

State of Florida  
Department of Financial Services

Invitation to Bid (ITB)  
Number: DFS UP ITB 1718-08  
Appraisal Services

Procurement Officer:  
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**Attachments**

#	Name	Intentionally Omitted	Attached for Reference	To Be Completed and Returned
A	Standard Contract, including: Standard Contract Signature Page; Attachment 1, Standard Terms and Conditions; Attachment 2, Statement of Work; Attachment 4, Form PUR 1000, General Contract Conditions (PUR 1000); Addendum A, Public Records Requirements; and Addendum B, Data Security Requirements		✓	
B	Mandatory Criteria Certification			✓
C	Price Response Form			✓
D	Business Reference Form			✓
E	Award Preferences for Identical Evaluation of Responses Form		✓	

## **SECTION 1. INTRODUCTION**

### **1.1 PURPOSE**

The Department of Financial Services (Department), an agency of the state of Florida (State), is issuing this Invitation to Bid (ITB) to establish a contract for appraisal services. The solicitation will be administered through the Vendor Bid System (VBS). Respondents interested in submitting a Response must comply with all of the terms and conditions described in this ITB.

### **1.2 SOLICITATION OBJECTIVE**

The Department intends to enter into a contract for appraisal services using Attachment A, Standard Contract, hereby incorporated by reference. The Department intends to make a single award, however the Department reserves the right to award to one Respondent or multiple Respondents by region, or to make no award, as determined to be in the best interest of the State.

### **1.3 BACKGROUND**

The Department is responsible for the administration and enforcement of the Florida Disposition of Unclaimed Property Act (Act), Chapter 717, Florida Statutes (F.S.). The Act requires the Department to be custodian of contents from unclaimed safe deposit boxes and other unclaimed safekeeping repositories, and authorizes the Department to sell said contents if not reclaimed within a certain amount of time. The Department has determined that in order to meet its legal obligation to sell the unclaimed contents from safe deposit boxes and other safekeeping repositories at a reasonable bid, it must first obtain an accurate identification of the items and establish a minimum bid.

The Department currently contracts with an experienced, certified personal property appraiser that provides appraisal services for tangible property received from unclaimed safe deposit boxes and other safe keeping repositories. Items appraised include, but are not limited to: coins and currency; jewelry, including diamonds and other precious and semiprecious stones; gold, silver, platinum, and other precious metals; and items of commercial value such as knives, paintings, watches, stock certificates, historical documents, sports memorabilia, and stamp collections.

### **1.4 TERM**

The initial term of the Contract, as defined below, will be three (3) years beginning on the date of execution, and the Contract may be renewed for up to three (3) additional years in accordance with section 287.057, F.S.

### **1.5 DEFINITIONS**

The Form PUR 1001, General Instructions to Respondents (PUR 1001), found in Rule 60A-1.002, Florida Administrative Code (F.A.C.), is hereby incorporated by reference. In addition to the definitions in the PUR 1001, and the Standard Contract's Attachment 2, Statement of Work, and Attachment 4, PUR 1000, the following definitions also apply to this ITB:

Confidential Information - Any documents, data, or records that are confidential and not subject to disclosure pursuant to Chapter 119, F.S., the Florida Constitution, or any other authority.

Contract - The agreement that results from this competitive procurement, if any, between the Department and the Respondent identified as providing the lowest responsive bid.

Contractor(s) - The Respondent(s) that will be awarded a Contract pursuant to this solicitation.

Response - the formal response to an ITB.

Respondent - an entity that submits a Response to this ITB.

### **1.6 SPECIAL ACCOMMODATIONS**

Any person requiring a special accommodation due to a disability should contact the Department's Procurement Officer. Requests for accommodation for meetings must be made at least five (5) Business Days prior to the meeting.

### **1.7 PROCUREMENT OFFICER**

Pursuant to section 287.057(23), F.S., and the PUR 1001, section 21, the Procurement Officer is the sole point of contact from the date of release of this ITB until 72-hours after the notice of intended award is posted. Violation of this provision may be grounds for rejecting a Response.

The Procurement Officer is:

Becky Hale  
Government Analyst II  
Department of Financial Services  
Email: DFSpurchasing@myfloridacfo.com

Refer ALL inquiries in writing to the Procurement Officer by email. Responses to timely questions posed to the Procurement Officer will be posted on the VBS, at [http://myflorida.com/apps/vbs/vbs\\_www.main\\_menu](http://myflorida.com/apps/vbs/vbs_www.main_menu) in accordance with Section 2.1.1.2, below.

The Department will not talk to any vendors or their agents regarding a pending solicitation. Please note that questions will NOT be answered via telephone.

\*\*\*ALL EMAILS TO THE PROCUREMENT OFFICER SHALL CONTAIN THE SOLICITATION NUMBER IN THE SUBJECT LINE OF THE EMAIL\*\*\*

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**SECTION 2. ITB PROCESS**

**2.1 Overview of the ITB**

The ITB is a method of competitively soliciting a commodity or contractual service under Chapter 287, F.S. The ITB process involves two phases: Solicitation and Evaluation.

**2.1.1 Solicitation Phase**

**2.1.1.1 Pre-Response Conference**

The Department will hold an optional pre-Response conference for Respondents to ask questions informally. The pre-response conference will be held at the location specified in Section 2.2, Timeline, below. Attendance is not mandatory, although Respondents are strongly encouraged to attend.

**2.1.1.2 Question and Answer Period**

Respondents may submit written questions or requests for clarification regarding the terms, conditions, and requirements of the ITB and its attachments, and any processes described in those documents, to the Procurement Officer by email by the deadline listed in Section 2.2, Timeline, below. The Department will address all inquiries submitted by the deadline.

Questions do not constitute a formal protest of the specifications or of the solicitation. Responses to all written inquiries, and clarifications or addenda to the ITB, will be made through the VBS.

Each submission must have the solicitation number in the subject line of the email. Questions must be submitted in the following format to be considered:

Question #	Respondent	ITB Section	ITB Page #	Question

**2.1.1.3 Submission of Responses**

Once the Department posts the answers to the questions, Respondents may begin submitting Responses as indicated in Section 3.4, How to Submit a Response; however, Respondents are encouraged to submit their Responses no earlier than five (5) days prior to the submission deadline. Respondents must submit Responses by the deadline listed in Section 2.2, Timeline, below.

**2.1.1.4 Public Opening**

The Department will open the Responses in a public meeting at the date, time, and location noted in Section 2.2, Timeline. The Procurement Officer will review the entire Response to ensure that all required volumes were timely submitted. Prices will not be read aloud at the ITB Response opening.

**2.1.2 Evaluation Phase**

**2.1.2.1 Administrative Review**

All responses will be reviewed by the Procurement Officer to determine whether the Responses submitted are complete and whether the Responses meet the minimum mandatory criteria listed in Attachment B, Mandatory Criteria Certification. (Regarding the cure process, see Section 2.8, Response Qualification and Cure Process.) The Price Response for each complete Response that meets the minimum mandatory criteria listed in Attachment B, Mandatory Criteria Certification, will be evaluated by the Procurement Officer. The Procurement Officer will then compile the responsive Responses and make a determination of responsibility based on the business references and financial information.

**2.1.2.2 Bid Tabulation**

The Procurement Officer will complete the bid tabulation sheet and indicate the responsible and responsive Respondent with the lowest responsive bid. The bid tabulation sheet is then sent to the Chief Financial Officer or his designee for approval.

**2.2 TIMELINE**

The following schedule will be strictly adhered to in all actions relative to this solicitation. The Department reserves the right to adjust this schedule and, if adjusted, will notify participants in the solicitation by posting an addendum on VBS. It is the Respondent’s responsibility to check VBS on a regular basis for such updates.

<b>Timeline</b>	<b>Event Time Eastern Time (ET)</b>	<b>Event Date</b>
ITB posted on the VBS.		January 18, 2018
Pre-response conference (attendance is not mandatory). Department of Financial Services, Larson Building, 200 East Gaines Street, Room 116, Tallahassee, Florida 32399	10:00 a.m.	January 22, 2018
Deadline to submit questions to Procurement Officer.	5:00 p.m.	January 25, 2018
Department’s anticipated posting date for answers to Respondents’ questions on VBS.	3:00 p.m.	January 31, 2018
Deadline to submit Responses and all required documents to the Department. Responses will be opened at the deadline. Department of Financial Services, Larson Building – Room B-24, 200 E. Gaines Street, Tallahassee, FL 32399	3:00 p.m.	February 14, 2018
<b><u>Anticipated</u></b> date to post Notice of Intent to Award.		February 21, 2018
<b><u>Anticipated</u></b> Contract start date.		April 15, 2018

**2.3 ADDENDA/AMENDMENTS TO THE ITB**

The Department reserves the right to modify this ITB by issuing addenda and/or amendments. All changes to the ITB will be made through addenda or amendments posted on the VBS. It is the Respondent’s responsibility to check the VBS for any posted changes.

