

State of Florida  
Department of Transportation  
District Two  
1109 South Marion Avenue  
Lake City, Florida 32025-5874

**INVITATION TO NEGOTIATE REGISTRATION**

\*\*\*\*\*  
**PLEASE COMPLETE AND RETURN THIS FORM ASAP  
TO THE ABOVE ADDRESS OR FAX TO (386) 758-3791**  
\*\*\*\*\*

ITN Number: ITN-DOT-13/14-2349-DS

Title: RAPID INCIDENT SCENE CLEARANCE (RISC) CONTRACT

Sealed Reply Due Date & Time: See Section 24 of Special Conditions

Vendors should notify our office by returning this Registration Form as soon as possible after downloading. Complete the information below and fax this sheet only to the Florida Department of Transportation Procurement Office at (386) 758-3791, or mail to the address noted above.

**THE INVITATION TO NEGOTIATE DOCUMENT YOU RECEIVED IS SUBJECT TO CHANGE. Notice of changes (addenda), will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com), under this ITN number (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", then click on "Search Advertisements", click on the drop-down arrow beside the box under Advertisement Type, select Competitive Solicitation, click on the drop-down arrow beside the box under Agency, select DEPARTMENT OF TRANSPORTATION, then go to the bottom of the same page and click on Initiate Search). It is the responsibility of all potential vendors to monitor this site for any changing information prior to submitting your reply.**

Company Name: \_\_\_\_\_

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

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

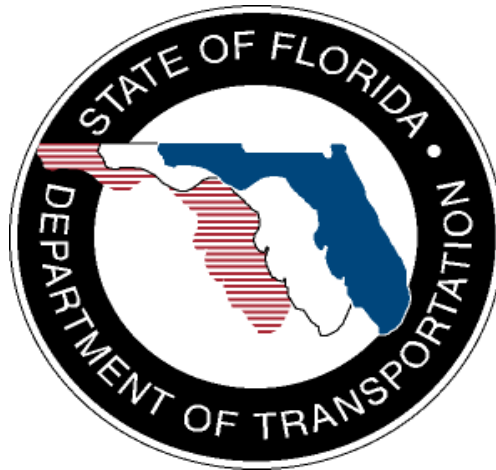
Telephone: (\_\_\_\_) \_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_

Contact Person: \_\_\_\_\_

Internet E-Mail Address: \_\_\_\_\_

For further information on this process, you may e-mail or telephone: Darlene Sawyer, [darlene.sawyer@dot.state.fl.us](mailto:darlene.sawyer@dot.state.fl.us), (386) 961-7732

**State of Florida  
Department of Transportation**



INVITATION TO NEGOTIATE  
**RAPID INCIDENT SCENE CLEARANCE (RISC)**

**ITN-DOT-13/14-2349-DS**

**CONTACT FOR QUESTIONS:**

Darlene Sawyer  
[darlene.sawyer@dot.state.fl.us](mailto:darlene.sawyer@dot.state.fl.us)  
Fax: 386-758-3791  
Phone: 386-961-7732  
1109 South Marion Avenue  
Lake City, Florida 32025-5874

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# INTRODUCTION SECTION

## 1) INVITATION

The State of Florida Department of Transportation (hereinafter referred to as the "Department") is soliciting written replies from vendors interested in participating in competitive negotiations to establish a term contract to provide **Rapid Incident Scene Clearance (RISC) services**. It is anticipated that the term of the agreement will be from the date of contract execution through May 1, 2019.

The Department considers that time is of the essence in the vendor's performance of required services. The incident scene clearance services described herein are considered by the Department to be the required emergency action for each motor vehicle crash or incident covered under this contract.

The Department intends to execute non-exclusive contracts with all responsive and responsible Vendors whose proposals are determined by the Technical Review Team to comply with contract specifications.

## 2) TIMELINE

Provided below is a list of critical dates and actions. These dates are subject to change. Notices of changes (addenda) will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements") under this ITN number. It is the responsibility of all potential vendors to monitor this site for any changing information prior to submitting your reply.

<b>ACTION / LOCATION</b>	<b>DATE</b>	<b>TIME</b>
<b>PUBLIC OPENING (Replies) - Florida Department of Transportation 1109 S. Marion Avenue Lake City, Florida 32025</b>	<b>April 15, 2014 Subsequent openings will be held on the Third Tuesday of each month at 2:00 pm (as needed)</b>	<b>02:00 PM</b>
<b>PUBLIC MEETING FOR SELECTION- Florida Department of Transportation 1109 S. Marion Avenue Lake City, Florida 32025</b>	<b>April 22, 2014 Subsequent meeting will be held on the Fourth Tuesday of each month at 2:00 pm (as needed)</b>	<b>02:00 PM</b>
<b>POSTING OF INTENDED AWARD ON VBS-</b>	<b>As needed</b>	

## 3) **PUBLIC MEETING AGENDA**

### **Agenda – Public Opening (Initial Replies)**

Agenda for Public Opening of initial replies to ITN-DOT-13/14-2349-DS:

Starting Time: see "Timeline" in ITN solicitation

- Opening remarks of approx. 2 minutes by Department Procurement Office personnel.
- Public input period – To allow a maximum of 15 minutes total for public input related to the ITN solicitation.
- At conclusion of public input or 15 minutes, whichever occurs first, the initial replies received timely will be opened, with respondent's name read aloud and tabulated.
- Adjourn meeting

### **Agenda – Meeting to Summarize & Determine Intended Award**

Agenda for Meeting to Summarize and Determine Intended Award for ITN-DOT-13/14-2349-DS:

Starting Time: see Timeline in ITN solicitation

- Opening remarks of approx. 2 minutes by Department Procurement Office personnel.

- Public input period – To allow a maximum of 15 minutes total for public input related to the ITN solicitation.
- At conclusion of public input or 15 minutes, whichever occurs first, recap and discussion among evaluation team(s) to determine selection for award.
- Announce respondent(s) selected for Intended Award.
- Announce time and date the decision will be posted on the Vendor Bid System (VBS).
- Adjourn.

#### **4) SPECIAL ACCOMMODATIONS**

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

## **SPECIAL CONDITIONS**

### **1) MyFloridaMarketPlace**

VENDORS MUST BE ACTIVELY REGISTERED IN THE STATE OF FLORIDA'S MYFLORIDAMARKETPLACE SYSTEM BY THE TIME AND DATE THE SEALED REPLIES ARE DUE OR THEY MAY BE CONSIDERED NON-RESPONSIVE (see Special Condition 18). All prospective vendors that are not registered, should go to <https://vendor.myfloridamarketplace.com/> to complete on-line registration, or call 1-866-352-3776 for assisted registration.

All payment(s) to the vendor resulting from this competitive solicitation **WILL** be subject to the 1% MFMP Transaction Fee in accordance with the attached Form PUR 1000 General Contract Condition #14.

### **2) Florida Department of Financial Services (DFS) W-9 INITIATIVE**

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

### **3) QUESTIONS & ANSWERS**

In accordance with section 287.057(26), Florida Statutes, respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

Any technical questions arising from this Invitation to Negotiate must be forwarded, in writing, to the procurement agent identified below. Questions must be received no later than the time and date reflected on the Timeline. The Department's written response to written inquiries submitted timely by vendors will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements"), under this ITN number. It is the responsibility of all potential vendors to monitor this site for any changing information prior to submitting their reply.

**WRITTEN TECHNICAL QUESTIONS** should be submitted to:

**Darlene Sawyer, Procurement Agent**  
**Florida Department of Transportation**  
**District Two Procurement Office**  
**1109 South Marion Avenue**  
**Lake City, FL 32025**  
**Fax: 386-758-3791 or email address: [darlene.sawyer@dot.state.fl.us](mailto:darlene.sawyer@dot.state.fl.us)**

Questions regarding administrative aspects of the procurement process should be directed to the Procurement Agent in writing at the address above or by phone: **386-961-7732**

#### **4) CHANGES TO THE INVITATION TO NEGOTIATE (ADDENDA)**

Notices of changes (addenda) will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements") under this ITN number. It is the responsibility of all potential vendors to monitor this site for any changing information prior to submitting your reply. All addenda will be acknowledged by signature and subsequent submission of addenda with reply when so stated in the addenda.

#### **5) PUBLIC MEETINGS**

Specific events in the competitive negotiation process will be conducted at a public meeting of the Technical Review Team. The specific events are noted in the Timeline (see Section 2 of Introduction Section). Minutes will be taken at all Public Meetings and will be retained in the procurement file.

#### **6) SCOPE OF SERVICES**

Details of the desired commodity/services, information and items to be furnished by the Vendor are described in Exhibit "A", Scope of Services/Specifications, attached hereto and made a part hereof. Documentation of any revisions that may occur during the competitive negotiation process will be retained in the procurement file.

#### **7) QUALIFICATIONS**

7.1 All requirements are included in Exhibit "A" – Scope of Services.

7.2 Authorized To Do Business in the State of Florida

In accordance with sections 607.1501, 608.501, and 620.9102, Florida Statutes, out-of-state corporations, out-of-state limited liability companies, and out-of-state limited partnerships must be authorized to do business in the State of Florida. Such authorization should be obtained by the reply due date and time, but in any case, must be obtained prior to posting of the intended award of the contract. For authorization, contact:

Florida Department of State  
 Tallahassee, Florida 32399  
 (850) 245-6051

7.3 Licensed to Conduct Business in the State of Florida

If the business being provided requires that individuals be licensed by the Department of Business and Professional Regulation, such licenses should be obtained by the reply due date and time, but in any case, must be obtained prior to posting of the intended award of the contract. For licensing, contact:

Florida Department of Business and Professional Regulation  
Tallahassee, Florida 32399-0797  
(850) 487-1395

#### 7.4 E-VERIFY

Vendors/Contractors:

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

#### 8) LIABILITY INSURANCE

The Vendor shall not commence any work until they have obtained the following types of insurance, and certificates of such insurance have been received by the Department. Nor shall the Vendor allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been so obtained. The Vendor shall submit the required Certificates of Insurance to the **Florida Department of Transportation, Procurement Office, Darlene Sawyer, 1109 South Marion Avenue, Lake City, Florida 32025-5874** within ten (10) days after the ending date of the period for posting the intended award decision.

