to this solicitation or any resulting contract

The parties therefore agree as follows:

### **1. SCOPE OF WORK**

See **Section 4** of the ITN.

### **2. DEFINITIONS**

The following definitions apply in addition to the definitions in PUR 1000.

**Confidential Information** - Any portion of a Contractor's documents, data, or records disclosed relating to its response that the Contractor claims is confidential and not subject to disclosure pursuant to chapters 39 and 119, Florida Statutes, the Florida Constitution, or any other legal authority and is clearly marked "Confidential."

**Service of Process** - The legal procedure that notifies persons of actions against them or court procedures involving them through the delivery of legal documents such as summons, complaints, subpoenas, order to show cause, and writs. Service of Process is used to give the person who is served notice of the proceedings and/or to command the person to either respond to the allegations or to appear at a specified time and answer the claim or criminal charge.

**Substitute Service** - When documents are left with an adult resident (a person over the age of 15) of the named party at the party's home. Substitute service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two attempts to serve the owner have been made at the place of business, in accordance with section 48.031 (2), Florida Statutes.



### **3. TERM**

#### **3.1. Initial Term**

The initial term of the Contract will be for three years. The initial Contract term shall begin on February 8, 2018 or on the last date it is signed by all parties, whichever is later.

#### **3.2 Renewal Term**

The contract may be renewed on a yearly basis for no more than three years beyond the initial contract, or for the term on the original Contract, whichever is longer. Renewals must be in writing, subject to the same terms and conditions set forth in the initial Contract and any written amendments signed by the parties. Renewals are contingent upon satisfactory performance evaluations as determined by the OAG and subject to the availability of funds. Contractor is responsible for any costs it incurs associated with the renewals.

#### **3.3 Termination**

**The following provisions apply in addition to the termination provisions in PUR 1000 sections 22 and 23.**

#### **3.4 Termination for Cause**

The OAG reserves the right to immediately terminate the Contract by providing written notice to the Contractor, including but not limited to, the following causes:

- a) Contractor knowingly furnished any statement, representation, warranty, or certification in connection with this ITN or the Contract, which representation is materially false, deceptive, incorrect, or incomplete.
- b) Contractor fails to perform to the OAG's satisfaction, any material requirement of the contract or defaults in performance of the Contract.
- c) Contractor's action or inaction will substantially endanger the performance of the Contract, or such occurrence can be reasonably anticipated.
- d) The State enacts a law which removes or restricts the authority or ability of the OAG to conduct all or part of its functions as a state agency.

Should the OAG give notice of termination for reasons in sub-paragraphs (b) or (c) above, Contractor will have 10 calendar days, or as specified by the notice, after receipt of the notice to remedy the failures or problems. If Contractor fails to remedy the failures or problems, the OAG may order Contractor to cease all work. If the Contract is terminated for cause or unilaterally canceled by the OAG, the OAG shall be obligated only for the goods and services actually delivered and accepted prior to the date of notice of termination, less any other financial consequences that may be assessed for non-performance.

### **3.5 Termination Because of Lack of Funds**

In the event funds to finance this contract become unavailable, the OAG may terminate the contract upon no less than 24 hours' written notice to Provider. The notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery. The OAG will be final authority as to the availability and adequacy of funds.

### **3.6. Termination by Mutual Agreement**

With the mutual written agreement of both parties, the Contract or any part of the Contract may be terminated on an agreed date prior to the end of the Contract period without penalty to either party.

### **3.7 Termination for Convenience**

The OAG reserves the right to terminate the Contract at its convenience with no less than 30 calendar days' written notice. The OAG will incur no liability for materials or services not yet ordered if it terminates for convenience. If the OAG terminates for convenience after an order for materials or services has been placed, the Contractor will be entitled to compensation upon submission of invoices and proper proof of claim, in that proportion which its services and products were satisfactorily rendered or provided, as well as properly documented expenses necessarily incurred in the performance of work up to time of termination.

### **3.8 Contractor's Responsibilities Upon Termination**

After receipt of a Notice of Termination, and except as otherwise specified by the OAG, Contractor will:

- a. Stop work under this Contract on the date, and to the extent specified, in the notice,
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;
- c. Complete performance of such part of the work as shall not have been terminated by the OAG; and
- d. Take such action as may be necessary, or as the OAG may specify, to preserve and deliver to the OAG all stored research separated by office related to this Contract which is in the possession or control of the Contractor.
- e. In the event this Contract is terminated, all finished or unfinished documents, data, studies, correspondence, reports and other products prepared by or for the Contractor under this Contract shall be made available to and for the use of the OAG.
- f. Notwithstanding the above, the Contractor shall not be relieved of liability to the OAG for damages sustained by the OAG by virtue of any termination of this Contract by the Contractor. In the event this Contract is terminated, the

Contractor shall be reimbursed for services satisfactorily completed subject to any such damages.