**2.4 CONTRACT FORMATION**

The Department will enter into a Contract with each Respondent awarded pursuant to Section 5, Award. The Contract will consist of the documents contained in Attachment A, Standard Contract, along with the Price Response submitted by the awarded Respondent(s).

The Department objects to and will not consider any additional terms or conditions submitted by a Respondent, including any appearing in documents attached as part of a Response, except those identified in the Contract. The Respondent must bring any perceived inconsistencies among any of the provisions of the ITB and its attachments to the attention of the Department prior to the submission of its Response. At any time during the solicitation, the Department may specifically identify and incorporate by reference any additional documents which are to be incorporated into the Contract. The Contract that results from this solicitation will be posted on the Internet on the Florida Accountability Contract Tracking System (FACTS) in accordance with section 215.985, F.S., “Transparency Florida Act.”

## **2.5 DISCLOSURE OF RESPONSE CONTENTS**

All documentation produced as part of the ITB will become the exclusive property of the Department and will not be returned to the Respondent unless its Response is withdrawn prior to the Response opening in accordance with Section 2.6, Withdrawal and Modification of Responses. Once the Procurement Officer opens the Response, the Response may be disclosed pursuant to a public records request, subject to any confidentiality claims and the timeframes identified in section 119.071(1)(b), F.S. Untimely responses will be maintained by the Department in accordance with the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

## **2.6 WITHDRAWAL AND MODIFICATION OF RESPONSES**

The Respondent may modify its Response at any time prior to the Response deadline (indicated in Section 2.2, Timeline) by submitting a request to the Procurement Officer. A submitted Response may be withdrawn if within seventy-two (72) hours after the deadline to submit Responses (indicated in Section 2.2, Timeline), the Respondent submits a signed, written request for withdrawal to the Procurement Officer.

## **2.7 CLARIFICATION PROCESS**

The Department may request clarification from the Respondent for the purpose of resolving ambiguities or questioning information presented in the Response. Clarifications may be requested throughout the solicitation process. The Respondent's answers to requested clarifications must be in writing and must address only the information requested. The Respondent's answers to requested clarifications must be submitted to the Department within the time specified by the Department in the requested clarification.

## **2.8 RESPONSE QUALIFICATION AND CURE PROCESS**

In the interest of maximizing competition, the Response qualification and cure process seeks to minimize, if not eliminate, Respondent disqualifications resulting from nonmaterial, curable deficiencies in the Respondent's Volume One, Response Qualification Documents, portion of the Response. During the Administrative Review portion of the evaluation, if the Department determines that a nonmaterial, curable deficiency in the Response will result in the disqualification of a Respondent, the Department may notify the Respondent of the deficiency and a timeframe within which to provide the information. This process is at the sole discretion of the Department; therefore, the Respondent is advised to ensure that its Response is compliant with the ITB at the time of submittal.

## **2.9 INFORMATION FROM OTHER SOURCES**

The Department reserves the right to seek information from outside sources regarding the Respondent and the Respondent's offerings, capabilities, references, and performance, if the Department determines that such information is pertinent to the ITB. The Department may consider such information throughout the solicitation process including, but not limited to, determining whether the award is ultimately in the best interest of the State. This may include, but is not limited to, the Department engaging consultants, subject matter experts, and others to ensure that the Department has a complete understanding of the information provided pursuant to the solicitation.

## **2.10 DIVERSITY**

The Department is dedicated to fostering the continued development and economic growth of minority-, veteran-, and women-owned small businesses. Participation of a diverse group of Respondents doing business with the State is central to the Department's effort. To this end, minority-, veteran-, and women-owned small business enterprises are encouraged to participate in the State's procurement process as both prime contractors and subcontractors.

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## **SECTION 3. RESPONSE INSTRUCTIONS**

### **3.1 INSTRUCTIONS TO RESPONDENTS**

This section contains the General Instructions (PUR 1001) and Special Instructions to Respondents. The PUR 1001 can be accessed at

[http://dms.myflorida.com/business\\_operations/state\\_purchasing/documents\\_forms\\_references\\_resources/purchasing\\_for\\_ms](http://dms.myflorida.com/business_operations/state_purchasing/documents_forms_references_resources/purchasing_for_ms).

The following sections of the PUR 1001 are inapplicable:

#### **Section 3. Electronic Submission of Responses**

Responses shall be submitted in accordance with Section 3.4, How to Submit a Response, below.

#### **Section 5. Questions**

Questions shall be submitted in accordance with Section 2.1.1.2, Question and Answer Period, above.

The Special Instructions are in the remaining sections of this Section 3. In accordance with Rule 60A-1.002, F.A.C., in the event any conflict exists between the Special Instructions and General Instructions, the Special Instructions shall prevail.

### **3.2 MYFLORIDAMARKETPLACE (MFMP) REGISTRATION**

The awarded Respondent(s) must have a current vendor registration in MFMP, at <https://vendor.myfloridamarketplace.com/>, prior to contract execution.

The awarded Respondent(s) will be required to pay the transaction fees specified in PUR 1000, section 14, unless an exemption has been requested and approved prior to the award of the contract pursuant to Rule 60A-1.031, F.A.C.

### **3.3 WHO MAY RESPOND**

The Department will evaluate Responses from responsive and responsible Respondents that meet the requirements of Attachment B, Mandatory Criteria Certification, and provide the mandatory documentation listed in the Mandatory Criteria Certification and elsewhere in this solicitation.

### **3.4 HOW TO SUBMIT A RESPONSE**

The Respondent must submit:

- One original version of each volume of the Response.
  - The Respondent must include the originals of any documents required to be signed as part of the Response. The Respondent must label the cover and spine of the volumes “Original – Volume \_\_\_\_, Binder \_\_\_\_ of \_\_\_\_,” and include the Respondent’s name, and the ITB number.
- One (1) copy of Volume Two (Price Response).
- One (1) scanned copy of the entire Response and price sheet on a CD-ROM or flash drive, with large files scanned as navigable, separate .pdf files.
- One (1) REDACTED scanned copy of the Response, to include one (1) Confidential Information index, if applicable (see Section 3.8, Confidential Response Materials and Redacted Submissions) on a CD-ROM or flash drive. The Respondent must ensure that all metadata has been removed from the files in the redacted copy.

Respondents must deliver the Responses in sealed packages to the Purchasing Office at 200 East Gaines Street, Larson Building, Room B24 – Office of Purchasing and Contractual Services, Tallahassee, Florida 32399-0317, by the deadline listed in Section 2.2, Timeline. The Respondent must clearly label the outside of the sealed packages with the ITB number and the Respondent’s name.

### **3.5 CONTENTS OF RESPONSE**

It is a mandatory requirement of this ITB that the Response contain all of the documents listed below. The Respondent shall organize the contents of each Response submittal as follows:

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## **Volume One: Response Qualification Documents**

- Cover Letter
- Attachment B, Mandatory Criteria Certification, and associated required documentation
- Financial Documentation
- Attachment D, Completed Business Reference Forms

## **Volume Two: Price Response**

- Attachment C, Price Response Form (Separately Sealed)

### **3.6 VOLUME ONE: RESPONSE QUALIFICATION DOCUMENTS**

#### **3.6.1 Cover Letter**

The Respondent must provide a cover letter on the Respondent's letterhead with the following information:

- Name and principal place of business of the Respondent
- Primary location at which the work will be performed

#### **3.6.2 Mandatory Criteria Certification and Required Documentation**

The Respondent must complete and submit Attachment B, Mandatory Criteria Certification. The Respondent must complete the form by checking "Yes" or "No" next to each question, unless otherwise indicated in the question, and signing the bottom. Completion of this form is mandatory. The Respondent must meet the qualifications identified in Attachment B to be considered for award. If any criteria listed on Attachment B indicates that supporting documentation is necessary, the Respondent must provide the supporting documentation with Attachment B. The Department will not evaluate a Response from a Respondent who answers "No" to any of the criteria. Failure to meet mandatory requirements will cause rejection of the Response or termination of the Contract.

#### **3.6.3 Financial Documentation**

The Respondent must submit a letter(s) (Financial Certification), signed on or after January 1, 2018, from a surety company or bonding agent authorized to do business in the State, and written on company letterhead, that documents the Respondent's present ability to obtain a fidelity bond and performance bond (or, in lieu of performance bond, an irrevocable letter of credit) that are each in the amount of at least \$100,000. Failure by the Respondent to provide this Financial Certification with its Response will be considered material and will result in the Response being deemed nonresponsive.

#### **3.6.4 Business References**

The Respondent shall complete and attach Attachment D, Business References Form, for at least five (5) references. The references must be from clients to whom the Respondent either: 1) currently provides services; or 2) has provided services within the three (3) years preceding the date this ITB was posted.