The Vendor must carry and keep in force during the period of the contract a general liability insurance policy or policies with a company authorized to do business in the state of Florida, affording public liability insurance with combined bodily injury limits of at least \$ 300,000.00 per person and \$ 300,000.00 each occurrence, and property damage insurance of at least \$ 200,000.00 each occurrence, for the services to be rendered in accordance with the contract.

All insurance policies shall be with insurers qualified and licensed to do business in the state of Florida. Such policies shall provide that the insurance is not cancellable except upon thirty (30) days prior written notice to the Department.

The Department shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Vendor or subcontractor providing such insurance.

#### 9) DIVERSITY ACHIEVEMENT

##### MINORITY BUSINESS ENTERPRISE (MBE) UTILIZATION

The Department encourages small, minority, women, and service-disabled veteran businesses to compete for Department contracts, both as "Vendor" and as subcontractors. The Department, its vendors, suppliers, and consultants should take all necessary and reasonable steps to ensure that small, minority, women, and service-disabled veteran businesses have the opportunity to compete for and perform contract work for the Department in a nondiscriminatory environment. Vendors are requested to indicate their intention regarding MBE participation on the MBE Planned Utilization form and to submit the completed form with their Reply. The contract vendor will be asked to submit payment certification for MBE subcontractors used.

To request certification or to locate certified MBEs, call the Office of Supplier Diversity, Department of Management Services at (850) 487-0915, or access their MBE directory on the Internet at [www.osd.dms.state.fl.us/](http://www.osd.dms.state.fl.us/).

**10) CONTRACTUAL OBLIGATIONS****10.1 Standard Written Agreement**

The Department's "Standard Written Agreement" is attached hereto and made a part hereof. The terms and conditions contained therein will become an integral part of the contract resulting from this solicitation. In submitting a reply, the vendor agrees to be legally bound by these terms and conditions.

**11) METHOD OF COMPENSATION**

Method of Compensation, Exhibit "B", is attached hereto and made part of this solicitation.

**12) EVALUATION PROCEDURE**

The Technical Review Team; composed at least three (3) members who collectively have experience and knowledge of the program areas and services requirements will evaluate the replies. Once each committee member has conducted their individual review of the replies, the Technical Review Team may conduct an on-site visit to the vendor's facilities.

The Department will enter into negotiations with those firms determined to have submitted a responsive reply.

**13) REVIEW OF VENDOR'S FACILITIES & QUALIFICATIONS**

The Department reserves the right to perform or have performed an on-site review of the Vendor's facilities and qualifications. This review will serve to verify data and representations submitted by the Vendor and may be used to determine whether the Vendor has an adequate, qualified, and experienced staff, and can provide overall management facilities. Should the Department determine that the reply / proposed negotiations have material misrepresentations or that the size or nature of the Vendor's facilities or the number of experienced personnel (including technical staff) are not adequate to ensure satisfactory contract performance, the Department has the right to reject the reply / proposal.

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

Any person who is adversely affected by the contents of this Invitation to Negotiate must file the following with the Florida Department of Transportation, Clerk of Agency Proceedings, Haydon Burns Building, 605 Suwannee Street, MS-58, Tallahassee, Florida 38399-0450:

1. A written notice of protest within seventy-two (72) hours after the posting of the solicitation, (the notice of protest may be Faxed to 850-414-5264), and
2. A formal written protest in compliance with Section 120.57(3), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed.

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

**15) CONTRACT RENEWAL**

All resulting contracts from this ITN may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever period is longer. Renewals shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds. Renewal of the contract shall be by mutual agreement in writing and shall be subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties.



**16) PROPOSAL REQUIREMENTS****16.1 Proposal Copies**

The vendor shall submit one (1) original and five (5) copies of their proposal. The Department reserves the right to make additional copies of this material for its own use during the evaluation process.

**16.2 Proposal Content**

Vendors shall complete the proposal forms contained in Exhibit C & D.

**17) COOPERATIVE PURCHASING**

In addition to use by the Department, and with the consent of the Vendor and the Department, other road/highway entities in the State of Florida may obtain the services of the Vendor under the terms and conditions of this contract agreement. The applicable purchasing laws, rules, and regulations of those governmental entities shall apply to their use of this contract.

**18) RESPONSIVENESS OF REPLIES**

Other conditions which may cause rejection of replies include, but are not limited to, evidence of collusion among Vendors, obvious lack of experience or expertise to perform the required work, failure to perform or meet financial obligations on previous contracts, or in the event an individual, firm, partnership, or corporation is on the General Services Administration Excluded Parties List.

**19) COPYRIGHTED MATERIAL**

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

**20) ATTACHMENT TO ITN SUBMITTALS - CONFIDENTIAL MATERIAL**

The Vendor must include any materials it asserts to be exempted from public disclosure under Chapter 119, Florida Statutes, in a separate bound document labeled "Attachment to Invitation to Negotiate, Number ITN-DOT-13/14-2349-DS - Confidential Material". The Vendor must identify the specific Statute that authorizes exemption from the Public Records Law. Any claim of confidentiality on materials the Vendor asserts to be exempt from public disclosure and placed elsewhere in the reply will be considered waived by the Vendor upon submission, effective after opening.

**21) UNAUTHORIZED ALIENS**

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

**22) COSTS INCURRED IN RESPONDING**

This Invitation to Negotiate does not commit the Department or any other public agency to pay any costs incurred by an individual firm, partnership, or corporation in the submission of a reply or subsequent

negotiations or to make necessary studies or designs for the preparation thereof, nor to procure or contract for any articles or services.

### **23) MAIL OR DELIVER REPLIES TO: (DO NOT FAX)**

**Florida Department of Transportation  
Darlene Sawyer, Procurement Agent  
District Two Procurement Office  
1109 South Marion Avenue  
Lake City, FL 32025**

Submit one (1) original and five (5) copies of your reply. Replies to this ITN must be submitted in a sealed envelope/package that should be labeled with the ITN number and may be submitted at anytime. Sealed replies will be received until such time the Department withdraws the program. Replies will be processed in the order received by the Department.

### **24) OPENING OF SEALED REPLIES**

All reply openings are open to the public. Replies will be opened by the Department at the date, time and location in the Timeline (See Introduction Section 2, Timeline), unless the date is a State holiday wherein the opening will be the next work day at the same time. The public may attend the opening but may not review any replies submitted until they become public records in accordance with Section 119.07, Florida Statutes.

### **25) PROPOSED NEGOTIATION PROCESS**

The Department intends to negotiate with each vendor whose response to this ITN has been determined responsive. The negotiations will focus on vendor's proposed areas of coverage given response time requirements as set forth in the contract Scope of Work. The Department and the vendor will agree upon primary coverage areas.

### **26) MULTIPLE AWARDS**

The Department intends to enter into a contract with each vendor the Department has determined to be responsive and in which the Department has successfully completed negotiations.

### **27) POSTING OF INTENDED AWARD**

27.1 Once the Department has successfully completed negotiations with the firm, the Department intended award decision will be posted according to law and rule. The Department intended awards as indicated through posting will not be binding on the Department until an agreement has been executed by the parties. Since multiple awards will be made under this procurement and such awards will be made over time, the Department's posting of its intended awards will be made on Tuesday of each week provided an intended award is to be posted.

27.2 The Department's decision will be posted on the Florida Vendor Bid System, at [www.myflorida.com](http://www.myflorida.com), (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", on date and time in the Timeline, and will remain posted for a period of seventy-two (72) hours. Any vendor who is adversely affected by the Department's recommended award or intended decision must file the following with the Florida Department of Transportation, Clerk of Agency Proceedings, Haydon Burns Building, 605 Suwannee Street, MS-58, Tallahassee, Florida 38399-0450 :

1. A written notice of protest within seventy-two (72) hours after posting of the Intended Award, (the notice of protest may be Faxed to 850-414-5264), and

2. A formal written protest and protest bond in compliance with Section 120.57(3), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed. At the time of filing the formal written protest, a bond (a cashier's check or money order may be accepted) payable to the Department must also be submitted in an amount equal to one percent (1%) of the estimated contract amount based on the contract price submitted by the protestor.

Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. If the notice advises of the bond requirement but a bond or statutorily authorized alternate is not posted when required, the agency shall summarily dismiss the petition.

## **28) AWARD OF THE CONTRACT**

Following expiration of the posting period for an intended award as described in Section 27, the Department will execute a standard written agreement with those Vendors selected by the Department. The standard written agreement will include the final negotiated terms, conditions, specifications, and prices.