#### **4. PAYMENTS**

##### **4.1 Pricing**

The Contractor shall adhere to the prices as stated in the **Price/Rate Sheet, Attachment B**, of this ITN, which will be reflected in the final contract and hereby incorporated by reference.

##### **4.2 Fees**

The Contractor is responsible for all fees, including, but not limited to issue fees, clerk fees, sheriff fees, process server fees, witness fees and all other fees associated with service of process, in accordance with this ITN.

##### **4.3 Invoices**

As services are complete, the Contractor shall submit invoices that have been approved by the OAG, including the original Affidavit or Proof of Service Form to the specific office, program area requestor, that initiated the request for Contractor services.

Contractor shall submit invoices, within seven calendar days from the date of service, to the OAG using the template approved and agreed upon by the Contractor and the OAG and include each service of process billed. The OAG reserves the right to request additional documentation.

The parties agree that all invoices must be received within seven calendar days from the date of service, and that payments under this contract shall be made in accordance with section 215.422, Florida Statutes.

**All costs associated with each request shall be submitted to the OAG on a separate bill or invoice.**

Invoice payments processed by the OAG will reference a nine-character invoice number. If the Contractor's invoice number contains more than nine characters, only the last nine characters will be used as the payment reference number.

Invoices not meeting the requirements of this section or invoices submitted directly (subcontractors included) to the OAG, Bureau of Finance and Accounting, will be considered non-compliant and will be rejected. The Contractor is responsible for re-submitting rejected invoices to the appropriate OAG office, attention to the program area requestor that requested the Contractor services.

#### **4.4 Travel Expenses**

Contractor may not submit invoices for travel expenses under the terms of this contract.

#### **4.5 Final Invoice**

Unless renewed or extended, the final invoice must be received within 30 calendar days immediately following contract expiration.

#### **4.6 Appropriations**

Pursuant to section 287.05582, Florida Statutes, the state of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

#### **4.7 Corrective Action Plan (CAP)**

Using this Contract as the basis, the OAG, at its sole discretion, is authorized to identify contracted deficiencies with the Contractor's performance and request a proposed Corrective Action Plan CAP to correct the deficiencies.

The proposed CAP is due within five business days of the date of an e-mailed letter from the OAG, which identifies a deficiency and requests a CAP.

The OAG shall notify the Contractor within five business days of the receipt of a CAP as to the acceptability of the plan and will allow five business days for the Contractor to submit a clarification or revision if the plan is deemed unacceptable to the OAG.

Upon the OAG's acceptance of the CAP, the Contractor shall have up to 30 calendar days or a time period mutually agreed upon by the OAG and the Contractor to successfully complete and implement the agreed upon CAP to rectify the deficiency. Failure to respond to a request for corrective action or failure to meet a CAP may result in termination of the Contract within 30 calendar days unless the OAG deems the necessity to terminate the Contract immediately. Nothing in this section obligates the OAG to propose the use of a CAP in lieu of termination. The OAG reserves the right to exercise other remedies, including but not limited to, using other Contractors during and after the process of any CAP action.

#### **4.8 Compensation**

##### **4.8.1 Payment for services**

1. Payment will be made for successful service of process or for documented fully attempted unsuccessful service in accordance with the requirements of this Contract.
2. Payment for services will be based on completed requests. Completed requests are defined as those where the Contractor has fulfilled the requirements of effecting a complete process

of service in accordance with this Contract.

3. Any request for service that has been attempted and is completed is payable by the OAG if documentation of such attempt is provided by the Contractor to the OAG. No payment by the OAG is due if the OAG cancels the request before an attempt is made to serve.
4. If only one address is provided by the OAG and it is found to be invalid by the Contractor, and the Contractor is unable to locate an additional address, the Contractor will be paid once for unsuccessful service attempts.
5. If more than one address is provided by the OAG or located by the Contractor and all are found to be invalid by the Contractor, the Contractor will be paid once for unsuccessful service attempts.

#### **4.9 Financial Consequences**

##### **4.9.1 Withholding Payment**

In addition to the specific financial consequences specified herein, the OAG reserves the right to withhold payment or implement other appropriate remedies, such as contract termination or nonrenewal, when the Contractor has failed to perform or comply with provisions of this Contract. These consequences for non-performance will not be considered penalties.

##### **4.9.2 Performance Measures and Financial Consequences**

In the event the Contractor fails to provide service of process as specified under the terms of this Contract, financial consequences will be assessed as specified in **Section 4, Scope of Work**, and pursuant to **Section 287.058, Florida Statutes**.

##### **4.9.3 Indemnification**

If Contractor or any of its subcontractors fails to properly serve a party as required by this contract, then the Contractor will pay any costs, damages, and losses that the OAG incurred because of the breach, including attorneys' fees not to exceed \$5,000 per breach.