### **3.7 VOLUME TWO: PRICE RESPONSE (SEPARATELY SEALED)**

The Respondent must complete and return the Price Response Form.

### **3.8 CONFIDENTIAL RESPONSE MATERIALS AND REDACTED SUBMISSIONS**

In addition to the public records requirements of the PUR 1001, section 19, if the Respondent considers any portion of its Response to be Confidential Information or exempt under Chapter 119, F.S., or other authority (Public Records Law), then the Respondent must simultaneously provide the Department with an unredacted version of the materials and a separate redacted electronic copy of the materials the Respondent claims as Confidential Information or exempt and briefly describe in writing the grounds for claiming exemption from the Public Records Law and state the specific statutory citation for each exemption.

The Respondent shall mark the unredacted version of the document as "Unredacted Version – Contains Confidential Information" and place such information in an encrypted electronic form or a sealed separate envelope.

### **3.8.1 Redacted Submissions**

If submitting a redacted version of its Response, the Respondent shall mark the redacted electronic copy with the Respondent's name, the Department's ITB name and number, and the words "Redacted Copy." The Redacted Copy should only redact those portions of material that the Respondent claims are Confidential Information or exempt from Public Records Law. An entire Response should not be redacted. An entire page or paragraph which contains Confidential Information or exempt material should not be redacted unless the entire page or paragraph is wholly Confidential Information or exempt from Public Records Law. In the Redacted Copy, the Respondent shall redact and maintain in confidence any materials the Department provides or seeks regarding security of a proposed technology system or information subject to sections 119.011(14), 119.071(1)(f), and 119.071(3), F.S.

In addition, the Respondent should submit a separate index listing the Confidential Information or exempt portions of its Response. The index should briefly describe in writing the grounds for claiming exemption from the Public Records Law, including the specific statutory citation for such exemption.

The Redacted Copy will be used to fulfill public records and other disclosure requests and will be posted on the FACTS website. In addition, the Department will follow the procedures identified in the Contract as Addendum A, Public Records Requirements, if the Department receives a further request for Confidential Information or exempt material that has been clearly identified as such in writing by the Respondent.

By submitting a Response, the Respondent agrees to protect, defend, and indemnify the Department for any and all claims arising from or relating to the Respondent's determination that the redacted portions of its Response are Confidential Information or otherwise not subject to disclosure. If the Respondent fails to submit a Redacted Copy of its Response, the Department is authorized to produce the entire unredacted Response submitted to the Department in response to a public records request.

### **3.9 ADDITIONAL INFORMATION**

By submitting the Response, Respondent certifies that it agrees to and satisfies all mandatory requirements specified in the ITB. At any time during the solicitation process, the Department may request, and the Respondent must provide, supporting information or documentation. Failure to supply supporting information or documentation as required and requested may result in disqualification or rejection of the Response.

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## **SECTION 4. SELECTION METHODOLOGY**

### **4.1 MANDATORY CRITERIA**

In the Administrative Review, the Procurement Officer will review Attachment B, Mandatory Criteria Certification, and make a determination of responsiveness. The Procurement Officer will also ensure that all documents that were labeled as "Mandatory" in this ITB have been submitted by the Respondent. Only those Responses that meet the mandatory criteria and contain all the mandatory documentation, including those Responses that meet these requirements after a timely cure, will be considered for award.

### **4.2 PRICE RESPONSE**

The Procurement Officer will evaluate the Price Response from responsible and responsive Respondents. The price for the entire Contract term, including renewal years, will be totaled to determine the lowest bid.

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## **SECTION 5. AWARD**

### **5.1 BASIS OF AWARD**

A Contract(s) may be awarded to the responsible and responsive Respondent(s) that submit(s) the lowest responsive bid(s). The Department reserves the right to award regional contracts for all or for part of the work contemplated by this solicitation.

The Department reserves the right to accept or reject any or all offers, or separable portions, and to waive any minor irregularity, technicality, or omission if the Department determines that doing so will serve the best interest of the State. The Department has the right to use any or all ideas or adaptations of the ideas presented in any Response. Selection or rejection of a Response will not affect this right.

Responses that do not meet all requirements, specifications, terms, and conditions of the solicitation or fail to provide all required information, documents, or materials may be rejected as non-responsive. Respondents whose Responses, past performance, or current statuses do not reflect the capability, integrity, or reliability to fully and in good faith perform the requirements of a contract may be rejected. The Department may request additional information pertaining to the Respondent's ability and qualifications to accomplish all services described in this ITB as deemed necessary during the ITB or after contract award.

### **5.2 AWARD PREFERENCES FOR IDENTICAL EVALUATIONS OF RESPONSES**

In the event that the ITB results in identical evaluations of Responses, the Department will provide Attachment E, Award Preference for Identical Evaluation of Responses Form, to the Respondents with Responses that resulted in the identical evaluations. Based on those forms, the Department will give the award to a Respondent if it is a minority-owned (which includes women-owned) or veteran-owned business. If more than one Respondent is entitled to this preference, the preference will be given to the Respondent that is the qualifying business of the smallest net worth, consistent with section 295.187(4)(b), F.S. If the award cannot be decided based on this preference, the Department will apply the criteria identified in subsections (1), (3), (4) of Rule 60A-1.011, F.A.C., in that order of precedence.

### **5.3 BID TABULATION**

The Department will develop a bid tabulation sheet that will result in a Contract(s) with the responsible and responsive Contractor(s) with the lowest responsive bid(s).

### **5.4 CHIEF FINANCIAL OFFICER'S APPROVAL**

The Chief Financial Officer or his designee will make the final decision as to which Respondent(s) should be awarded the Contract(s) based on the bid tabulation sheet.

### **5.5 POSTING OF DECISION**

The Department will post a notice of intended award, stating its intent to enter into one (1) or more Contracts with the Respondent(s) identified therein, on the VBS website ([http://vbs.dms.state.fl.us/vbs/main\\_menu](http://vbs.dms.state.fl.us/vbs/main_menu)). If the Department decides to reject all Responses, it will post its notice on the same VBS website.

### **5.6 ITEMS TO BE COMPLETED PRIOR TO CONTRACT EXECUTION**

Prior to execution of the Contract, the Contractor must perform a background check that, at a minimum, is equivalent to the Level 2 screening described in section 435.04, F.S., on all Contractor personnel (including any subcontractors or consultants) who will have access to the unclaimed items at the Division of Unclaimed Property's offices, and the Contractor must provide a copy of the results of such background check(s) to the Department. The Department reserves the right to reject proposed Contractor personnel based on the results of the background check. The Contractor is responsible for payment of, and retaining records relating to, employee background checks, which records are exempt from Chapter 119, F.S.

Prior to execution of the Contract, the Contractor shall also submit an insurance certificate(s) evidencing that it maintains all of the insurance coverage required by the Contract.

**5.7 EXECUTION OF CONTRACT**

The awarded Respondent shall sign the Contract within eight (8) calendar days of receipt of the Contract for execution, unless there is an automatic stay triggered by the filing of a formal protest. If a formal protest is timely filed, the time to sign the Contract shall be tolled. The Department reserves the right to withdraw its Notice of Intent to Award if the Contract is not timely signed, if it determines in its sole discretion that it is in the best interest of the State to do so. The Department also reserves the right to award to the Respondent ranked second if the Department does not receive a timely signed Contract from the awarded Respondent.

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DEPARTMENT OF FINANCIAL SERVICES

Standard Contract

ATTACHMENT A
DEPARTMENT OF FINANCIAL SERVICES
Standard Contract Signature Page

Contract Title P.O. No. or Solicitation No., if any Contract Number
DFS UP ITB 1718-08

1. This Contract is entered into between the Department of Financial Services and the Contractor named below:

The Department of Financial Services, 200 East Gaines St., Tallahassee, FL 32399 (hereinafter called the Department)

Contractor's Name (hereinafter called the Contractor)

2. Contract to Begin: Date of Completion: Renewals:
April 15, 2018 April 14, 2021 Up to 3 years

3. Performance Bond, if any: Other Bonds, if any:

4. Total Value for Contract Term: Total Value of Renewal(s): Total Value of Contract Term Plus Renewal(s):

5. Department's Contract Manager Contractor's Contract Manager
Name: Address: Phone: Name: Address: Phone:

6. The parties agree to comply with the terms and conditions of the following attachments which are hereby incorporated by reference:

- Attachment 1: Standard Terms and Conditions Applicable to Competitively Procured Contracts
Attachment 2: Statement of Work
Attachment 3: Completed Price Response Form
Attachment 4: PUR 1000

7. The parties agree to comply with the terms and conditions of the following addenda which are hereby incorporated by reference:

- Addendum A: Public Records Requirements
Addendum B: Data Security Requirements

IN WITNESS WHEREOF, this Contract is being executed by the parties and is effective on the date in the Contract Begin Date above or the last date signed below, whichever is later.