## **29) ATTACHED FORMS**

MBE Planned Utilization (Form 375-040-24), if applicable  
 Bid Opportunity List, if applicable  
 Exhibit "C" – Vendor's Area of Coverage  
 Exhibit "D" – Proposal Forms

## **30) ATTACHED TERMS AND CONDITIONS**

Exhibit "A"- Scope of Services  
 Attachment "A" – "Open Roads Policy"  
 Attachment "B" – Traffic Incidents Utilization  
 Attachment "C" – Equipment and Vehicle Requirements  
 Exhibit "B" – "Method of Compensation"  
 Standard Written Agreement  
 Instructions to Respondents (PUR 1001)  
 General Conditions (PUR 1000)

## **31) ORDER OF PRECEDENCE**

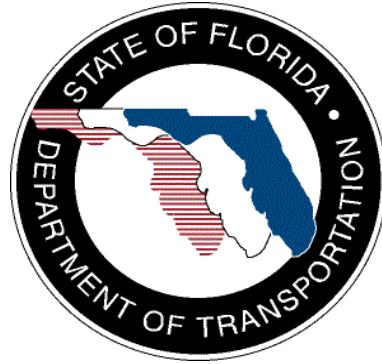
All responses are subject to the terms and conditions of this solicitation, which, in case of conflict, shall have the following order of precedence listed:

Special Conditions  
 Scope of Services / Specification  
 Standard Written Agreement  
 Appendix I (Terms for Federal Aid Contracts)  
 Instructions to Respondents (PUR 1001)  
 General Conditions (PUR 1000)  
 Introduction Section

## **32) ATTACHED FORMS PUR 1000, GENERAL CONTRACT CONDITIONS AND PUR 1001, GENERAL INSTRUCTIONS TO REPENDENTS**

These are standard forms from the Department of Management Services that the Department is required to include in all formal solicitations. The following paragraphs do not apply to this Invitation to Negotiate:

Paragraph 3, Electronic Submission – PUR 1001  
Paragraph 4, Terms and Conditions – PUR1001  
Paragraph 5, Questions – PUR 1001  
Paragraph 31, Dispute Resolution - PUR 1000



# **RAPID INCIDENT SCENE CLEARANCE (RISC)**

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

## EXHIBIT "A"

### SCOPE OF SERVICES

#### RAPID INCIDENT SCENE CLEARANCE (RISC)

##### 1. PROJECT OBJECTIVE

- 1.1 In an effort to provide the traveling public of the State of Florida a cost effective, high quality, transportation infrastructure, the Florida Department of Transportation (hereinafter "Department") has implemented the "Open Roads Policy" attached hereto as Attachment "A" for Quick Clearance for Safety and Mobility to make travel in Florida safer and more efficient. Consistent with the Open Roads Policy, District Two has adopted an innovative clearance strategy by implementing the Rapid Incident Scene Clearance (RISC) Program in order to significantly reduce the time it takes to clear major highway incidents and truck crashes.
- 1.2 Towing regulations for heavy-duty wreckers currently used in Florida were developed decades ago. Heavy trucks hauling larger loads now require specialized equipment and skilled operators to quickly remove them after an incident. This contract provides an incentive to clear wreckage and open roads as quickly as possible. This contract does not eliminate the current Class "C" (Heavy -duty) wrecker class that will continue to be utilized to remove trucks and busses that are disabled.
- 1.3 This agreement and RISC funding will be limited to use on limited access highways. Other non-limited access highways will be considered on a case-by-case basis and must be approved by the Department's State Traffic Engineer. See section 8.3 for the list of roadways that are included in the District's RISC Program.

##### 2. GENERAL DESCRIPTION

- 2.1 The District shall grant to a towing and recovery company (hereinafter "Vendor") a nonexclusive privilege to provide RISC Services, for those events, crashes or traffic incidents described in Attachment "B", on that portion of the District's roadway system selected by the Vendor.
- 2.2 The Vendor agrees to provide the professional incident clearance and vehicle recovery services in accordance with the terms and conditions described herein and in compliance with all Florida Highway Patrol (hereinafter "FHP") local city and county police officers, and Florida Department of Transportation Rules and Regulations, all local city and county Rules and Regulations, and applicable provisions of the Florida Administrative Code and Motor Vehicle Statutes.  
  
The Vendor's relationship to the District is that of an independent contractor authorized to perform incident scene clearance and vehicle recovery services on the District's roadway system in strict compliance with the terms and conditions contained herein.
- 2.3 Should the District determine that the Vendor under this agreement is unable to assist, perform, or provide adequate services or equipment, the District reserves the right to utilize additional services or equipment from any available source. The District also reserves the right to modify the designated limits of responsibility of the Vendor at any time.

- 2.4 The Vendor and all their operators, employees and subcontractors shall cooperate and comply with the guidance of the FHP or District authorized representatives pertaining to scene safety and traffic control.

### 3. GENERAL REQUIREMENTS

- 3.1 The Vendor shall perform all work in accordance with Department Specifications (including all Supplemental Specifications and Special Provisions in the Specification Workbook), FY 2012/2013 Design Standards and Manual of Uniform Traffic Control Devices (MUTCD).

Internet locations:

FDOT Design Standards: <http://www.dot.state.fl.us/rddesign/DesignStandards/Standards.shtm>

MUTCD: [http://mutcd.fhwa.dot.gov/pdfs/2009/pdf\\_index.htm](http://mutcd.fhwa.dot.gov/pdfs/2009/pdf_index.htm)

- 3.2 Proper health and safety measures will be taken to insure safety for the traveling public, Department employees, Vendor employees, and subcontractor employees.
- 3.3 The owner(s) of heavy duty recovery companies applying for RISC vendor status shall submit a copy of the FDLE background investigation, per Florida Administrative Code 15b-9.003(2)(b), prior to final contract acceptance. Fees associated with the background investigation shall be the responsibility of the vendor.

### 4. INCIDENT RESPONSE REQUIREMENTS

- 4.1 The Vendor shall respond to FHP, local law enforcement, and/or District requests for vehicle recovery and clearance services as soon as possible but no later than **fifteen (15) minutes** from the FHP, local law enforcement or the Department's authorized representative initial contact with Vendor requesting RISC activation. The Vendor acknowledges that time is of the essence and shall arrive with the two Recovery Wreckers and the Recovery Support Vehicle with required equipment, and materials as specified in Attachment "C", and with all necessary traffic control devices at the incident site within **one hour (60 minutes)** from the time RISC activation is requested in order to qualify for RISC incentive payments. The 60 minute time frame begins with initial call to the Vendor. If the selected vendor has not responded within 15 minutes of the initial call, the next available Vendor will be contacted. The need for additional trucks and heavy equipment shall be jointly determined at the incident scene by the Department authorized representative or Asset Maintenance Contractor, FHP, local law enforcement and the Vendor's representatives. The need for the additional trucks and heavy equipment described herein shall not increase the time required by the Vendor to perform services.
- 4.2 The Vendor shall be available to provide these services on a **twenty-four (24) hours a day, seven (7) days** a week basis, and to provide the arrival status of their personnel and equipment upon request by the investigating law enforcement personnel. The Vendor shall provide the District with a telephone number at which the Vendor can be contacted at all times. Under no circumstances will answering services be allowed. Phone numbers for the FDOT Traffic Management Center or FHP Regional Communications Center will be provided to the vendor upon acceptance of this agreement by both parties.
- 4.3 **TIME IS OF THE ESSENCE IN THIS CONTRACT.** Upon the FHP, local law enforcement, or the District's request for RISC services, the Vendor shall provide the District, FHP or local law enforcement an estimated arrival time. The Vendor will not transfer calls for recovery services to another Vendor. In the event the Vendor is unable to respond, the Vendor **must** notify the requestor. The Vendor will be rotated to the bottom of the rotation list and the next Vendor on the list will be

contacted to respond. If no Vendors within the local service area are able to respond, the next closest vendor from another service area may be called.

The response time specified herein shall be strictly enforced. Failure to respond to a call for RISC services or arrive at the incident site within the time required and with all necessary materials and equipment as specified herein will result in non-payment of the incentive feature. Failure to respond after the Vendor has agreed to the request for RISC implementation shall be considered a breach of this Contract.

- 4.4 Notification – The vendor shall notify the FDOT Traffic Management Center or FHP Regional Communications Center at the following points:
- a. When the Vendor is en-route to the incident scene.
  - b. When the Vendor arrives at the incident scene.
  - c. When the Vendor is given the Notice to Proceed.
  - d. When all travel lanes are cleared.

Should RISC recovery operations be halted by Fire Rescue, FHP, local law enforcement or the Department authorized representative, the vendor should ensure that both the time of the work stoppage and the restart time are recorded in the incident log (event chronology).

## 5. TERMINATION

- 5.1 The District reserves the right in its sole discretion to terminate this agreement for breach of a term of this agreement, upon **thirty (30)** days written notice to the Vendor by certified mail.
- 5.2 The District reserves the right to terminate this agreement at any time, for any reason, upon **sixty (60)** days prior written notice by certified mail.
- 5.3 Change of ownership or termination of the Vendor’s business shall be grounds for immediate termination of this agreement.

## 6. INDEMNITY

- 6.1 The Vendor shall indemnify and hold harmless the District, the FHP, their officials, officers, employees, consultants and agents from and against any and all liabilities, claims, injuries, damages, penalties, actions, suits, losses, costs expenses and attorneys’ fees resulting from or arising out of District requests for vehicle recovery services or incident scene clearance on the District’s roadway system.

## 7. MISCELLANEOUS

- 7.1 This is a non-exclusive agreement. The District intends to allow other companies to perform vehicle recovery and incident scene clearance on a rotation basis within the area being serviced by the Vendor. Initially, assignment within a rotation shall be based on contract execution date with the Vendor having the earlier contract execution date given the first roadway incident scene clearance. Once a Vendor performs rapid scene clearance services, the Vendor will be placed at the bottom of the rotation. New Vendors added to the rotation will always be added to the bottom of the rotation even though another Vendor may have already performed services as the rotation existed at the time of contract execution. In some instances, there may be only one Vendor in a given service area and there would not be a rotation list. The one Vendor would receive all RISC calls for that area until such time as another vendor(s) was contracted with to provide services in that service area. The rotation list shall be managed by the FHP and/or the Department, at the discretion of the FHP.



- 7.2 If the Vendor is contacted by a party other than FHP, local law enforcement, or the District to provide the services described herein in the District, the Vendor shall notify the District of the request prior to responding. Failure to do so will automatically cause the Vendor to forfeit the performance payments contained in Exhibit “B”, Method of Compensation. However, the Vendor would be eligible for the performance payments if the Vendor was authorized by FHP, local law enforcement, or the District prior to responding.
- 7.3 The Vendor or any of its operators or employees will not provide any gratuities, commissions, kick-backs or complimentary services of any kind to any District, FHP, or local law enforcement officials, officers, employees, consultants or agents.
- 7.4 Vendor agrees to provide copies of their itemized invoice to the Department and FHP for review and use.
- 7.5 Vendor must take photographs both prior to and subsequent to scene cleanup. Photos must be detailed in showing lane blockage and affected traffic from the incident scene.