#### **5. CONTRACT DOCUMENT**

This Contract constitutes the entire understanding of the parties and consists of the documents listed. In the event there is a conflict between these documents, the conflict will be resolved in the following order of priority:

- a. This Contract
- b. Scope of Work, (**Section 4 of this ITN**)
- c. Price/Rate Sheet (**Attachment B of this ITN**)
- d. The General Contract Conditions - PUR 1000 which are incorporated by reference, attached to this Contract and available at

## **6. CONTRACT ADMINISTRATION**

### **6.1 Contract Administrator**

The OAG's Contract Administrator is responsible for all aspects of contract administration including but not limited to: creation and maintenance of the contract file, managing changes to the contract, maintaining financial information, and entering contract information into the OAG's contract tracking system (CTRS). As of the effective date of the Contract, the Contract Administrator is:

**Chari Wester, General Services Manager**  
**Bureau of General Services**  
**Office of Administrative Services**  
**Florida OAG of Legal Affairs**  
**Physical Address: 107 West Gaines Street Tallahassee, FL 32301**  
**Mailing Address: PL-01 The Capitol Tallahassee FL 32399-1050**  
**Phone: (850) 414-3417**  
**Email: [chari.wester@myfloridalegal.com](mailto:chari.wester@myfloridalegal.com)**

In the event the OAG changes the Contract Administrator, the OAG will notify the Contractor's Representative in writing. Such changes do not require a formal written amendment to the Contract.

### **6.2 Contract Manager**

The OAG's Contract Manager is responsible for all aspects of contract management including but not limited to: managing the receipt, certification, and payment of commodities and contractual services; monitoring and evaluating contractor performance and end user satisfaction; serving as the point of contact for the OAG and contractor; and maintaining a contract management file. As of the effective date of the Contract, the Contract Manager is:

**Chari Wester**  
**Bureau of General Services**  
**Office of Administrative Services**  
**Florida OAG of Legal Affairs**  
**Physical Address: 107 West Gaines Street Tallahassee, FL 32301**  
**Mailing Address: PL-01 The Capitol Tallahassee FL 32399-1050**  
**Phone: (850) 414-3417**  
**Email: [chari.wester@myfloridalegal.com](mailto:chari.wester@myfloridalegal.com)**

In the event the OAG changes the Contract Manager, the OAG will notify the Contractor's Representative in writing. Such changes do not require a formal written amendment to the Contract.

### **6.3. Contractor's Representative**

The Contractor will assume sole responsibility for providing the commodities and services offered in its Response, whether or not the Contractor is the provider of said commodities and services or any component thereof. The OAG will consider the Contractor's Representative to be the sole point of contact with regard to contractual matters. As of the effective date of the Contract, the Contractor's Representative is:

Representatives Name:

Entity's Name:

Physical Address:

Mailing Address:

Phone:

Email:

In the event the Contractor changes the Contractor's Representative, the Contractor will notify the OAG's Contract Administrator and Contract Manager in writing. Such changes do not require a formal written amendment to the Contract.

## **7. COMPLIANCE WITH LAWS**

### **7.1 Governing Law and Venue**

This Contract will be construed, performed, and enforced in accordance with the laws and rules of the state of Florida. If any term or provision of the Contract is found to be illegal or unenforceable such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Any, and all litigation arising under this Contract shall be instituted in the appropriate court in Leon County, Florida.

### **7.2 Compliance**

The Contractor will comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority. Violation of any laws, rules, codes, ordinances, or licensing requirements will be grounds for Contract termination or nonrenewal of the Contract.

### **7.3 Licenses and Permits**

The Contractor is responsible for obtaining all necessary licenses and permits required to perform the services specified in this contract and shall bear all costs related to any licenses or permits.

### **7.4 Notice of Legal Actions**

The Contractor will notify the OAG of any legal actions filed against it for a violation of any laws, rules, codes ordinances, or licensing requirements within 30 days of the action being filed. The Contractor will notify the OAG of any legal actions filed against it for a breach of a contract

of similar size and scope to this Contract within 30 days of the action being filed. Failure to notify the OAG of a legal action within 30 days of the action will be grounds for termination or nonrenewal of the Contract.

## **7.5 Public Entity Crime and Discriminatory Vendors**

Pursuant to Sections 287.133 and 287.134, Florida Statutes, the following restrictions apply to the persons placed on the convicted vendor list or the discriminatory vendor list.

### **7.5.1 Public Entity Crime**

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 response on a contract to provide any goods or services to a public entity; may not submit a response on a contract with a public entity for the construction or repair of a public building or public work; may not submit a response 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 following the date of being placed on the convicted vendor list.