8.

CONTRACTOR

Contractor's Name (if other than individual, state whether corporation, partnership, etc.)

By (Authorized Signature) Date Signed

Printed Name and Title of Person Signing

9.

Department of Financial Services DEPARTMENT

By (Authorized Signature) Date Signed

Printed Name and Title of Person Signing

**DEPARTMENT OF FINANCIAL SERVICES  
STANDARD TERMS AND CONDITIONS  
APPLICABLE TO COMPETITIVELY PROCURED CONTRACTS  
DFS UP ITB 1718-08**

**ATTACHMENT 1**

**1. Entire Contract.**

This Contract, including any Attachments and Addenda referred to herein and attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any preprinted contract terms and conditions included on Contractor's forms or invoices shall be null and void.

**2. Contract Administration.**

- a. Order of Precedence. If there are conflicting provisions the documents that make up the Contract, the order of precedence for the documents is as follows:
  - i) Attachment 2, Statement of Work
  - ii) Standard Contract Signature Page
  - iii) Attachments other than Attachments 1, 2, and 4, in the numerical order designated in the Standard Contract Signature Page
  - iv) Attachment 1, Standard Terms and Conditions Applicable to Competitively Procured Contracts
  - v) Attachment 4, Form PUR 1000, General Contract Conditions
  - vi) The Addenda in alphabetical order as designated in the Standard Contract
- b. All written and verbal approvals referenced in this Contract must be obtained from the parties' Contract Managers, or designees, referenced in the Standard Contract Signature Page.
- c. In the event that different Contract Managers are designated by either party after execution of this Contract, notice of the name and contact information of the new Contract Manager shall be submitted in writing to the other party and maintained in the respective parties' Contract records.
- d. This Contract may be amended only by a written agreement between both parties.

**3. Contract Duration.**

- a. Term. The term of the Contract shall begin and end on the dates indicated on the Standard Contract Signature Page unless terminated earlier in accordance with the applicable terms and conditions.
- b. Renewals. Section 287.058(1)(g), F.S., is hereby incorporated by reference and any renewals provided under the Contract must meet the requirements of this statute. If the Standard Contract Signature Page indicates renewals are available, the Contract may be renewed for the timeframe(s) indicated in the Standard Contract Signature Page.

**4. Deliverables.**

The Contractor agrees to render the services or other units of deliverables as set forth in the Attachment 2, Statement of Work. The services or other units of deliverables specified in the above paragraph shall be delivered in accordance with the schedule and at the pricing outlined in the Statement of Work. Deliverables may be comprised of tasks or activities that must be completed prior to the Department making payment on that deliverable.

**5. Performance Measures.**

The Contractor warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Statement of Work; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees shall comply with any security requirements and processes as provided by the Department, or provided by the Department's customer, for work done at the Department or other locations. The Department reserves the right to investigate or inspect at any time whether the services or qualifications offered by the Contractor meet the Contract requirements. Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable/minimum requirement does not foreclose the Department's remedies in the event those performance standards that cannot be readily measured at the time of delivery are not met.



## **6. Acceptance of Deliverables.**

- a. Acceptance Process. All deliverables must be received and accepted in writing by the Contract Manager before payment.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables as outlined in the Statement of Work as incomplete, inadequate, or unacceptable due in whole or in part to the Contractor's lack of satisfactory performance under the terms of this Contract. Failure to use the appropriate technical requirements or complete all tasks or activities as identified in the Statement of Work will result in automatic deliverable rejection and may not be invoiced or paid until correction of the deliverable. Failure to complete the required duties as outlined in the Statement of Work will result in the rejection of the invoice. The Department, at its option, may allow additional time within which the Contractor may remedy the objections noted by the Department and the Department may, after having given the Contractor a reasonable opportunity to complete or make acceptable said deliverables, declare this Contract to be in default. If the Contract Manager rejects the deliverables, the Contractor shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time, at the Contractor's expense. If the Contract Manager does not accept the deliverables within thirty (30) days, they will be deemed rejected.
- c. Status Reports. If status reports are required as part of the Contract, the Contractor shall timely submit status reports showing deliverables, tasks, or activities worked on, attesting to the level of services provided, hours spent on each deliverable/task/activity, and upcoming major deliverables, tasks, or activities.
- d. Completion Criteria and Date. The Contract will be considered complete once all of the deliverables under the Contract have been provided and accepted. The final date for completion of the Contract shall not exceed the Contract duration, including any executed renewals or extensions, or, where applicable, the expiration date of any purchase orders made from the Contract.

## **7. Financial Consequences for Nonperformance.**

Withholding Payment. In addition to the specific consequences explained in the Statement of Work, the state of Florida (State) reserves the right to withhold payment when the Contractor has failed to perform/comply with provisions of this Contract. These consequences for nonperformance shall not be considered penalties.

## **8. Dispute Resolution.**

Any claim, counterclaim, or dispute between the Department and the Contractor relating to this Contract shall be resolved as set forth herein. For all claims, the party with the dispute shall submit an affidavit executed by that party's Contract Manager or his or her designee certifying that:

- i. The claim is made in good faith,
- ii. The claim accurately reflects the adjustments for performance, and
- iii. The supporting data provided with such an affidavit are current and complete to the Contract Manager's best knowledge and belief.

The Contractor is obligated to address any cost related issues with the Department for which the Contractor believes the State is liable and address all costs of every type to which the Contractor is entitled from the occurrence of the claimed event. The Contractor shall not seek a claim under this Contract for an increase in payment.

- a. Informal Resolution Process. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Department's Chief Financial Officer (CFO), or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
  - i. The representatives of the Contractor and the Department shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter at issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
  - ii. During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to this Contract will be honored in order that each of the parties may be fully advised of the other's position.
  - iii. The specific format for the discussions will be left to the discretion of the designated Department's and Contractor's representatives but may include the preparation of agreed upon statements of fact or written statements of position.
  - iv. Following the completion of this process, the Department, or designee, shall issue a written opinion regarding the issue(s) in dispute. The opinion regarding the dispute shall be considered the Department's final action.

- b. Continued Performance. Each party agrees to continue performing its obligations under this Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute with the Department over compensation shall not be deemed to preclude performance) and without limiting either party's right to terminate this Contract for convenience or default.

**9. Payment.**

- a. Payment Process. Subject to the terms and conditions established by the Statement of Work, the pricing per deliverable established by the Attachment C, Price Response, or Statement of Work, and the billing procedures established by the Department, the Department agrees to pay the Contractor for services rendered in accordance with section 215.422, F.S. To obtain the applicable interest rate, please refer to <http://www.myfloridacfo.com/Division/AA/Vendors/default.htm>
- b. Vendor Rights. A Vendor Ombudsman has been established within the Department. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be reached at (850) 413-5516.
- c. Taxes. The Department is exempted from payment of Florida State sales and use taxes and Federal Excise Tax. The Contractor, however, shall not be exempted from paying Florida State sales and use taxes to the appropriate governmental agencies or for payment by the Contractor to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Contractor shall not use the Department's exemption number in securing such materials. The Contractor shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Contract. The Contractor shall provide the Department its taxpayer identification number upon request.
- d. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by the Department pursuant to the Statement of Work, shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed.
- e. Interim Payments. Interim payments may be made by the Department at its discretion under extenuating circumstances if the completion of services and other units of deliverables to date have first been accepted in writing by the Department's Contract Manager.

**10. Insurance.**

- a. Required Coverage. At all times during the duration of the Contract, the Contractor, at its sole expense, and its subcontractors, if any, shall maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with the Contract. 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 licensed and authorized to write policies in Florida. Unless specifically exempted in the Statement of Work, the following are the minimum insurance requirements applicable to this Contract:
  - i. Commercial General Liability Insurance.  
By execution of this Contract, unless the Contractor is a state agency or subdivision as defined by subsection 768.28(2), F.S., the Contractor shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Contract. A self-insurance program established and operating under the laws of the State may provide such coverage. The Department shall be named as an additional insured on any general liability policies.
  - ii. Workers' Compensation and Employer's Liability Coverage.  
The Contractor shall provide workers' compensation, in accordance with Chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any Contract work.
  - iii. Other Insurance.  
At all times during the duration of the Contract, the Contractor shall maintain any other insurance as required in the Statement of Work.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor providing such insurance.
- c. Verification of Insurance. Upon execution of the Contract, the Contractor shall provide the Department written verification of the existence and amount for each type of applicable insurance coverage. Upon receipt of

written request from the Department, the Contractor shall furnish the Department proof of applicable insurance coverage by standard form certificates of insurance.

- d. Failure to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, the Contractor shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage.