**8. RECOVERY AREAS**

- 8.1 The District may review the recovery area boundaries periodically to ensure that level of service in each area is consistent with the quick clearance goals stated in the Open Roads Policy.
- 8.2 Recovery wrecker companies need not be located within the area boundaries, but they must mobilize and respond to calls within the indicated response time.
- 8.3 This agreement covers Rapid Incident Scene Clearance by the Vendor for those segments of the following limited access highways, interchanges, ramps and other approved roadway segments, under the jurisdiction and operational control of the District and selected by the Vendor.

DESCRIPTION	COUNTY
<b>I-10 (Limits to be determined)</b>	Duval County Nassau County Baker County Columbia County Suwannee County Madison County
<b>I-95 (limits to be determined)</b>	St. Johns County Duval County Nassau County
<b>J. Turner Butler Blvd</b>	Duval County
<b>I-295</b>	Duval County
<b>9 A</b>	<b>Duval County</b>
<b>I-75</b>	Alachua County Columbia County Hamilton County

8.4 From the roadway described in 8.3, the Vendor has selected to provide services for those areas described in Exhibit "C". The Investigating Law Enforcement Officer or FDOT representative can allow additional response time (arrival to scene with all 3 pieces of contract required equipment) for a vendor who is responding to a RISC activation outside of his originally contracted area.

## **9. VENDOR REQUIREMENTS AND QUALIFICATIONS**

9.1 The ultimate equitable owner/owners of the wrecker company shall be required to submit documentary proof showing previous experience and extensive knowledge in working Heavy Duty Towing and Recovery business. Vendor shall be in good standing on the FHP wrecker rotation list. The Project description, dates, photos and locations of successfully completed projects shall be submitted with the Vendor's proposal. Award of the contract will be contingent on the demonstrated experience, knowledge and quality of work.

9.2 If the Vendor's primary place of business is located within a county or municipality that requires by local ordinance, an occupational license, said license must be maintained for the term of the Agreement.

9.3 The Vendor is required to abide by all local ordinances for wrecker providers within the county they are working RISC activations.

9.4 The Vendor must comply with all Rules and Statutes and provide evidence of current and valid insurance coverage required by the State of Florida and by the FHP Authorized Wrecker Program. FHP Policy# 17.02  
FSS 321.051  
FAC Rule 15B-9  
Vendor shall be subject to the standard rules and policies already established by the FHP. Suspensions from towing rotation list will be grounds for removal from the RISC contract.

9.5 The Vendor must maintain current and up to date CDL driving records, employment records and training records on all Operators and make them available for inspection by the FHP, local law enforcement, and Florida Department of Transportation or their authorized representatives.

9.6 The Vendor shall be proficient and able to demonstrate "Expedited Roadway Clearance Practices" and "Incident Scene Safety" including:

- Single lane uprighting of loaded tractor trailers.
- Relocation of loaded, overturned, tractor trailers from travel lanes.

9.7 The Vendor shall be or become proficient and able to demonstrate such proficiency in the following areas within the time frames specified in 10.1.

- Setting up incident scene Traffic Control in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).
- The mitigation of accidental discharges of motor vehicle fluids, per the Florida Guidelines.

9.8 The RISC Vendor agrees that upon activation of the RISC contract, the responsible party, unless otherwise directed by the Investigating Law Enforcement Officer can request towing of the damaged vehicle(s) to a location of their choice with the understanding that they will be charged for the tow at the rate established by the county or FHP where the incident occurred.

## 10. QUALIFICATIONS, TRAINING AND CERTIFICATION OF VENDOR'S OPERATORS

10.1 Within sixty (60) days of the execution of this agreement or sixty days of their hiring date, all Recovery Wrecker Operators shall:

1. Complete Intermediate Maintenance of Traffic (MOT) training from a certified Department approved training agency. It is recommended that support personnel involved in the recovery effort also complete the Intermediate MOT training from a certified Department approved training agency., Recovery operators and support personnel shall also complete the FDOT MOT Training Course for Incident Responders, which is available online at:
  - <http://wbt.dot.state.fl.us/ois/MOTTIRCBT/index.htm>
2. Receive instruction, training and if applicable, examination in each of the following specialized recovery wrecker operator services:
  - Heavy Duty Wrecker Operations
  - Ultra Heavy Wrecker and Recovery Practices
  - Hazardous Materials Awareness

This training shall be conducted by state and/or industry recognized and approved instructors.
3. Have knowledge and understanding of the following policies/procedures:
  - Traffic Incident Management Practices including:
    1. The Florida "Open Roads" policy
    2. The Florida "Guidelines for the Mitigation of Accidental Discharges of Motor Vehicle Fluids (Non-Cargo)

## 11. AREAS WITH NO AVAILABLE 'RISC' VENDORS

It is anticipated that there may be areas in which the Department does not have under contract a RISC Vendor or times when a Vendor or Vendors for an area are unavailable to respond to a request for services. In such situations the Department reserves the right to contact any available RISC Vendor. The Department will attempt to call the Vendor whose facilities appear to be closest to the incident. Such Vendor shall be eligible for performance payment under paragraphs 2.2 and 2.3 of Exhibit "B" provided the Vendor is able to respond immediately with the two required recovery units and recovery support vehicles as referenced in Attachment "C" within the arrival time agreed upon by the department designee and the vendor provided all travel lanes are open within 90 minutes after the notice to proceed is given by FHP and/or the Department authorized representative. The Vendor should also be eligible to receive any additional performance payments provided the contract times are met.

## 12. CONTRACT TERM

The term of the agreement will be from the date of contract execution through May 1, 2019.

## 13. VENDOR PERFORMANCE

The Department will evaluate the Vendor's performance following each incident and will maintain such evaluations for use in administering this contract and in future contract renewal awards.

## ADDITIONAL VENDORS

The District reserves the right to add new Vendors to provide services in accordance with this contract at such time as the prospective Vendor is able to provide the District with documentary proof of compliance with the requirements and qualifications specified herein.

**14. PAYMENT OF TOLLS**

The Vendor's attention is directed to the fact that the Vendor will be required to pay tolls, as applicable to the general public.

**15. MYFLORIDAMARKETPLACE TRANSACTION FEE**

This procurement is subject to the MyFloridaMarketPlace transaction fee, pursuant to Rule 60A-1.031, Florida Administrative Code (F.A.C.).

# ATTACHMENTS TO EXHIBIT "A"

## ATTACHMENT 'A'

### State of Florida

#### **OPEN ROADS POLICY AGREEMENT** (Revised January 2014)

#### *Quick Clearance for Safety and Mobility*

This Open Roads Policy Agreement (Agreement) is entered into between the Florida Highway Patrol (FHP) and the Florida Department of Transportation (FDOT) and establishes a policy for FHP and FDOT personnel to expedite the removal of vehicles, cargo, and debris from roadways on the State Highway System to restore, in an **URGENT MANNER**, the safe and orderly flow of traffic following a motor vehicle crash or other traffic incident on Florida's roadways.

*Whereas*, public safety is the highest priority and must be maintained on Florida's roadways before, during, and after traffic incidents; and

*Whereas*, the quality of life in the State of Florida is heavily dependent upon the free movement of people, vehicles, and all types of commerce, and FHP and FDOT share the responsibility for achieving and maintaining the degree of order necessary to make this free movement possible; and

*Whereas*, traffic incidents account for approximately twenty-five percent of non-recurring congestion and the impacts on commerce can be minimized with sound traffic incident management practices by responding agencies; and

*Whereas*, nationally, it is estimated that five fire personnel, twelve police officers, and sixty tow truck operators are killed in struck-by incidents each year, and governmental entities have the responsibility to do whatever is reasonable to reduce the risks to responders; and

*Whereas*, secondary crashes pose safety risks to incident responders and all motorists; and

*Whereas*, the expeditious clearance of traffic incidents promotes safety, and that vehicle removal, move-over laws, and quick clearance policies minimize exposure and the potential for secondary crashes; and

*Whereas*, it is understood that damage to vehicles or cargo or both may occur as a result of clearing the roadway on an urgent basis. While reasonable attempts to avoid such damage shall be taken, the priority of responders is to safely restore traffic to normal conditions because traffic incident related congestion has an enormous cost to society. This cost is significantly greater than the salvage value of an already damaged vehicle and its cargo.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. Roadways will be cleared of damaged vehicles, spilled cargo, and debris as soon as it is safe to do so. Reasonable attempts will be made to avoid unnecessary damage to vehicles and cargo in the process of clearing the roadway.

2. The following operating standards are based on the philosophy that the State Highway System will not be closed or restricted any longer than is absolutely necessary following a traffic crash or other roadway traffic incident.

3. Florida Highway Patrol Operating Standards:

a. Members of FHP who respond to the scene of traffic incidents will make clearing the travel portion of the roadway a high priority. When an investigation is required, it will be conducted in as expedient a manner as possible considering the severity of the incident. Non-critical portions of the investigation may be delayed until lighter traffic conditions allow completion of those tasks. FHP will close only those lanes absolutely necessary to safely conduct the investigation. FHP will coordinate with FDOT representatives to set up appropriate traffic control, establish alternate routes, expedite the safe movement of traffic at the scene, and restore the roadway to normal conditions as soon as possible.

b. Whenever practical, damaged vehicles on access-controlled roadways will be removed to off ramps, accident investigation sites, or other safe areas for completion of investigations to reduce delays. Tow truck operators will be requested as soon as it is evident that they will be needed to clear the roadway. FHP will assure that all authorized tow operators have met established competency levels and that the equipment is of appropriate size, capacity, and design to meet all standards of the State of Florida.

c. FHP will not unnecessarily cause any delay in reopening all or part of a roadway to allow a company to dispatch its own equipment to off-load cargo or recover a vehicle or load that is impacting traffic during peak traffic hours or creating a hazard to the public. FHP and FDOT will cooperate in planning and implementing clearance operations in the most safe and expeditious manner, to include the use of FDOT's Rapid Incident Scene Clearance (RISC) Procedure Number 750-030-020 when and where appropriate.