### **7.5.2 Discriminatory Vendors**

An entity or affiliate who has been placed on the discriminatory vendor list may not submit a response on a contract to provide any goods or services to a public entity; may not submit a response on a contract with a public entity for the construction or repair of a public building or public work; may not submit a response 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 so long as that entity's name appears on the discriminatory vendor list.

The Contractor must notify the OAG if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Contract.

## **8. LIABILITY AND WORKER'S COMPENSATION INSURANCE**

***This provision takes precedence over General Contract Condition #35 in PUR 1000.***

During the Contract term, the Contractor at its sole expense will provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract, which, at a minimum, shall be as follows: where required by law, workers' compensation and employer's liability insurance per Florida statutory limits covering all employees engaged in any Contract work; commercial general liability coverage on an occurrence basis in the minimum amount of \$500,000 (defense cost shall be in excess of the limit of liability), naming the State as an additional insured; and automobile liability insurance covering all vehicles,



owned or otherwise, used in the Contract work, with minimum combined limits of \$500,000, including hired and non-owned liability, and \$10,000 per person medical payments.

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. The Contract does not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. 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 will be through insurers authorized to write policies in the state of Florida.

## **8.1 Liability**

The OAG will not assume any liability for the acts, omissions to act, or negligence of the Contractor, its agents, servants, subcontractors or employees. The Contractor will assume all liability for its own acts, omissions to act, or negligence of its agents, servants, subcontractors, or employees. In addition, the Contractor agrees to be responsible for any injury or property damage resulting from any activities conducted by the Contractor, its agents, servants, subcontractors, or employees. Neither the OAG nor any agency or subdivision of the state of Florida waives any defense or sovereign immunity, or increases the limits of its liability, upon entering into any contractual arrangement resulting from this ITN.

## **9. PUBLIC RECORDS**

### **9.1 Public Records**

The Contractor will keep and maintain public records required by the OAG to perform all services required under this Contract. A request to inspect or copy public records relating to this Contract must be made directly to the OAG. If the OAG does not possess the requested records, the OAG will notify the Contractor of the request. Upon receiving request from the OAG's Custodian of Public Records, the Contractor will provide the OAG with a copy of the request public records at no cost to the OAG, or allow the records to be inspected or copied by the member of the public making the records request at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. The Contractor must ensure that in allowing public access to all documents, papers, letters, or other materials made or received in conjunction with this Contract, those records that are exempt or confidential and exempt from public records disclosure requirements by operation of Section 119.071, Florida Statutes or Chapter 119, Florida Statutes, are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the successful Respondent does not transfer the records to the OAG.

A Contractor who fails to provide the public records to the OAG within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes. Upon completion of this Contract, the Contractor will keep and maintain public records required by the OAG to perform the services to be provided in the scope of this Contract, or electronically transfer in a file format compatible with the information technology systems of the OAG, at no cost to the OAG, all public records in possession of the Contractor. If the Contractor transfers all public records to

the OAG upon completion of the Contract, the Contractor will destroy all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, it must meet all applicable requirements for retaining public records, consistent with the state of Florida's records retention schedule. All public records stored electronically must be provided to the OAG, upon request of its Custodian of Public Records, at no cost to the OAG, in a format compatible with the information technology systems of the OAG. The OAG may unilaterally terminate this contract if the Contractor refuses to allow access to all public records made or maintained by the Contractor in conjunction with this contract, unless the records are exempt from Section 24(a) of Art. I, Florida State Constitution, and Section 119.07(1), Florida Statutes.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THEN THE CONTRACTOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (850) 414-3634, [publicrecordsrequest@myfloridalegal.com](mailto:publicrecordsrequest@myfloridalegal.com) OFFICE OF THE ATTORNEY GENERAL, PL-01, THE CAPITOL, TALLAHASSEE, FL 32399-1050.**

## **9.2 Indemnification**

*This provision is in addition to the Indemnification provision in General Contract Condition #19 in PUR 1000.*

Contractor will protect, defend, and indemnify the OAG for any and all claims arising from or relating to Contractor's determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If Contractor fails to submit a redacted copy of information it claims is Confidential, the OAG is authorized to produce the entire documents, data, or records submitted to the OAG in answer to a public records request or other lawful request for these records.

## **9.3 Confidential Information in Possession of Contractor**

During the course of the Contract, the Contractor may have access to information that is confidential, exempt, or otherwise protected information. The Contractor must comply with the **Section 4, Scope of Work**. Maintaining confidentiality and security of information which is in possession of the Contractor pursuant to this Contract is a material provision of this Contract. Failure to maintain the confidentiality and security required by **Section 4, Scope of Work**, will result in termination of this contract for cause.

## **10. INTELLECTUAL PROPERTY**

The parties do not anticipate that any Intellectual Property will be developed as a result of this Contract. However, any Intellectual Property developed as a result of this Contract will belong to the party that develops it. This provision will survive the termination or expiration of this Contract.