#### **11. Termination.**

- a. Contractor Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination, and except as otherwise directed by the Department, the Contractor shall stop performing services on the date, and to the extent specified, in the notice. The Contractor shall accept no further work or new services related to the affected deliverables, and shall, as soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate any orders and/or subcontracts related to the terminated deliverables and settle all outstanding liabilities and all claims arising out of such termination of orders and/or subcontracts, with the approval or ratification of the Department to the extent required, which approval or ratification shall be final for the purpose of this section. The Contractor shall not perform any services after it receives the notice of termination or after Contract expiration, except as necessary to complete the transition or continued portion of the Contract, if any. The Contractor shall submit to the Department within ninety (90) calendar days of termination a request for payment of completed services. Requests submitted later than ninety (90) calendar days after termination will not be honored and will be returned unpaid. All services for which the Department has paid prior to the termination date of this Contract shall be professionally serviced to conclusion in accordance with the requirements of the Contract. Should the Contractor fail to perform all services under the Contract, the Contractor shall be liable to the Department for any fees or expenses that the Department may incur in securing a substitute provider to assume completion of those services.
- b. Contractor Obligations after Termination. If at any time the Contract is canceled, terminated, or expires, and a contract is subsequently executed with a provider other than the Contractor, the Contractor has the affirmative obligation to assist in the smooth transition of Contract services to the subsequent contractor in accordance with Exit Transition requirements in the Statement of Work or Section 31, below.
- c. Termination for Convenience. The Department may, in its sole discretion, terminate the Contract at any time by giving thirty (30) days' written notice to the Contractor.

#### **12. Notice of Default.**

If the Contractor defaults in the performance of any covenant or obligation contained in the Contract, including, without limitation, any of the events of default listed below, the Department shall provide notice to the Contractor and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Contractor fail to perform within the time provided, the Contractor will be found in default, and the Department may terminate the Contract effective as of the date of receipt of the default notice.

#### **13. Events of Default.**

Provided such failure is not the fault of the Department or outside the reasonable control of the Contractor, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Contract by the Contractor, including failure to timely deliver a material deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Contract;
- b. Failure to maintain adequate progress, thus endangering performance of the Contract;
- c. Failure to honor any term of the Contract,
- d. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Contractor by the State or other licensing authority;
- e. Failure to pay any and all entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Contract;
- f. Employment of an unauthorized alien in the performance of the work, in violation of section 274A of the Immigration and Nationality Act, 8 U.S.C. section 1324a;
- g. One or more of the following circumstances, uncorrected for more than thirty (30) calendar days unless within the specified thirty (30) day period, the Contractor (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Contract:
  - i) Entry of an order for relief under Title 11 of the United States Code;

- ii) The making by the Contractor of a general assignment for the benefit of creditors;
  - iii) The appointment of a general receiver or trustee in bankruptcy of the Contractor's business or property;
  - iv) An action by the Contractor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation;
- h. The commitment of an intentional material misrepresentation or omission in any materials provided to the Department;
  - i. Failure to comply with the E-Verify requirements of this Contract; and
  - j. Failure to or maintain the insurance required by this Contract.

**14. Indemnification.**

All references to attorneys' fees in section 19, PUR 1000, are stricken.

**15. Limitation of Liability.**

The following terms replace the limitation of liability terms in section 20 of Form PUR 1000: The Department's liability for any claim arising from this Contract is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Contract. Such liability is further limited to a cap of \$100,000.

**16. Remedies.**

Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable does not foreclose the Department's remedies in the event those performance standards that cannot be readily measured at the time of delivery are not met. Nothing in this Contract shall be construed to make the Contractor liable for force majeure events. Nothing in this Contract, including financial consequences for nonperformance, shall limit the Department's right to pursue its remedies for other types of damages under the Contract, at law, or in equity. The Department may, in addition to other remedies available at law or equity and upon notice to the Contractor, retain such monies from amounts due to the Contractor as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against it. The Department may set off any liability or other obligation of the Contractor or its affiliates to the Department against any payments due the Contractor under any contract with the State.

**17. Waiver.**

The delay or failure by the Department to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Department'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.

**18. Record Retention.**

The Contractor shall retain records demonstrating its compliance with the terms of the Contract five (5) years after the expiration of the Contract and all pending matters, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer. If the Contractor is required to comply with section 119.0701, F.S., then compliance with the retention of records in accordance with section 119.0701(2)(b)4., F.S., will fulfill the above stated requirement. If the Contractor's record retention requirements terminate prior to the requirements stated herein, the Contractor may meet the Department's record retention requirements for this Contract by transferring its records to the Department at that time, and by destroying duplicate records in accordance with section 501.171, F.S., and, if applicable, section 119.0701, F.S. The Contractor shall adhere to established information destruction standards such as those established by the National Institute of Standards and Technology Special Publication 800-88, "Guidelines for Media Sanitization" (2014). See <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf>.

**19. Intellectual Property.**

The following terms apply, unless otherwise stated in the Statement of Work:

- a. The Contractor's intellectual property rights that preexist this Contract will remain with the Contractor. Intellectual property rights to all property created or otherwise developed by the Contractor specifically for the Department will be owned by the State through the Department. Proceeds derived from the sale, licensing, marketing, or other authorization related to any such Department-controlled intellectual property rights shall be handled in the manner specified by applicable statute.
- b. If the Contractor fails to provide, or no longer can provide, a deliverable or service under the Contract that contains or otherwise utilizes intellectual property controlled by the Contractor, the Contractor shall grant the Department a royalty-free, paid-up, nonexclusive, perpetual license to use, modify, reproduce, distribute, publish or release to others, such Contractor-controlled intellectual property solely for use in connection with the deliverables or services under the Contract.

## **20. Ownership of Property.**

Title to all property furnished by the Department under this Contract and deliverables provided to the Department shall remain property of the Department and/or become property of the Department upon receipt and acceptance. The Contractor shall perfect any transfer of the property of the Department upon completion, termination, or cancellation of the Contract prior to payment of the final invoice.

## **21. Nonexclusive Contract.**

This Contract is not an exclusive license to provide the services described in the solicitation or the resulting Contract. The Department may, without limitation and without recourse by the Contractor, contract with other vendors to provide the same or similar services.

## **22. Statutory Notices.**

The Department shall consider the employment by any contractor of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationality Act. Pursuant to sections 287.133 and 287.134, F.S., the following restrictions are placed on the ability of persons placed on the convicted vendor list or the discriminatory vendor list:

- a. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a 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, F.S., for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.
- b. **Discriminatory Vendors.** An entity or affiliate that 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 any public entity; and may not transact business with any public entity.

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

## **23. Compliance with Federal, State, and Local Laws.**

- a. The Contractor and all its agents shall comply with all federal, state, and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements.
- b. This Contract shall be governed by and construed in accordance with the laws of the State of Florida.
- c. If applicable, the Contractor shall ensure that, as to its products and services it develops for the Department, electronic and information technology accessibility requirements of the Rehabilitation Act Amendments, 29 USC section 794 are met. Section 508 of the Rehabilitation Act Amendments, 29 USC section 794, compliance information on the supplies and services in this Contract are available on a website indicated by the Contractor. The Electronic and Information Technology standard can be found at: <http://www.section508.gov/>.
- d. **Scrutinized Companies.** This provision applies only when the goods or services to be provided are \$1 million or more. Section 287.135, F.S., requires the Contractor to certify that it is not: 1) on the Scrutinized Companies with Activities in Sudan List, 2) on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or 3) participating in a boycott of Israel. By entering into this Contract, the Contractor certifies that it is not on either of these lists and that it is not participating in a boycott of Israel. The Contract may be terminated if the Contractor submits a false certification regarding such matters or is placed on either list. In addition, a Contract entered into on or after October 1, 2016, may be terminated if the Contractor is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. The State Board of Administration provides a link to the "Scrutinized List of Prohibited Companies" at the following link: <http://www.sbafla.com/fsb/PerformanceReports.aspx>, and the "Quarterly List of Scrutinized Companies that Boycott Israel" list at the following link: <http://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/GlobalGovernanceMandates.aspx>

## **24. Employment Eligibility Verification.**

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

- a. In cooperation with the Governor's Executive Order 11-116, the Contractor must participate in the federal E-Verify System for employment eligibility verification under the terms provided in the "Memorandum of Understanding" with the Department of Homeland Security if any new employees are hired to work on this Contract during the term of the Contract. The Contractor agrees to provide to the Department, within thirty (30) days of hiring new employees to work on this Contract, documentation of such enrollment in the form of a copy of the E-Verify "Edit Company Profile" screen, which contains proof of enrollment in the E-Verify System. Information on "E-Verify" is available at the following website: <http://www.uscis.gov/e-verify>.
- b. The Contractor further agrees that it will require each subcontractor that performs work under this Contract to enroll and participate in the E-Verify System if the subcontractor hires new employees during the term of this Contract. The Contractor shall include this provision in any subcontract and obtain from the subcontractor(s) a copy of the "Edit Company Profile" screen indicating enrollment in the E-Verify System and make such record(s) available to the Department upon request.