4. Florida Department of Transportation Operating Standards:

a. When requested by FHP or any other emergency response agency, FDOT will respond and deploy resources to major traffic incidents 24 hours a day, 7 days per week. Each FDOT District will develop and implement response procedures to meet the goal of providing initial traffic control within **30 minutes** of notification during the assigned working hours of each maintenance yard, and **60 minutes** after hours.

b. FDOT, in coordination with FHP, will upgrade traffic controls, determine detour routes, and discuss clearance strategies. When requested, FDOT will provide temporary traffic controls to ensure a safe work zone for all responders and the motoring public.

c. FDOT, in cooperation with FHP, will determine and deploy the necessary heavy equipment and manpower to reopen the roadway if there is a delay in clearing the travel lanes, or if the task is beyond the capabilities of the tow truck operator on scene. If cargo or spilled loads [non-hazardous] are involved, FDOT will make every effort to assist in the relocation of the materials in the shortest possible time, using whatever equipment necessary. All such materials or any vehicles relocated by FDOT will be moved the minimum practical distance to eliminate traffic hazards.

d. FDOT personnel will document all hours and equipment used for traffic control, roadway clearance, and debris clean up. FDOT will place traffic control devices at the scene should any damaged vehicles or cargo remain on the shoulder adjacent to the travel lanes for removal at a later time.

5. FDOT and FHP will continually work together to ensure that the needs of motorists on state roadways are being met in the most professional, safe, and efficient manner.

6. FHP and FDOT will evaluate and continually update and modify their operating policies, procedures, rules, and standards to assure they are consistent with this Agreement.

7. FHP, together with FDOT, will research, evaluate, and conduct training in the most advanced technologies, equipment, and approved methods for the documentation and investigation of crash or traffic incident scenes. FHP, using these techniques, will prioritize the investigative tasks that impede traffic and reopen travel lanes upon completion of such tasks that must be conducted in order to minimize impeding traffic.

8. Roadways will be cleared as soon as possible. It is the **goal** of all agencies that **all incidents be cleared from the roadway within 90 minutes of the arrival of the first responding officer**. This goal is made with the understanding that more complex scenarios may require additional time for complete clearance.

9. This Agreement applies to the impacts of roadway traffic incidents and does not apply to closures that are necessary for the furtherance of motorists' safety such as those undertaken for high winds, flooding, ice, fog, smoke, or other circumstance.

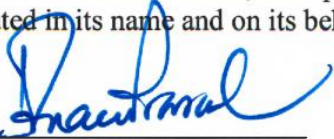
10. FHP and FDOT will actively solicit and enlist other state, county, and local agencies, political subdivisions, industry groups, and professional associations to endorse this Agreement for the State of Florida.

11. FHP will be responsible for calling a meeting with FDOT in July of each year to review this policy, and make changes as necessary.

12. With the mutual agreement of both parties, this policy agreement may be terminated on an agreed upon date without penalty to either party.



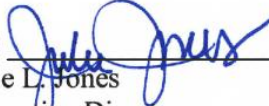
In witness whereof, each party to this Agreement has caused this Agreement to be executed in its name and on its behalf by its duly authorized representative.

By:   
Ananth Prasad, P.E.  
Secretary  
Florida Department of Transportation

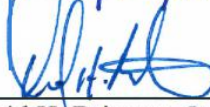
Date: 1-31-14

Legal Review:



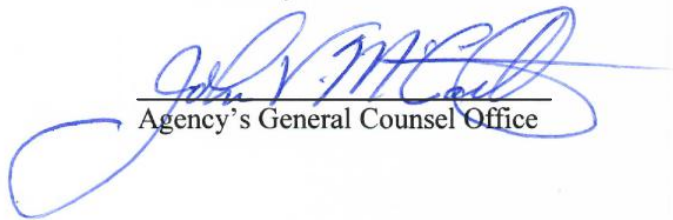
By:   
Julie L. Jones  
Executive Director  
Florida Department of Highway Safety and  
Motor Vehicles

Date: 2/26/14

By:   
Col. David H. Brierton, Jr.  
Director  
Florida Highway Patrol

Date: 2/17/14

Reviewed By:

  
Agency's General Counsel Office

**ATTACHMENT “B”**

**EVENTS, CRASHES OR TRAFFIC INCIDENTS\* UTILIZING THE SERVICES OF THE  
RECOVERY VENDOR  
FOR  
RAPID INCIDENT SCENE CLEARANCE**

- A. Tractor Trailer Combinations (DOT Class 8)
  - **Rollover blocking one or more travel lanes**
  - **Multiple truck crash**
  - **Lost Load on or affecting the travel lanes**
  - **Load Shifted on or affecting a travel lane**
  - **Lost tandems or split trailer on or affecting a travel lane**
  - **Truck fire with tires burned off or cargo spilled**
  - **Major impact with or on top of a barrier wall, guard rail or with a bridge support.**
  
- B. Trucks over 16,000 lbs. (DOT Class 5, 6 & 7)
  - **Rollover blocking one or more travel lanes**
  - **Lost load on or affecting the travel lanes**
  - **Load shifted on or affecting a travel lane**
  - **Truck fire with tires burned off or cargo spilled**
  - **Major impact with or on top of a barrier wall, guard rail or with a bridge support.**
  
- C. Motor Homes and Motor Coaches (DOT Class 5 and 6)
  - **Rollover blocking one or more travel lanes**
  - **Fire with tires burned off**
  - **Major impact with or on top of a barrier wall, guard rail or with a bridge support**
  
- D. Busses (16 passenger or more, DOT Class 6, 7 & 8)
  - **Rollover blocking one or more travel lanes**
  - **Fire with tires burned off or burned luggage on the roadway**
  - **Major impact with or on top of a barrier wall, guard rail or with a bridge support**
  
- E. Aircraft
  - **Any incident involving an aircraft effecting the travel lanes**
  
- F. Large yacht type boats
  
- G. Mobile Homes, Modular Homes, or Modular Buildings

Note: *In addition, any complex or extended incident where vehicles cannot be easily towed from the scene or are creating a hazard to traffic may be candidates for using the “Vendor” as directed by the District.*

\*Includes but not limited to

**ATTACHMENT “C”****Equipment and Vehicle Requirements**

The Vendor shall be required to submit to the District documentary proof of current ownership or lease of the following equipment having the minimum capacity, size and number listed below:

**A. Initial Response:****Recovery Wrecker Requirements  
(Company Owned/or leased)**

One 50-ton (Heavier) Hydraulic, extendable, fixed boom, ultra heavy duty recovery wrecker with a boom structural rating (TEMA or SAE) of 100,000 lbs or rotator type wrecker with the same capacity or greater. A minimum of two planetary winches with a manufacturers rating of 50,000 lbs. each and 200 ft. of ¾” cable. The boom shall extend a minimum of 150” beyond the tailgate. The boom shall elevate to a working height of 21 ft. The truck chassis shall be a minimum of 62,000 lbs gross vehicle weight (GVW). The unit shall be equipped with an under reach tow unit with a capacity of 50,000 lbs. The truck chassis must be designed for or reinforced for severe service. The drive line shall also be severe service and geared for the low end, high torque applications frequently required for quick clearance and relocation of loaded, wrecked heavy trucks - in some cases while they are still overturned.

AND

One 35-ton capacity rotator type heavy-duty wrecker or extendable boom wrecker with the same capacity or greater. The Vendor may request to substitute a mobile crane for the rotator. To be considered, the mobile crane shall have a minimum capacity of 35 tons and be equipped for truck crash recovery with the tool supplies and rigging as established in this agreement. A valid OSHA crane operator certification is required. The District reserves the right to approve or reject the request to substitute a crane for the rotator wrecker.

**NOTE: ONE OF THE ON-SCENE WRECKERS SHALL BE A ROTATOR OR DISTRICT APPROVED MOBILE CRANE.**

**A. Recovery Support Vehicle Requirements:  
(Company Owned/or leased)**

**1 ea. Support vehicle with an enclosed or utility body and a roof mounted DOT approved MUTCD Type B arrow board. The truck shall be stocked with MUTCD traffic control devices (signs, sign stands and cones etc.) and the additional tools, equipment and material listed. Alternatively this may consist of the Vehicle with Type B arrow board and a support trailer with all recovery equipment.**

**B. Additional Trucks and Heavy Equipment Requirements:  
(Company Owned or leased)**

- **1 ea. Heavy-duty skid steer loader with bucket, broom, and fork attachments. The loader should have the capability to load a dump truck. (e.g., Bobcat T300)**

**C. Subcontracted Service Providers**

The Vendor shall provide proof of an existing account in good standing with a local company to provide the following services. These services must have the means to respond to a major incident scene 24 hours per day/7 days per week in one hour or less.