## **11. E-VERIFY EMPLOYMENT ELIGIBILITY VERIFICATION**

Pursuant to the Office of the Governor Executive Order Number 11-116, Contractors will utilize the U.S. OAG of Homeland Security's E-Verify System to verify the employment eligibility of all new employees hired by the Contractor during the contract term, and include in any subcontracts an express requirement that subcontractors performing work or providing services pursuant to the State

The Contractor will utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

## **12. GEOGRAPHIC LOCATION OF DATA SERVICES**

The state of Florida requires that all data generated, used, or stored by the Contractor pursuant to the Contract will reside and remain in the United States of America and will not be transferred outside of the U.S.A. The state of Florida also requires that all services provided under the Contract, including call center or other help services, will be performed by persons located in the U.S.A.

## **13. RECORDS RETENTION**

The Contractor will retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers, and documents that were made in relation to this the Contract. Contractor will retain all documents related to this Contract in compliance with the rules and laws of the state of Florida.

## **14. COOPERATION WITH INSPECTOR GENERAL**

The Contractor understands its duty, pursuant to Section 20.055(5) Florida Statutes, to cooperate with the Inspector General in any investigation, audit, inspection, review or hearing. The Contractor will comply with this duty and ensure that its subcontracts issued under this contract, if any, impose this requirement in writing, on its subcontractors.

## **15. VENDOR OMBUDSMAN**

A Vendor Ombudsman has been established within the OAG of Financial Services. The duties of this office are found in Section 215.422, Florida Statutes, which include disseminating information relative to prompt payment and assisting vendors in receiving their payments in a timely manner from a OAG. The Vendor Ombudsman may be contacted at (850) 413-3431.

## **16. MONITORING BY THE OAG**

The Contractor will permit all persons who are duly authorized by the OAG to inspect and copy any records, papers, documents, facilities, goods, and services of the Contractor that are relevant to this Contract, and to interview clients, employees, and subcontractor employees of the

Contractor to assure the OAG of satisfactory performance of the terms and conditions of this Contract.

## **17. AUDITS**

The OAG may conduct or have conducted performance and compliance audits of any and all areas of the Contractor and Subcontractors as determined by the OAG. The OAG may conduct an audit and review all the Contractor's and Subcontractors' data and records that directly relate to the Contract Services. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with Subcontractors, partners or agents of the Contractor, pertaining to this Contract, may be inspected by the OAG upon five days' notice, during normal working hours. Release statements from its subcontractors, partners or agents are not required for the OAG or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The State's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

## **18. PREFERRED PRICE**

*This provision is in addition to General Contract Condition #4 in PUR 1000.*

The Contractor will submit to the Contract Manager, at least annually, a statement signed by an authorized representative attesting that the Contractor is in compliance with the Best Pricing Offer provision.

## **19. INDEPENDENT CONTRACTOR**

The Contractor is an independent contractor and is solely liable for the performance of all tasks and deliverables contemplated by this contract,

- a. The Contractor, its officers, agents, employees, subcontractors, or assignees, in performance of this contract, will act in the capacity of an independent contractor and not as an officer, employee, or agent of the state of Florida. The Contractor will not represent to others that it has the authority to bind the OAG unless specifically authorized to do so.
- b. The Contractor will take such actions as may be necessary to ensure that each subcontractor of the Contractor understand they are an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the state of Florida.
- c. Unless justified by the Contractor and agreed to by the OAG in **Section 4, Scope of Work**, the OAG will not furnish services of support (e.g., office space, office supplies, telephone service, secretarial, or clerical support) to Contractor, or its subcontractor or assignee.
- d. All deductions for social security, withholding taxes, income taxes, contributions to unemployment compensation funds, and all necessary insurance for Provider, Provider's officers, employees, agents, subcontractors, or assignees will be the responsibility of Provider.

## 20. PRESERVATION OF REMEDIES

No delay or omission to exercise any right, power or remedy accruing to either party upon breach or default by either party under this Contract, shall impair any such right, power or remedy of either party; nor shall delay or omission be construed as a waiver of any such breach or default, or any similar breach of default thereafter.

## 21. UNAUTHORIZED EMPLOYMENT

The employment of unauthorized aliens by a Contractor is considered a violation of Section 274 A of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the agreement.

## 22. HIPAA COMPLIANCE

The Contractor must meet all federal and state regulations regarding standards for privacy and individually identifiable health information as identified in the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and Florida Statutes. HIPAA requires, among other things, that the confidentiality of Personal Health Information (PHI) is ensured. This includes physical and logical security of data, encryption of data in transit, proper disposal and destruction of data on any media (electronic or hardcopy), and release of data only to authorized recipients.