**25. Data.**

- a. All data centers used to process and store State Data under this Contract shall only be located in the United States.
- b. If the Department shares data that is covered by section 501.171, F.S., with the Contractor in the process of fulfilling this Contract, the Contractor is responsible for fulfilling the requirements of section 501.171, F.S., in the event that the Contractor is responsible for a breach of this data.

**26. Applicable Law and Disputes.**

Any dispute concerning performance of the Contract shall be processed according to the Statement of Work. Jurisdiction for any damages arising under the terms of the Contract will be in the courts of the State of Florida, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Contract.

**27. Independent Contractor.**

The Contractor is an independent contractor and is not an employee or agent of the Department.

**28. Subcontracting.**

- a. Unless otherwise specified in the Statement of Work, all services contracted for are to be performed solely by the Contractor and may not be subcontracted or assigned without the prior written consent of the Department.
- b. The Department may, for cause, require the replacement of any Contractor employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to the Department's secure information or any facility by any Contractor employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract.
- e. The Department will not deny the Contractor's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of the Department's denial is safety or security considerations.

**29. Guarantee of Parent Corporation.**

In the event the Contractor is a subsidiary of another corporation or other business entity, the Contractor asserts that its parent corporation will guarantee all of the obligations of the Contractor for purposes of fulfilling the obligations of the Contract. In the event the Contractor is sold during the period the Contract is in effect, the Contractor agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of the Contractor.

**30. Survival.**

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

**31. Exit Transition Services.**

If not otherwise addressed in the Statement of Work, the Contractor has the affirmative obligation to provide to the Department, or its designee, all reasonable services necessary for the transfer of knowledge regarding the services and deliverables provided under the Contract (Exit Transition Services) to facilitate the orderly transfer of such services to the Department or its designee. If Exit Transition Services are necessary, such services may continue for up to six (6) months after termination, expiration, or cancellation of the Contract, at no cost to the Department.

**32. Third Parties.**

The Department shall not be deemed to assume any liability for the acts, omissions to act, or negligence of the Contractor, its agents, servants, and employees, nor shall the Contractor disclaim its own negligence to the Department or any third party. This Contract does not and is not intended to confer any rights or remedies upon any person other than the parties. If the Department consents to a subcontract, the Contractor will specifically disclose that this Contract does not create any third party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Contract.

**33. Employment of State Employees.**

During the term of this Contract, the Contractor shall not knowingly employ, subcontract with, or subgrant to any person (including any nongovernmental entity in which such person has any employment or other material interest as defined in section 112.312(15), F.S.), who is employed by the State or who has participated in the performance or procurement of this Contract except as provided in section 112.3185, F.S.

**34. Audits.**

The Contractor understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Contractor will comply with this duty and ensure that subcontracts issued under this Contract, if any, impose this requirement, in writing, on its subcontractors.

**35. Travel Reimbursement.**

Any travel expenses allowable under this Contract must be submitted in accordance with section 112.061, F.S.

**36. Use of State Funds to Purchase or Improve Real Property.**

Any State funds provided for the purchase of, or improvements to real property, are contingent upon the Contractor or political subdivision granting to the State a security interest in the property at least in the amount of State funds provided, for at least five (5) years from the date of purchase or the completion of the improvements, or as further required by law.

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**DEPARTMENT OF FINANCIAL SERVICES  
STATEMENT OF WORK FOR  
APPRAISAL SERVICES**

**Attachment 2**

**1. Scope of Work.**

The Contractor shall provide appraisal services for items from unclaimed safe deposit boxes and other unclaimed safekeeping repositories that are remitted to the Department of Financial Services (Department), Division of Unclaimed Property, per Chapter 717, F.S. These items include, but are not limited to: coins and currency; jewelry, including diamonds and other precious and semi-precious stones; gold, silver, platinum, and other precious metals; and other items of commercial value such as knives, paintings, watches, stock certificates, historical documents, and stamp collections.

**1.1 Place and Time of Appraisal**

Unless otherwise permitted, the Contractor must perform all appraisals at the office of the Division of Unclaimed Property, at 101 E. Gaines Street, Tallahassee, Florida 32399. The Contractor shall conduct appraisals and identifications for an estimated 16 – 20 hours each week, unless the Department determines that fewer than 16 hours or more than 20 hours are required. Written notice of a known absence must be provided to and approved by the Contract Manager. For an absence that was unexpected and unavoidable, a written excuse must be provided to the Contract Manager within three (3) Business Days after the unexpected absence.

The Contractor may subcontract with other sources when the Contractor is unable to properly identify an item or to provide an appraised value for an inventory item if the other source: 1) possesses at least ten (10) years of appraisal experience in the specialty area required to properly identify and appraise the item(s); and 2) maintains certification by at least one nationally recognized appraiser's association. The Contractor may contact outside sources within a field of expertise if the Contractor is unable to properly identify an item or to provide an appraised value for an inventory item. If such an expert is engaged as a consultant, the Contractor may photograph the items needing review when the consultant cannot inspect the items onsite or, under special circumstances, allow the consultant to review the items off-site provided the Department approves of the off-site review and that the item stays under the supervision of the Contractor and the Vault Supervisor, as defined below, or other authorized Department staff. Any consultation or subcontracting must be pre-approved by the Contract Manager and is at the Contractor's sole expense.

The Department reserves the right to obtain an appraisal of an item from another qualified source at the Department's expense.

**2. Definitions.**

Business Days - Monday through Friday, inclusive, except for State government holidays.

Contract Manager – the person who is responsible for enforcing performance of the Contract terms and conditions, and who serves as a liaison with the Contractor.

Contractor(s) - the Respondent(s) awarded a Contract pursuant to DFS UP ITB 1718-08.

Vault Supervisor – the Department employee responsible for overseeing the Division of Unclaimed Property's vault.

Note: currently, the Vault Supervisor is serving as the Contract Manager. Should this change, the Department will provide the Contractor with the name and contact information for the Vault Supervisor.

**3. Duration.**

- a. Term. The term of the Contract shall begin on April 15, 2018, or the date the Contract is signed, whichever is later, and continue until April 14, 2021, unless otherwise terminated.
- b. Renewals. The Contract may be renewed for up to three (3) additional years.

**4. Payment Provisions.**

- a. Compensation. This is a fixed rate contract. The hourly rate to be paid is stated in Attachment 3, Completed Price Response Form. The Contractor must submit invoices monthly.
- b. Expenses. No separate expenses or travel will be paid.

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**5. Contractor Responsibilities.**

<b>Deliverable:</b> One (1) hour of work performing the tasks described below.		
<b>TASK</b>	<b>PERFORMANCE MEASURE/DUE DATE</b>	<b>FINANCIAL CONSEQUENCE</b>
<p>The Contractor will identify all items provided by the Department, provide an accurate description of the item, and provide either: 1) if the item will be auctioned off, an estimated minimum bid value, which will be the beginning minimum reserve auction price; or 2) if the item will be mailed to the rightful owner, a fair replacement value of the item for the purpose of providing a declared value. Tangible property items to be identified include, but are not limited to:</p> <ol style="list-style-type: none"> <li>a. Coins and currency, both foreign and domestic (description must include the grading or condition, date, and other identifying characteristics).</li> <li>b. Jewelry (appraisal must include the testing and weighing of any precious metals).</li> <li>c. Precious and Semi-Precious Stones (the description must include estimated size, and a detailed identification is required when, in the best judgment of the Contractor, it is necessary to determine the value of a stone).</li> <li>d. Gold, silver, platinum, and other precious metals (the description must include the penny weight (DWT) or gram weight and, for gold or silver, the fineness. Other precious metals shall also be tested for fineness if possible.).</li> <li>e. Miscellaneous Property (such as knives, paintings, watches, stock certificates, historical documents, stamp collections, flatware, baseball cards, autographs, and fur coats).</li> </ol>	<p>The Contractor will be responsible for identifying and fairly appraising an average of thirty (30) items per hour each month. The appraisal for each item scheduled to be auctioned off must be completed no later than forty-five (45) days before the date the auction is scheduled to occur. Any exceptions to this deadline must be discussed and pre-approved by the Contract Manager.</p> <p>No later than the 5<sup>th</sup> Business Day of each month, the Contractor shall submit:</p> <ol style="list-style-type: none"> <li>1) an invoice for services rendered the previous month;</li> <li>2) a time sheet documenting the dates and times the Contractor provided appraisal services; and</li> <li>3) a list of bins and the number of items appraised during the invoiced time period.</li> </ol> <p>Failure to submit a list of bins with the number of items appraised will result in the rejection of the corresponding invoice.</p> <p>Failure to submit a time sheet will result in the rejection of the corresponding invoice.</p> <p>Documentation shall be reviewed by the Contract Manager and upon approval, shall be signed by the Contract Manager.</p> <p>An invoice rejected due to missing documentation can be resubmitted for consideration of payment.</p>	<p>Failure to meet the required hourly average of appraised items will result in the reduction of the corresponding invoice. To calculate the reduction, the Department will divide the average number of items appraised during the month by thirty (30) (the hourly average required by the contract), and then multiply that number by the invoiced dollar amount. For example, if the average number appraised per hour is 27, then the financial consequence will be 10% of the invoice.</p>

## 6. Department's Responsibilities

- a. The Department will provide a work space, computer, network access, limited access to the Unclaimed Property Management Information System (UPMIS), and internet access to the Contractor for the completion of appraisal services.
- b. The Department will conduct an initial inventory and reconciliation of items prior to the Contractor's appraisal and will perform a second reconciliation of the items and the appraisal description/value provided by the Contractor.
- c. The Department's Contract Manager will review the documentation provided by the Contractor for the time worked and items appraised.
- d. The Department shall notify the Contractor, in writing, of the dates of scheduled auctions.