- **A Maintenance of Traffic (MOT) Contractor that can provide and set up MUTCD and FDOT approved work zone traffic controls including a Worksite Traffic Supervisor.**
- **A Disposal Company that can deliver to the scene of an incident dumpsters or hoppers for crash debris, fire debris and or spilled non-hazardous cargo.**
- **A Vacuum or Suction Service for off loading or recovering spilled grains, powders, plastic pellets, etc.**
- **A Trucking or Transport company that can provide dump, refrigerator or flat bed trucks and trailers.**
- **1 ea. Tilt bed, hydraulic, lowboy semi-trailer (Landoll or equivalent) with a 35-ton capacity, 48 ft. bed and a 20,000 lb. winch with 75 ft. of 5/8" cable**
- **1 ea. Tandem axle tractor with a sliding fifth wheel**
- **1 ea. Rubber tired, articulated, heavy construction end loader with a minimum 2 yard bucket (when loaded on the lowboy trailed the combined height must not exceed 13 ft.-6in.)**
- **A Construction Crane Rental Company with 50-ton and larger mobile cranes.**
- **A source of bulk sand available 24 Hours a day, 7 days a week.**

#### **D. Items Required on Recovery Wreckers**

**Each Recovery Wrecker or District approved mobile crane shall carry the following tools, supplies and rigging:**

- Alloy (grade #8) chain: 2 ea. 3/8"x 10', 2 ea. 5/8"x 10' and 4 ea. 1/2"x 10'
- Two pair (4), wide profile, 50-ton, nylon recovery straps
- Four heavy duty snatch blocks (working load matched to the wrecker)
- Various hooks, clevis' and chokers (matched to the wrecker capacity)
- 1 ea. High Pressure air cushion (24"x24") with control module and hose
- 4 ea. hardwood timbers (4"x6")
- 8 ea. hard wood cribbing (4"x4")
- 1 ea. Extension ladder (18 ft.)
- 1 ea. 36" bolt cutters
- 1 ea. BC Fire extinguisher (10 lbs.) or 2 ea. BC Fire extinguisher (5 lbs.)
- 1 ea. Long handle axe
- 1 ea. Long handle shovels (flat blade)
- 1ea. Long handle shovels (round blade)
- 1 ea. Street brooms
- 4 ea. Wheel chocks
- 1 ea. 5 ft. Pike bar
- 1 ea. Crow bars (36")
- 1 ea. Sledge hammer (10-12 lbs)
- 1 ea. Hydraulic jack (20-ton)
- 1 ea. Plug/spill kits, fully stocked
- Angle iron or aluminum, wide flange various lengths
- 1 ea. Complete brake release kit: (hand tools, hoses, glad hands, numerous fittings and brake caging bolts)
- 2 ea. Heavy duty, Industrial flashlights
- 12 ea. Thirty-six (36) inch, 12lb. reflectorized traffic cones stamped with the FDOT certified product number
- 1 ea. Commercial box 30-minute highway flares
- 120 lbs. or 30 gal. of oil dry or approved absorbent
- 50 ft. of rope (1/2")
- 4 ea. load binders, transport chains and cheater pipe
- 1 ea. Tarpaulin (Minimum size of 400 square feet)
- Digital camera with a minimum of 5 megapixels (may be carried on wrecker or support vehicle)

- 2 ea. Rolls of duct tape
- 1 ea. Complete mechanics hand tool set
- 1 ea. Complete first-aid kit

**E. Items required in the Recovery Support Vehicle or Recovery Support Trailer pulled by a Support Vehicle**

- 60 ea. Thirty-six (36) inch, 12lb. reflectorized traffic cones stamped with the FDOT certified product number
- 4 ea. Fabric, MUTCD approved Incident Management Warning signs
- 4 ea. Portable sign stands for 48" warning signs (see above)
- 1 ea. Gas powered cut-off saw
- 2 ea. 500-watt Auxiliary flood lights w/stands
- 1 ea. Minimum 3,500 watt generator
- 1 ea. Portable air compressor or truck supplied compressed air
- 1 ea. Air impact wrench with sockets
- 1 ea. Air powered metal chisel
- 1 ea. Acetylene/Oxygen cutting torch
- 1 ea. Bolt cutters (36")
- 4 ea. Long handle shovels (flat blade)
- 2 ea. Long handle shovels (round blade)
- 2 ea. Aluminum or plastic coal or grain shovels
- 4 ea. Street brooms
- 1 ea. Refrigerator dolly
- 1 ea. Hand trucks
- 1 ea. Pallet puller
- 1 ea. Dock plate with clamps
- 2 ea. Large Tarpaulins (Minimum size of 400 square feet)
- 6 dozen 30-minute Highway flares
- 200 lbs. or 50 gals. of oil dry or approved absorbent
- 1 Roll of rubber floor runner (36" wide)
- 10 lbs. of 16D nails
- 8 2x4 studs
- 2 Rolls of heavy duty (80 gauge) stretch wrap with dispenser
- 4 Rolls of duct tape
- 4 load binders and securement chain for a 30-ton load
- 1 Case of heavy duty, 55 gallon trash bags (Minimum of 25 bags)
- 1 Roll of heavy gauge polyethylene plastic sheeting
- 1 ea. Complete first-aid kit
- 2 ea. Large capacity trash cans
- 1 ea. BC Fire extinguisher (10lbs.)
- 2 ea. Sewer drain or inlet covers (mud flaps acceptable)

These tools, supplies and material are required as a minimum. It is expected that a professional recovery wrecker operation will supplement this list with all items needed to operate in a safe and efficient manner.

The "Vendor" grants the Florida Department of Transportation, the Florida Highway Patrol and local law enforcement the right to inspect the vehicles and equipment, or those of any subcontractor, upon request during normal business hours to establish or confirm that the Company is in compliance with the terms of this Agreement.

**EXHIBIT "B"****METHOD OF COMPENSATION****1. BILLING VEHICLE OWNERS**

The Vendor agrees to seek compensation for actual vehicle recovery and towing services performed pursuant to this agreement solely from the owner of the vehicle or their insurance provider. The Vendor agrees that no claim for compensation will be made against the District, the Florida Highway Patrol, local law enforcement or its employees or agents for any recovery or towing services.

**2. PERFORMANCE PAYMENTS**

The Vendor shall be eligible for payment under paragraph 2.1 or 2.2, but not both, provided certain requirements are met. Payment under paragraph 2.3 shall only be made if performance payment is made under paragraph 2.2 and the additional trucks and heavy equipment were mobilized at the request of the Department.

2.1 In the event the Vendor mobilizes and arrives at the crash scene at the District's request with the traffic control devices and recovery equipment, as specified in Attachment "C", within one hour, unless additional arrival time has been granted for out of area/zone response by the District and recovery services are not necessary or another towing and recovery firm hired or engaged by the vehicle owner is allowed by FHP, local law enforcement, and the District incident managers to complete the clearance of the incident and towing of the vehicles, the District agrees to pay a Flat Rate **Service payment** of **\$600.00**. Once a "notice to proceed" is given to the Vendor to commence actual performance of removal and clearance services, the Vendor is not eligible for payment under this paragraph 2.1.

2.2 The Department agrees to pay the Vendor a Flat Rate **Emergency Response and Mobilization payment** of **\$2,500** when services were authorized by the Department, FHP or local law enforcement.

To qualify for the Emergency Response and Mobilization payment the Vendor must:

- Have responded to the incident scene with all requested recovery, clearance and traffic control equipment and necessary personnel **within one hour** from the official notification by the FDOT, FHP or local law enforcement, unless additional arrival time has been granted for out of area/zone response by the District.

**AND**

- Have completed the removal and clearance of all crash scene vehicles, cargo, debris and non-hazardous vehicle fluids from **all travel lanes** and **opened** to traffic **within 90 minutes** after the Notice to Proceed by FHP, local law enforcement or a Department authorized representative.

**Note:** The documented "notice to proceed" and "all lanes open" times recorded at the Traffic Management Center (TMC), FHP Communications Center or local law enforcement communications center will be used to verify the request for emergency response and mobilization payment. If needed, the final clean up and removal of wreckage and debris shall be coordinated with the District, FHP or local law enforcement and may be postponed until the operation will have a minimal impact on traffic.

2.3 Upon approval of the Investigating Law Enforcement Officer, or the district designee, the District agrees to pay for a Flat Rate **Additional Trucks and Heavy Equipment Response and Mobilization payment**, of **\$600** for the additional Trucks and Heavy Equipment listed in Attachment "C". **This payment will apply for response and mobilization of the equipment in Attachment "C" when not used in the recovery**

**effort. The cost of bringing this additional equipment will not be billed to insurance companies by the Vendor. The vendor may qualify for the additional equipment mobilization payment of \$600 in addition to the initial response mobilization payment of \$600 shown in 2.1 above, if the RISC vendor arrives on-scene within the required time frames and is not utilized for incident recovery.**

2.4 **Once the additional equipment is placed into service in the recovery effort at the incident scene, the above “Additional Trucks and Heavy Equipment Response and Mobilization payment” will be increased to \$1,000 and the use may be billed to the insurance companies by the Department as part of the RISC incident. \$1,000 is the maximum payment available in section. 2.3 Exhibit B.**

2.5 The FHP Regional Communications Center, any applicable local law enforcement agency communication center, or the Department Traffic Management Center will note all times as related to the RISC implementation and operation.

### 3. **FORFEITURE OF PERFORMANCE PAYMENTS**

No performance payment shall be made to the Vendor under paragraph 2.2 and 2.3 of this Exhibit “B” if the Vendor has not completed their work and all travel lanes are not open to traffic **ninety (90) minutes** after the notice to proceed.

If the Vendor was ordered to stop their roadway clearance activity by Fire Rescue, FHP, local law enforcement or the Department authorized representative, the Vendor will not be penalized for the time they were delayed. This extended time must be documented by the authorized representative of the District or incident commander at the incident scene. The vendor should ensure that both the time of the work stoppage and the restart time are recorded in the incident log (event chronology).

### 4. **LIQUIDATED DAMAGES**

If the Vendor has not completed the removal and clearance of the vehicles, non-hazardous cargo, debris and vehicle fluids after three hours from the Notice to Proceed, and all travel lanes are not open to traffic as a result, a flat rate of **\$600** can be assessed against the Vendor at the discretion of the authorized representative of the District. An additional **\$600** will be assessed for each additional hour or **\$10 per minute** it takes the Vendor to completely open the roadway to traffic.

Exemptions to the Liquidated Damages Provisions:

Incidents involving trucks hauling a Hazardous Material cargo that by direction of the Department authorized representative require special precautions. Incidents involving damage to the roadway infrastructure that prohibit reopening the travel lanes.

### 5. **BILLING**

The Vendor shall bill the Department for services rendered only upon receipt of a **Confirming Letter of Authorization (LOA)** issued by the Department following completion of services. The Department’s LOA shall identify the location where services were authorized to be performed, the services to be compensated, and the rate to be paid as set forth in this agreement. The Vendor’s invoice shall reference the services being billed and the LOA number.