## 23. DELEGATION OF OBLIGATIONS UNDER THE CONTRACT

The Contractor may delegate the provision of service of process to subcontractors. However, the provision of the online request, tracking and billing system shall not be delegated. All subcontractors must be certified to effectuate service of process in the judicial circuit or county in which they are requested to provide the service. The OAG shall place all requests for service directly with the Contractor and the Contractor shall bill the OAG directly for the provision of service of process. The OAG will not pay any invoices that come directly from any subcontractors.

The Contractor will be responsible for its subcontractors' work under the contract, including consequences which result from the subcontractor's non-performance. Nothing in this Contract grants any rights or remedies to any person other than the Contractor and OAG. Nothing in this contract creates a third-party beneficiary relationship between the OAG and any subcontractors or employees of the Contractor.

## 24. SECURITY

*This provision applies in addition to the Security and Confidentiality provision in General Contract Condition #33 in PUR 1000.*

**High Confidentiality:** preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information.

**High Integrity:** guarding against improper information modification or destruction and includes ensuring information non-repudiation and authenticity.

**Medium Availability:** ensuring timely and reliable access to and use of information with minimal downtime during normal business hours.

Maintaining security is a material portion of this Contract and failure to maintain these standards may result in the consequences for non-performance described in **Section 4, 4.9** of the contract, including, but not limited to indemnification of the state from any liability caused by the breach.

**25. CONTRACTOR RESPONSIBILITY**

The OAG will consider the Contractor to be the sole point of contact with regard to contractual matters. The Contractor will assume sole responsibility for providing the commodities and services offered in its Reply whether or not the Contractor is the supplier of said commodities and services or any component.

**26. ADDITIONS AND DELETIONS**

During the term of the Contract resulting from this ITN, the OAG will have the right to add and delete services and products upon mutual written agreement of both parties and as permitted by Florida law.

**27. SEVERABILITY**

If any part, term or provision of the Contract is held by a Court of law to be invalid or unenforceable, the validity or enforceability of the remaining portions or provisions will not be affected, and the right and obligations of the parties will be construed and enforced as if the Contract did not contain the particular part, term, or provision held to be invalid.

SO AGREED by the parties' authorized representatives on the dates noted below:

CONTRACTOR

DEPARTMENT

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Signature:

Date:\_\_\_\_\_

Date:\_\_\_\_\_

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
FEID NUMBER:

\_\_\_\_\_  
FUNDING SOURCE:

**THIS SECTION INTENTIONALLY LEFT BLANK**

DRAFT

**ATTACHMENT B**  
**Office of the Attorney General**  
**Service of Process**  
**Price/Rate Sheet**  
**DLA-2019.01**

**INSTRUCTIONS:** Contractors must submit pricing for the initial three (3) year contract terms and each renewal year. Pricing for the initial three-year period shall be a fixed firm price that will be unchanged during the initial term of the contract. Respondent must use this Price/Rate Sheet. Alternative pricing/format models are NOT allowed.

Pricing must be based upon a flat fee, regardless of the number of attempts (The Contractor shall attempt service a minimum of five (5) times, using at least two (2) different service options, minimum of ten (10) hours apart, with attempts taking place on at least two (2) different dates.

**PRICE/RATE**

Service Area 1: Service of Process Within the state of Florida	Years 1-3	Renewal Yr. 1	Renewal Yr. 2	Renewal Yr. 3
Routine Service				
Express Service				
Priority Service				
Cancellation Prior to Attempt to Effect Service -				
Routine Cancellation After Attempt to Effect Service But Prior to Effected Service				
Express Cancellation After Attempt to Effect Service But Prior to Effective Service				
Priority Cancellation After Attempt to Effect Service But Prior to Effective Service				



**PRICE/RATE**

<b>Service Area 2: Service of Process Within the United States, including its Territories and Commonwealths</b>	<b>Years 1-3</b>	<b>Renewal Yr. 1</b>	<b>Renewal Yr. 2</b>	<b>Renewal Yr. 3</b>
<b>Routine Service</b>				
<b>Express Service</b>				
<b>Priority Service</b>				
<b>Cancellation Prior to Attempt to Effect Service -</b>				
<b>Routine Cancellation After Attempt to Effect Service But Prior to Effected Service</b>				
<b>Express Cancellation After Attempt to Effect Service But Prior to Effective Service</b>				
<b>Priority Cancellation After Attempt to Effect Service But Prior to Effective Service</b>				

**Service Area 3: Service of Process Outside of the United States, its Territories and Commonwealths. The price for Service Area 3 will be determined on a case by case basis and agreed to by both parties in writing, prior to Service of Process.**

**Additional Services/Fixed Price Rate:**

- Witness Fees**
- Subpoena Fees**
- Skip Trace**
- Wait Times**
- Stakeouts**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**Signature of Vendor**