## 7. Miscellaneous Contract Terms.

- a. Termination for Convenience. The Department may, in its sole discretion, terminate the Contract at any time by giving one (1) months' written notice to the Contractor.
- b. Bond. The Contractor, at its sole expense, must maintain a fidelity bond and performance bond, each of which must be for at least \$100,000. The bonds shall provide that no material alteration or cancellation, including expiration or non-renewal, shall be effective until thirty (30) days after the Department's Contract Manager receives written notice of such alteration or cancellation. In lieu of the performance bond, the Contractor may provide an irrevocable letter of credit for at least \$100,000. The Contractor shall submit documentation evidencing execution of the fidelity bond and the performance bond (or irrevocable letter of credit).
- c. Insurance.

At the contractor's sole expense, the Contractor shall provide the following types of insurance for anyone directly or indirectly employed by the Contractor for this contract:

- 1) Commercial general liability coverage, bodily injury, property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate. (Insuring clause for both bodily injury and property damage shall be amended to provide coverage on an occurrence basis.)
- 2) Automobile liability coverage, bodily injury, property damage: \$1,000,000 Combined Single Limits. (Insuring clause for both bodily injury and property damage shall be amended to provide coverage on an occurrence basis.)
- 3) Worker's compensation and employer's liability insurance covering all employees engaged in any Contract work, in accordance with Chapter 440, Florida Statutes.

The Contractor shall maintain this insurance throughout the term of the Contract.

- d. PUR 1000. The following provisions of Attachment 4, PUR 1000, are not applicable to this Contract:

Section 2. Purchase Orders,  
Section 3. Product Version,  
Section 4. Price Changes Applicable only to Term Contracts subsections (b), Best Pricing Offer and (e), Equitable Adjustment,  
Section 5. Additional Quantities,  
Section 6. Packaging,  
Section 8. Safety Standards,  
Section 11. Transportation and Delivery,  
Section 12. Installation,  
Section 20. Limitation of Liability,  
Section 27. Purchase Order Duration,  
Section 39. Leases and Installment Purchases, and  
Section 43. Cooperative Purchasing

- e. Remedies.

If the Contractor's failure to properly identify an item, to provide an accurate description, or to provide a reserve value or replacement value directly results in a) the Department receiving less proceeds for an item at auction than it would have received had the Contractor properly performed or b) a lack of coverage for an item that is lost or damaged in shipping, the Contractor will compensate the Department in amount sufficient to make the owner of the item whole.

If the Contractor's failure to perform the number of required appraisals by the due date(s) specified in this Contract results in the Department's need to reschedule a scheduled auction, the Contractor will compensate the Department in an amount sufficient to cover the costs of rescheduling the auction.

| Nothing in this section shall limit the Department's right to pursue its remedies for other types of damages.

- f. Corrective Action Plan. Failure to complete the deliverable in accordance with the requirements of this Contract, as specified above in Section 5, Contractor Responsibilities, will result in assessment by the Department of the specified financial consequences. If the parties mutually agree to a corrective action plan, the plan shall specify the applicable financial consequences to be applied after the effective date of the corrective action plan.

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

**Attachment 4**

**Contents**

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2. Purchase Orders.
3. Product Version.
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13. Risk of Loss.
14. Transaction Fee.
15. Invoicing and Payment.
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21. Suspension of Work.
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45. Annual Appropriations.
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47. Severability.

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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.

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**DEPARTMENT OF FINANCIAL SERVICES**  
**Public Records Requirements**  
**DFS UP ITB 1718-08**  
**Addendum A**

**1. Public Records Access Requirements.**

- a. If the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from public access pursuant to section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access to Public Records as required by law.

**2. Public Records Requirements Applicable to All Contractors.**

- a. For purposes of the Contract, the Contractor is responsible for becoming familiar with Florida's Public Records law, consisting of Chapter 119, F.S., section 24(a) of Article I of the Florida Constitution, or other applicable state or federal law (Public Records Law).
- b. All requests to inspect or copy Public Records relating to the Contract must be made directly to the Department. Notwithstanding any provisions to the contrary, disclosure of any records made or received by the State in conjunction with the Contract is governed by Public Records Law.
- c. If the Contractor has a reasonable, legal basis to assert that any portion of any records submitted to the Department are confidential, proprietary, trade secret, or otherwise not subject to disclosure ("Confidential" or "Trade Secret") under Public Records Law or other authority, the Contractor must simultaneously provide the Department with a separate redacted copy of the records the Contractor claims as Confidential or Trade Secret and briefly describe in writing the grounds for claiming exemption from the Public Records Law, including the specific statutory citation for such exemption. The un-redacted copy of the records shall contain the Contract name and number, and shall be clearly labeled "Confidential" or "Trade Secret." The redacted copy of the records should only redact those portions of the records that the Contractor claims are Confidential or Trade Secret. If the Contractor fails to submit a redacted copy of records it claims are Confidential or Trade Secret, such action may constitute a waiver of any claim of confidentiality.
- d. If the Department receives a Public Records request, and if records that have been marked as "Confidential" or "Trade Secret" are responsive to such request, the Department shall provide the Contractor-redacted copies to the requester. If a requester asserts a right to the portions of records claimed as Confidential or Trade Secret, the Department shall notify the Contractor that such an assertion has been made. It is the Contractor's responsibility to assert that the portions of records in question are exempt from disclosure under Public Records Law or other authority. If the Department becomes subject to a demand for discovery or disclosure of the portions of records the Contractor claims as Confidential or Trade Secret in a legal proceeding, the Department shall give the Contractor prompt notice of the demand, when possible, prior to releasing the portions of records the Contractor claims as Confidential or Trade Secret (unless disclosure is otherwise prohibited by applicable law). The Contractor shall be responsible for defending its determination that the redacted portions of its records are Confidential or Trade Secret. No right or remedy for damages against the Department arises from any disclosure made by the Department based on the Contractor's failure to promptly legally protect its claim of exemption and commence such protective actions within ten days of receipt of such notice from the Department.
- e. If the Contractor claims that the records are "Trade Secret" pursuant to section 624.4213, F.S., and all the requirements of section 624.4213(1), F.S., are met, the Department will respond to the Public Records Request in accordance with the provisions specified in that statute.
- f. The Contractor shall ensure that exempt or confidential and exempt Public Records are not disclosed except as permitted by the Contract or by Public Records Law.

**3. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.**

If the Contractor is a "contractor" as defined in section 119.0701(1)(a), F.S., the Contractor shall:

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- (1) Keep and maintain Public Records required by the Department to perform the service.
- (2) Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (3) A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- (4) Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.
- (5) Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.