### 6. **INVOICES**

The Vendor agrees to provide the District with copies of all invoices billed to insurance companies of vehicles involved in RISC activation.

7. All elements of a RISC activation shall be completely documented by the Vendor. This shall include photographs, time of day, lanes blocked, and duration of incident.





**EXHIBIT "D"**

**PROPOSAL FORMS FOR  
RAPID INCIDENT SCENE CLEARANCE (RISC)**

**EXHIBIT "D"**  
**PROPOSAL FORMS FOR**  
**RAPID INCIDENT SCENE CLEARANCE (RISC)**

*Print or type, include additional sheets if required.*

Name of Vendor: \_\_\_\_\_

Business address: \_\_\_\_\_  
\_\_\_\_\_

Business Telephone No.: \_\_\_\_\_

Fax Telephone No.: \_\_\_\_\_

24 hour Telephone No.: \_\_\_\_\_

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

Please check the appropriate space:

- |  |                                      |
|--|--------------------------------------|
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Joint Venture       | <input type="checkbox"/> Corporation |

State of Florida Registration Number: \_\_\_\_\_

Years this Vendor has been in the Towing and Recovery Business: \_\_\_\_\_ years.

Names of ultimate equitable Owner/Owners and Officers:

- |       |                                   |
|-------|-----------------------------------|
| _____ | Years experience in towing: _____ |
| _____ | Years experience in towing: _____ |
| _____ | Years experience in towing: _____ |
| _____ | Years experience in towing: _____ |

The date the Vendor began operating under this name: \_\_\_\_\_

Locations (City/County): \_\_\_\_\_

Complete this form for each garage or tow yard:

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

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Does the applicant own or lease the business buildings and/or adjoining land at each of these sites?

Please explain: \_\_\_\_\_  
\_\_\_\_\_

If leased, provide the owners name and address and term of the lease:

Owner's Name: \_\_\_\_\_ Term of lease(s): \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Indicate dates leases expire. \_\_\_\_\_ Is there an option to renew? \_\_\_\_\_

How long has the garage or tow yard been operating at this location? \_\_\_\_\_

Size of garage: \_\_\_\_\_

List hours of Operation for the:

Garage \_\_\_\_\_ to \_\_\_\_\_ Tow Yard office \_\_\_\_\_ to \_\_\_\_\_

Name of business if the garage is used as a vehicle repair business.

\_\_\_\_\_ Number of mechanics \_\_\_\_\_

Size of secure storage yard \_\_\_\_\_ Is it fenced? \_\_\_\_\_

List the types of additional security arrangements or elements utilized

\_\_\_\_\_  
\_\_\_\_\_

Indicate the closest access point to the highway coverage areas you've checked in Exhibit "C" and route to be taken from your

garage: \_\_\_\_\_

Distance from garage to this Highway access point \_\_\_\_\_Miles

Travel time for a Recovery Truck to the access point: Day \_\_\_\_\_ Night \_\_\_\_\_

### **Wreckers and Equipment**

List on the following page, each of the Recovery Trucks that will be used to qualify for this contract with the following detailed information:

#### **TRUCK CHASSIS:**

1. Make and model and year
2. V I N
3. GVW, Wheel base, Number of axles
4. Engine make, horsepower and torque output
5. Details of driveline
6. Push Bumper (Yes or No)

#### **RECOVERY WRECKER:**

1. Wrecker and body manufacturer and model
2. Winch capacity
3. Boom capacity and reach
4. Under-lift capacity and reach

#### **MOBILE CRANE – if substituted for the Rotator type wrecker**

1. Crane and body manufacturer and model
2. Winch capacity
3. Boom capacity and reach
4. All crane operators shall have OSHA crane operator certification

*(Refer to Attachment "C", Equipment and Vehicle Requirements.)*

**Description of Recovery Wrecker Equipment**

**UNIT #1:**

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**UNIT #2:**

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Optional

**OTHER UNITS:**

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### **Additional Trucks and Heavy Equipment**

List with a detailed description all additional Vendor-owned or leased equipment that is required for this contract.

(See the listed equipment requirements)

**For each piece of equipment indicate:**

**Make, model, capacity, year, Serial number or VIN:**

**Use additional sheets as needed**

**Subcontractor Equipment and Service Providers**

List your subcontracted service providers with which agreements exist to respond to the District on a 24-hour basis as required by this contract.

**Indicate company name, address, phone, type of equipment and location the equipment will be deployed from:**

**Use additional sheets as needed**

**STAFF**

**Qualifications and Experience**

List of all Operators including Owners

Note: This information will be used to qualify the Vendor and if needed for background and security checks

**Full Name:**

**CDL Type and License number:**

**State of Issue:**

**Date of birth:**

**Date of hire:**

Provide complete detailed description of towing experience, formal training attended and certification level attained along with dates:

(Please indicate if the employee is in training)

**Use additional sheets as needed**



**Attach Project description, dates, photos and locations of successfully completed projects.**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**MBE PLANNED UTILIZATION**

375-040-24  
PROCUREMENT  
12/09

PROCUREMENT NO. \_\_\_\_\_ FINANCIAL PROJECT NO. \_\_\_\_\_  
(DEPARTMENT USE ONLY)

DESCRIPTION: \_\_\_\_\_

I, \_\_\_\_\_, \_\_\_\_\_  
(name) (title)

of \_\_\_\_\_

plan to subcontract at least \_\_\_\_\_ % (percent) of the project costs on the above referenced project to Minority Business Enterprises.

If I have indicated above that a portion of the project costs will be subcontracted to MBE(s), the firms considered as proposed subconsultants/contractors and the types of services or commodities to be subcontracted are as follows:

MBE SUBCONSULTANTS/CONTRACTORS

TYPES OF SERVICES/COMMODITIES

I understand that I will need to submit Minority Business Enterprises (MBE) payment certification forms to the Department for reporting purposes only.

Signed: \_\_\_\_\_

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

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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STANDARD WRITTEN AGREEMENT**

375-040-19  
PROCUREMENT  
OGC - 12/13  
Page 1 of 8

Agreement No.: \_\_\_\_\_

Financial Project I.D.: \_\_\_\_\_

F.E.I.D. No: \_\_\_\_\_

Appropriation Bill Number(s)/Line Item Number(s) for 1st year of contract, pursuant to s. 216.313, F.S.: \_\_\_\_\_

*(required for contracts in excess of \$5 million)*

Procurement No.: \_\_\_\_\_

D.M.S. Catalog Class No.: \_\_\_\_\_

BY THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the "Department" and

of \_\_\_\_\_  
duly authorized to conduct business in the State of Florida, hereinafter called "Vendor," hereby agree as follows:

1. SERVICES AND PERFORMANCE

A. In connection with \_\_\_\_\_,

the Department does hereby retain the Vendor to furnish certain services, information, and items as described in Exhibit "A," attached hereto and made a part hereof.

B. Before making any additions or deletions to the work described in this Agreement, and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into an Amendment covering such work and compensation. Reference herein to this Agreement shall include any amendment(s).

C. All tracings, plans, specifications, maps, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, shall be the exclusive property of the Department without restriction or limitation on their use and shall be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Vendor shall not copyright any material and products or patent any invention developed under this Agreement. The Department shall have the right to visit the site for inspection of the work and the products of the Vendor at any time.

D. All final plans, documents, reports, studies, and other data prepared by the Vendor shall bear the professional's seal/signature, in accordance with the applicable Florida Statutes, Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the statutes or rules create a conflict with the requirements of published guidelines, requirements of the statutes and rules shall take precedence.

E. The Vendor agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department shall be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. Coordination shall be maintained by the Vendor with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to this Agreement may request and be granted a conference.

F. All services shall be performed by the Vendor to the satisfaction of the Director who shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount of value thereof; and the decision upon all claims, questions, and disputes shall be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and amendment(s) shall be entered into by the parties in accordance herewith.

Reference herein to the Director shall mean the

## 2. TERM

- A. Initial Term. This Agreement shall begin on date of execution and shall remain in full force and effect through completion of all services required or \_\_\_\_\_, whichever occurs first. Subsequent to the execution of this Agreement by both parties, the services to be rendered by the Vendor shall commence and be completed in accordance with the option selected below. (Select box and indicate date(s) as appropriate):

- Services shall commence \_\_\_\_\_ and shall be completed by \_\_\_\_\_ or date of termination, whichever occurs first.
- Services shall commence upon written notice from the Department's Contract Manager and shall be completed by \_\_\_\_\_ or date of termination, whichever occurs first.
- Other: See Exhibit "A"

- B. RENEWALS (Select appropriate box):

- This Agreement may not be renewed.
- This Agreement may be renewed for a period that may not exceed three (3) years or the term of the original contract, whichever is longer. Renewals are contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds. Costs for renewal may not be charged. Any renewal or extension must be in writing and is subject to the same terms and conditions set forth in this Agreement and any written amendments signed by the parties.

- C. EXTENSIONS. In the event that circumstances arise which make performance by the Vendor impracticable or impossible within the time allowed or which prevent a new contract from being executed, the Department, in its discretion, may grant an extension of this Agreement. Extension of this Agreement must be in writing for a period not to exceed six (6) months and is subject to the same terms and conditions set forth in this Agreement and any written amendments signed by the parties; provided the Department may, in its discretion, grant a proportional increase in the total dollar amount based on the method and rate established herein. There may be only one extension of this Agreement unless the failure to meet the criteria set forth in this Agreement for completion of this Agreement is due to events beyond the control of the Vendor.

It shall be the responsibility of the Vendor to ensure at all times that sufficient time remains in the Project Schedule within which to complete services on the project. In the event there have been delays which would affect the project completion date, the Vendor shall submit a written request to the Department which identifies the reason(s) for the delay and the amount of time related to each reason. The Department shall review the request and make a determination as to granting all or part of the requested extension.