\_\_\_\_\_  
**Date:**

**ATTACHMENT C**  
**Office of the Attorney General**  
**Service of Process**  
**Business Reference Form**  
**DLA-2019.01**

1. \_\_\_\_\_  
Company Name Point of Contact

\_\_\_\_\_  
Address Telephone Number

\_\_\_\_\_  
City/State/Zip Code Email Address

\_\_\_\_\_  
Project Date

\_\_\_\_\_  
Description (Scope of Work)

\_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_  
Company Name Point of Contact

\_\_\_\_\_  
Address Telephone Number

\_\_\_\_\_  
City/State/Zip Code Email Address

\_\_\_\_\_  
Project Date

\_\_\_\_\_  
Description (Scope of Work)

\_\_\_\_\_

\_\_\_\_\_

3. \_\_\_\_\_  
Company Name Point of Contact

\_\_\_\_\_  
Address Telephone Number

---

City/State/Zip Code

---

Email Address

---

Project Date

Description (Scope of Work)

---

---

4. 

---

Company Name

---

Point of Contact

---

Address

---

Telephone Number

---

City/State/Zip Code

---

Email Address

---

Project Date

Description (Scope of Work)

---

---

5. 

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Company Name

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Point of Contact

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Address

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Telephone Number

---

City/State/Zip Code

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Email Address

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Project Date

Description (Scope of Work)

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**ATTACHMENT D**  
**Office of the Attorney General**  
**Service of Process**  
**Attestation of No Conflict**  
**DLA-2019.01**

As a preamble to this AGREEMENT, the AGENCY and the CONTRACTOR agree to the following:

- A. CONTRACTOR Defined:** As used in this AGREEMENT the term “CONTRACTOR” is defined as the CONTRACTOR and its current and former parent entities, predecessors, successors, and assigns, including the agents, employees, officers and directors, and independent contractors of the CONTRACTOR, their successors and assigns, to the extent such agents and independent contractors were acting for or on behalf of the CONTRACTOR.
- B. Motivation for AGREEMENT:** Some of the information to be provided by the AGENCY to the CONTRACTOR may be nonpublic, exempt from Chapter 119, Florida Statutes, confidential or proprietary in nature and the parties wish to herein state their understanding and agreement to the terms under which such information will be provided.

**Now, Therefore,** for and in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- Confidential Information.** For purposes of this AGREEMENT, the term “Confidential Information” includes, but it is not limited to, any and all proprietary, confidential or nonpublic formulae, investigative materials, data, drawings, diagrams, plans, lists, documents obtained pursuant to a subpoena, discovery or other legal process, technology, processes, developments, inventions, know-how, operations or business, whether oral or written, which the AGENCY provides to the CONTRACTOR. Without limiting the foregoing, information shall be deemed to be provided by the AGENCY to the extent it is known to or derived by the CONTRACTOR, as herein defined, (a) from any inspection, examination or other review of documents, records, machinery, devices, samples, prototypes, processes or production methods of the AGENCY, (b) from communications with employees, agents or

representatives of the AGENCY, (c) during visits to the AGENCY's premises, or (d) through disclosure or discovery in any other manner.

2. **Information Not Covered.** The obligations hereunder of nonuse and disclosure shall not apply to the following information, which shall be excluded from the definition of Confidential Information: (a) information which was in the CONTRACTOR's possession in written or other tangible form prior to any disclosure by the AGENCY; (b) information which is in or comes into the public domain through no fault of the CONTRACTOR; (c) information received by the CONTRACTOR from a third party without a restriction and not in violation of any duty of nondisclosure on the part of such third party.
3. **Obligation of Nonuse and Nondisclosure.** The Confidential Information shall be used solely for the purpose of this AGREEMENT. The CONTRACTOR will not otherwise disclose or use the Confidential Information in any of the CONTRACTOR's products or services or exploit the Confidential Information in any way. The CONTRACTOR will not, without the AGENCY's prior written consent, analyze, perform any other qualitative or quantitative analysis, reverse engineer, or in any other manner attempt to discover the contents, compositions, design or makeup of any data received from the AGENCY except as defined in this AGREEMENT and as provided by the AGENCY.
4. **Limiting Access to the Confidentiality Information.** Except as otherwise set forth in this paragraph, the CONTRACTOR shall not disclose the Confidential Information to the CONTRACTOR's affiliates, agents, consultants, advisors or other representatives (collectively "agents") without the prior written consent of the AGENCY. The CONTRACTOR will disclose the Confidential Information to its employees only on a need-to-know basis and the CONTRACTOR will inform such employees of the confidential nature of the Confidential Information and direct them to treat the Confidential Information in accordance with this AGREEMENT.
5. **Duty of Care.** The CONTRACTOR agrees to take all reasonable measures to prevent disclosure of the Confidential Information to others, using at least the same degree as it uses to protect its own confidential, proprietary or trade secret information.
6. **Return of the Confidential Information.** Within (10) ten calendar days of a request by the AGENCY or should either party terminate discussions in connection with the AGREEMENT, the CONTRACTOR will return all of the Confidential Information, in whatever form, including all samples and other tangible things, documents, memoranda, notes and other writings

whatsoever prepared by the CONTRACTOR or its agents and all copies thereof, to the AGENCY.