## 3. COMPENSATION AND PAYMENT

- A. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Section 215.422(14), Florida Statutes.
- B. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.
- C. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- D. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, shall be submitted in accordance with Section 112.061, Florida Statutes, and Chapter 3 - Travel, Department's Disbursement Operations Manual, 350-030-400.
- E. Vendors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless otherwise specified herein. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

- F. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- G. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(22), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which the Vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall pay the transaction fee pursuant to Rule 60A-1.031 (2), Florida Administrative Code. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Vendor shall receive a credit for any transaction fee paid by the Vendor for the purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor'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 Vendor in default and recovering reprourement costs from the Vendor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.
- H. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all subcontractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Department for a proper audit of project costs.
- J. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

#### 4. INDEMNITY AND PAYMENT FOR CLAIMS

- A. **INDEMNITY:** To the extent permitted by Florida Law, the Vendor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Vendor and persons employed or utilized by the Vendor in the performance of this Agreement.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

**PAYMENT FOR CLAIMS:** The Vendor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Vendor or any subcontractor, in connection with the Agreement. The Department's final acceptance and payment does not release the Vendor's bond until all such claims are paid or released.

B. LIABILITY INSURANCE. (Select and complete as appropriate):

- No general liability insurance is required.
- The Vendor shall carry and keep in force during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with a combined bodily injury limits of at least \$ \_\_\_\_\_ per person and \$ \_\_\_\_\_ each occurrence, and property damage insurance of at least \$ \_\_\_\_\_ each occurrence, for the services to be rendered in accordance with this Agreement.
- The Vendor shall have and maintain during the term of this Agreement, a professional liability insurance policy or policies or an irrevocable letter of credit established pursuant to Chapter 675 and Section 337.106, Florida Statutes, with a company or companies authorized to do business in the State of Florida, affording liability coverage for the professional services to be rendered in accordance with this Agreement in the amount of \$ \_\_\_\_\_ .

C. WORKERS' COMPENSATION. The Vendor shall also carry and keep in force Workers' Compensation insurance as required for the State of Florida under the Workers' Compensation Law.

D. PERFORMANCE AND PAYMENT BOND. (Select as appropriate):

- No Bond is required.
- Prior to commencement of any services pursuant to this Agreement and at all times during the term hereof, including renewals and extensions, the Vendor will supply to the Department and keep in force a bond provided by a surety authorized to do business in the State of Florida, payable to the Department and conditioned for the prompt, faithful, and efficient performance of this Agreement according to the terms and conditions hereof and within the time periods specified herein, and for the prompt payment of all persons furnishing labor, materials, equipment, and supplies therefor.

E. CERTIFICATION. With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Vendor shall provide to the Department certificates showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Contract. Policies that include Self Insured Retention (SIR) will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.

5. COMPLIANCE WITH LAWS

- A. The Vendor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Specifically, if the Vendor is acting on behalf of a public agency the Vendor shall:
- (1) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the Vendor.
  - (2) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
  - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
  - (4) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Vendor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

Failure by the Vendor to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department. The Vendor shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of the Vendor and shall promptly provide the Department a copy of the Vendor's response to each such request.

- B. The Vendor agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise discuss or permit to be disclosed or discussed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department's Contract Manager and securing prior written consent. The Vendor also agrees that it shall not publish, copyright, or patent any of the data developed under this Agreement, it being understood that such data or information are works made for hire and the property of the Department.
- C. The Vendor shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- D. If the Vendor is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then Section 337.162, Florida Statutes, applies as follows:
- (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.
  - (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.
  - (3) Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to Chapter 455, Florida Statutes, and applicable state law.
- E. The Vendor covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Vendor further covenants and agrees that when a former state employee is employed by the Vendor, the Vendor shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Vendor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- F. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.
- G. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity.
- H. The Department shall consider the employment by any vendor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this agreement.
- I. Pursuant to Section 216.347, Florida Statutes, the vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

6. TERMINATION AND DEFAULT

- A. This Agreement may be canceled by the Department in whole or in part at any time the interest of the Department requires such termination. The Department reserves the right to terminate or cancel this Agreement in the event an assignment be made for the benefit of creditors.
- B. If the Department determines that the performance of the Vendor is not satisfactory, the Department shall have the option of (a) immediately terminating the Agreement, or (b) notifying the Vendor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the Department.
- C. If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Vendor, the Department shall notify the Vendor of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- D. If the Agreement is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Department and shall be turned over promptly by the Vendor.
- E. For Agreements \$1,000,000 and greater, if the Department determines the Vendor submitted a false certification under Section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall either terminate the Agreement after it has given the Vendor notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or maintain the Agreement if the conditions of Section 287.135 (4), Florida Statutes, are met.

7. ASSIGNMENT AND SUBCONTRACTS

- A. The Vendor shall maintain an adequate and competent staff so as to enable the Vendor to timely perform under this Agreement and may associate with it such subcontractors, for the purpose of its services hereunder, without additional cost to the Department, other than those costs within the limits and terms of this Agreement. The Vendor is fully responsible for satisfactory completion of all subcontracted work. The Vendor, however, shall not sublet, assign, or transfer any work under this Agreement to other than subcontractors specified in the proposal, bid, and/or Agreement without the written consent of the Department.

- B. Select the appropriate box:

- The following provision is not applicable to this Agreement:
- The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles that are the subject of, or required to carry out this Agreement 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 Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for the state agency (Department) insofar as dealings with such qualified nonprofit agency are concerned. RESPECT of Florida provides governmental agencies within the State of Florida with quality products and services produced by persons with disabilities. Available pricing, products, and delivery schedules may be obtained by contacting:

RESPECT  
2475 Apalachee Pkwy  
Tallahassee, Florida 32301-4946  
Phone: (850)487-1471



The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out this Agreement shall be purchased from the corporation identified under Chapter 946, Florida Statutes, in the same manner and under the procedures set forth in Sections 946.515(2) and (4), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for this agency (Department) insofar as dealings with such corporation are concerned. The "corporation identified" is Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises  
12425 - 28th Street, North  
St. Petersburg, FL 33716-1826  
(800)643-8459

This Agreement involves the expenditure of federal funds and Section 946.515, Florida Statutes, as noted above, does not apply. However, Appendix I is applicable to all parties and is hereof made a part of this Agreement.

## 8. MISCELLANEOUS

- A. The Vendor and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Vendor and its employees, agents, representatives, or subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of the Vendor or its employees, agents, representatives, or subcontractors. Vendor agrees to include this provision in all its subcontracts under this Agreement.
- B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Vendor.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- F. In any legal action related to this Agreement, instituted by either party, the Vendor hereby waives any and all privileges and rights it may have under Chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Department and in the event that any such legal action is filed by the Vendor, the Vendor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.
- G. If this Agreement involves the purchase or maintenance of information technology as defined in Section 282.0041, Florida Statutes, the selected provisions of the attached Appendix II are made a part of this Agreement.
- H. If this Agreement is the result of a formal solicitation (Invitation to Bid, Request for Proposal or Invitation to Negotiate), the Department of Management Services Forms PUR1000 and PUR1001, included in the solicitation, are incorporated herein by reference and made a part of this Agreement.

I. Vendor/Contractor:

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

J. Time is of the essence as to each and every obligation under this Agreement.

K. The following attachments are incorporated and made a part of this agreement:

L. Other Provisions:

SAMPLE

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

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Name of Vendor

BY: \_\_\_\_\_  
Authorized Signature

BY: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
(Print/Type)

\_\_\_\_\_  
(Print/Type)

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

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

FOR DEPARTMENT USE ONLY

APPROVED: \_\_\_\_\_

LEGAL REVIEW: \_\_\_\_\_

Procurement Office \_\_\_\_\_

**State of Florida**  
**PUR 1000**  
**General Contract Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

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

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

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

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

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

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

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

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

**12. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to

cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

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

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

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

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

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

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

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

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

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

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

**18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dhis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

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

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

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

**20. Limitation of Liability.** For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

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

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

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

**23. Termination for Cause.** The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

**24. Force Majeure, Notice of Delay, and No Damages for Delay.** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE**



**FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

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

**26. Renewal.** Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

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

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

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

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

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

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

**28. Advertising.** Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

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

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

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

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

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

**33. Security and Confidentiality.** The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's

confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

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

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

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

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

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

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

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

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

nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

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

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

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

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

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

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

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

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

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

- (a) "Buyer" means the entity that has released the solicitation. The "Buyer" may also be the "Customer" as defined in the PUR 1000 if that entity meets the definition of both terms.
- (b) "Procurement Officer" means the Buyer's contracting personnel, as identified in the Introductory Materials.
- (c) "Respondent" means the entity that submits materials to the Buyer in accordance with these Instructions.
- (d) "Response" means the material submitted by the respondent in answering the solicitation.
- (e) "Timeline" means the list of critical dates and actions included in the Introductory Materials.

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

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

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

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

- Technical Specifications,

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

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

**5. Questions.** Respondents shall address all questions regarding this solicitation to the Procurement Officer. Questions must be submitted via the Q&A Board within MyFloridaMarketPlace and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline. Questions shall be answered in accordance with the Timeline. All questions submitted shall be published and answered in a manner that all respondents will be able to view. Respondents shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the MyFloridaMarketPlace site for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained within the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 19 of these Instructions.

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

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

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

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

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

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

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
- The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
- The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
  - Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
  - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The product offered by the respondent will conform to the specifications without exception.
- The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

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

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

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

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

**13. Electronic Posting of Notice of Intended Award.** Based on the evaluation, on the date indicated on the Timeline the Buyer shall electronically post a notice of intended award at [http://fcn.state.fl.us/owa\\_vbs/owa/vbs\\_www.main\\_menu](http://fcn.state.fl.us/owa_vbs/owa/vbs_www.main_menu). If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected by the decision shall file with the Buyer a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone.

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

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

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

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

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



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

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

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

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

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

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