7. **Confidential Nature of Discussions.** Neither party will disclose the existence, nature or status of the investigations, discussions, or negotiations which take place concerning the AGREEMENT, without the prior written consent of the other party.
8. **Unauthorized Disclosure.** The CONTRACTOR may not, absent a subpoena from a law enforcement entity with jurisdiction over the data or from a court of competent jurisdiction, disclose any of the Confidential Information. The CONTRACTOR agrees to provide the AGENCY with written notice of such subpoena as soon as possible but no later than ten (10) calendar days from the date of service so that the AGENCY may seek appropriate remedies from the Court. Further, the CONTRACTOR agrees not to release or disclose any Confidential Information until the AGENCY has been heard by the Court and the Court has ruled on the matter. The CONTRACTOR agrees to indemnify and hold harmless the State of Florida, Office of the Attorney General, Department of Legal Affairs and all its representatives, employees and agents against any damages, actions, suits or demands whatsoever kind made by or on behalf of any person as a result of the CONTRACTOR disclosing any Confidential Information provided by the AGENCY.
9. **Injunctive Relief.** The CONTRACTOR agrees that (a) because of the unique nature of the Confidential Information, the AGENCY may suffer irreparable harm in the event the CONTRACTOR fails to comply with any of the terms of this AGREEMENT, (b) monetary damages and other remedies at law may not be adequate in the event of such a breach, (c) the AGENCY shall be entitled to injunctive relief from such court or courts as shall have jurisdiction, and (d) such injunctive relief shall be in addition to, and not in lieu of, other remedies available to AGENCY at law or in equity.
10. **Miscellaneous.** This AGREEMENT shall be construed under and governed by the laws of the State of Florida and shall be deemed to have been made and entered into in the state of Florida and venue shall be proper in Leon County Florida. This AGREEMENT supersedes and replaces any and all prior understandings or AGREEMENT between the parties with respect to the subject matter of this AGREEMENT. This AGREEMENT can only be modified by a subsequent, written document, signed by both parties. Waiver of any breach of this AGREEMENT shall not be a waiver of any subsequent breach. If any one or more of the provisions contained in this AGREEMENT shall, for any reason, be held to be invalid, illegal or

unenforceable in any respect, such invalidity, illegality or lack of enforceability shall not affect any other provisions of this AGREEMENT, but this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein; or if any one or more of the provisions of this AGREEMENT shall for any reason be held to be excessively broad, it shall be construed or modified so as to be enforceable to the extent compatible with the law and the intentions of the parties.

**Vendor/Contractor:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Name Print:** \_\_\_\_\_

**Name Sign:** \_\_\_\_\_

**City/State/Zip:** \_\_\_\_\_

**Telephone/Fax:** \_\_\_\_\_

**ATTACHMENT E**  
**Office of the Attorney General**  
**Service of Process**  
**Drug-Free Work Place Certification**  
**DLA-2019.01**

Section 287.087, Florida Statutes. Preference to businesses with drug-free workplace programs. Whenever two or more bids, proposals, or replies that 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, proposal, or reply received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. 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, Florida Statutes, 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) calendar 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 indicated requirements.**

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINTED NAME:** \_\_\_\_\_

**REPRESENTING:** \_\_\_\_\_



**ATTACHMENT F**  
**State of Florida**  
**PUR 1000 (DMS Form)**  
**General Contract Conditions**

**Contents**

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3. Product Version.
4. Price Changes Applicable only to Term Contracts.
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**1. Definitions.** The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

- (a) “Contract” means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.
- (b) “Customer” means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The “Customer” may also be the “Buyer” as defined in the PUR 1001 if it meets the definition of both terms.
- (c) “Product” means any deliverable under the Contract, which may include commodities, services, technology or software.
- (d) “Purchase order” means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

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

**3. Product Version.** Purchase orders shall be deemed to reference a manufacturer’s most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

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

- (a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.
  - (b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
  - (c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.
  - (d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.
  - (e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.
- 5. Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.
- 6. Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.
- 7. Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess

conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

- 8. Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.
- 9. Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.
- 10. Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
- 11. Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.
- 12. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.
- 13. Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of

the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

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

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

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

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering reprocurement costs from the Contractor in addition to all outstanding fees.

**CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

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

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

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is

responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

- 16. Taxes.** The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.
- 17. Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.
- 18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://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.