**(6) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT PUBLIC RECORDS AT:**

**Telephone:** (850) 413-3149  
**Email:** [PublicRecordsInquiry@myfloridacfo.com](mailto:PublicRecordsInquiry@myfloridacfo.com)  
**Mailing Address:** The Department of Financial Services  
Office of the General Counsel, Public Records  
200 E. Gaines Street, Larson Building  
Tallahassee, Florida 32399-0311

**DEPARTMENT OF FINANCIAL SERVICES**  
**DFS UP ITB 1718-08**  
**Data Security Requirements**

**Addendum B**

**1. Data Security, Recovery, and Damages for Non-Performance.**

- a. Data Security. The Contractor, its employees, subcontractors, and agents, shall comply with Rule Chapter 74-2, Florida Administrative Code (F.A.C.), which contains information technology (IT) procedures and requires adherence to the Department's security policies, in performance of this Contract. The Contractor shall provide immediate notice to the Department's Information Security Office (ISO), within the Office of Information Technology, in the event it becomes aware of any security breach or any unauthorized transmission or loss of any or all of the data collected, created for, or provided by the Department (State Data), and provide immediate notice to the ISO, of any allegation or suspected violation of Rule Chapter 74-2, F.A.C. Except as required by law or legal process, and after notice to the Department, the Contractor shall not divulge to third parties any Confidential Information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers, or employees in the course of performing Contract work according to applicable rules, including, but not limited to, Rule Chapter 74-2, F.A.C. "Confidential Information" means information in the possession or under the control of the state of Florida (State) or the Contractor that is exempt from public disclosure pursuant to Chapter 119, Florida Statutes (F.S.), or to any other applicable provision of State or federal law that serves to exempt information from public disclosure. This includes, but is not limited to, the security procedures, business operations information, or commercial proprietary information in the possession of the State or the Department. The Contractor shall not be required to keep confidential any information that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's Confidential Information, or information that is otherwise obtainable under State law as a public record. Failure to maintain security that results in certain data release will subject the Contractor to the administrative sanctions for failure to comply with section 501.171, F.S., together with any costs to the Department of such breach of security caused by the Contractor. If State Data will reside in the Contractor's system, the Department may conduct, or request the Contractor conduct at the Contractor's expense, an annual network penetration test or security audit of the Contractor's system(s) on which State Data resides. If the Contract is less than a year in duration, the right to conduct the network penetration test or security audit of the Contractor's system(s) on which State Data resides can be exercised at any time.
  - b. Data Protection. No State Data will be transmitted, processed, or stored outside of the United States of America regardless of method, except as required by law. Access to State Data shall only be available to staff approved and authorized by the Department, that have a legitimate business need. Access to State Data does not include remote support sessions for devices that might contain the State Data; however, during the remote support session the Department requires the Contractor to escort the remote support access and maintain visibility of the support personnel's actions. Requests for remote access shall be submitted to the Department's Help Desk. With approval, third parties may be granted time-limited terminal service access to IT resources as necessary for fulfillment of related responsibilities. Remote connections are subject to detailed monitoring via two-way log reviews and the use of other tools. When remote access is no longer needed, the ISO shall be promptly notified and access shall be promptly removed.
  - c. Encryption and Remote Access. The Contractor shall encrypt all data transmissions containing Confidential Information utilizing a protocol approved by the Department.
  - d. Breach and Negligence. The Contractor agrees to protect, indemnify, defend, and hold harmless the Department from and against any and all costs, claims, demands, damages, losses, and liabilities arising from or in any way related to the Contractor's breach of this Section 1 or the negligent acts or omissions of the Contractor related to this addendum.
  - e. Separate Security Requirements. Any Criminal Justice Information Services-specific and/or Health Information Portability and Accountability Act-specific security requirements are attached in a separate addendum, if applicable.
  - f. Ownership of State Data. State Data will be made available to the Department upon its request, in the form and format reasonably requested by the Department. Title to all State Data shall remain property of the
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Department and/or become property of the Department upon receipt and acceptance. The Contractor will not possess or assert any lien or other right against or to any State Data in any circumstances.

**2. Data Access.**

- a. Background Checks and Screening. All Contractor personnel who will have direct query access to State Data will undergo the background checks and screenings described in the Statement of Work.
- b. Cooperation with the State and Third Parties. The Contractor agrees to cooperate with the following entities: (i) the State; (ii) the State's other contractors; (iii) the State's agents, including properly authorized governmental entities; (iv) the State's authorized third parties, such as technology staff under contract with the State; and (v) other properly authorized individuals who directly or indirectly access State Data on behalf of any of the entities listed in this section. The Contractor shall also provide reasonable access to the Contractor's Contract personnel, systems, and facilities to these same entities, when reasonably requested by the Department. The Contractor agrees to impose these same requirements on all subcontractors performing the work of this Contract.

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**DEPARTMENT OF FINANCIAL SERVICES  
Mandatory Criteria Certification**

**Attachment B**

**This form must be completed by the Respondent's authorized representative. The Respondent acknowledges that the Department will rely on the representations made on this form in making its decision of award. If the Department discovers that any of the information on this form is false prior to the award of the Contract, the Department will determine the Respondent non-responsive and not evaluate its Response. If the Department discovers that any information on this form is false after the award to the Respondent is made, the Department reserves the right to terminate the Contract and hold the Respondent liable for costs associated with re-procuring the services.**

1. Does Respondent certify that it agrees to the terms above?  
Yes \_\_\_ No\_\_\_
  
2. Does Respondent certify that the person submitting the Response is authorized to respond to this RFP on Respondent's behalf?  
Yes \_\_\_ No\_\_\_
  
3. Does Respondent certify that it is not a Discriminatory Vendor or Convicted Vendor as defined in Sections 7 and 8 of the PUR 1001?  
Yes \_\_\_ No\_\_\_
  
4. Does Respondent certify compliance with Section 9 of the PUR 1001?  
Yes \_\_\_ No\_\_\_
  
5. Does Respondent agree to protect, defend, and indemnify the Department for any and all claims arising from or relating to the Respondent's determination that the redacted portions of its reply are confidential, proprietary, trade secret, or otherwise not subject to disclosure?  
Yes \_\_\_ No\_\_\_
  
6. Certify one and write N/A on the others:
  - a. Does Respondent certify that it is registered with the Florida Department of State?  
Yes \_\_\_ No\_\_\_ N/A\_\_\_  
**OR**
  - b. Does Respondent certify that if awarded a contract under this solicitation, it will register with the Florida Department of State prior to execution of the Contract?  
Yes \_\_\_ No\_\_\_ N/A\_\_\_  
**OR**
  - c. Does Respondent certify that it is not required to register with the Florida Department of State (see applicable sections of Title XXXVI, Business Organizations, Chapters 605 through 623, F.S.)?  
Yes \_\_\_ No\_\_\_ N/A\_\_\_
  
7. Certify one and write N/A on the other:
  - a. Does Respondent certify that a drug-free workplace has been implemented in accordance with section 287.087, F.S.?  
Yes \_\_\_ No\_\_\_ N/A\_\_\_  
**OR**
  - b. Does Respondent agree to waive its right to be given preferential treatment as a drug-free workplace in the event of a tie?  
Yes \_\_\_ No\_\_\_ N/A\_\_\_
  
8. Does the Respondent agree not to seek indemnification from the Department?  
Yes \_\_\_ No\_\_\_

9. Does Respondent certify that it is not 1) on the Scrutinized Companies with Activities in Sudan List, 2) on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or 3) participating in a boycott of Israel? *Based on the total submitted on the Price Response, including all renewal years, respond "N/A" if the goods or services to be provided are less than \$1 million.*  
 Yes \_\_\_ No\_\_\_ N/A\_\_\_
10. Does the Respondent certify that it possesses ten (10) years of appraisal experience (with at least one (1) year of providing appraisal services to a governmental entity (federal, state, or local) OR to an auctioneer for the purpose of utilizing the appraisal to aid in the auction of the appraised items) in the following areas: numismatic; jewelry, including diamonds and other precious and semiprecious stones; gold, silver, platinum, and other precious metals; and other items of commercial value including, but not limited to, knives, paintings, watches, stock certificates, historical documents, and stamp collections?  
 Yes \_\_\_ No\_\_\_
11. Does the Respondent certify that any subcontractor of the Respondent that it anticipates utilizing for appraisals in one of the specified areas (numismatic; jewelry, including diamonds and other precious and semiprecious stones; gold, silver, platinum, and other precious metals; and other items of commercial value including, but not limited to, knives, paintings, watches, stock certificates, historical documents, and stamp collections) is a subject matter expert with ten (10) years of appraisal experience (which includes at least one (1) year providing appraisal services to a governmental entity (federal, state, or local) OR to an auctioneer for the purpose of utilizing the appraisal to aid in the auction) in the area that the subcontractor will be utilized?  
 Yes \_\_\_\_\_ No \_\_\_\_\_
12. Does the Respondent certify that it and any subcontractor it anticipates utilizing for appraisals has been certified as an appraiser by at least one nationally recognized appraiser's association which ensures that its members are qualified to act as appraisers through a mandatory examination process designed to test the appraiser's competency, **and** that a copy of such certification is attached hereto?  
 Yes \_\_\_ No\_\_\_

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2018.  
 Name of Business Entity: \_\_\_\_\_  
 Signed by: \_\_\_\_\_  
 Print Name \_\_\_\_\_

**DEPARTMENT OF FINANCIAL SERVICES  
Price Response Form**

**Attachment C**

Deliverable	Initial 3-Year Term Hourly Rate	Renewal 3-Year Term Hourly Rate	*Total (Initial 3-Year Term Hourly Rate + Renewal 3-Year Term Hourly Rate)
Appraisal Services			

\*This figure will be used as the basis for award.

I agree to abide by all conditions of this Response and certify the Respondent is in compliance with all requirements of the ITB, including but not limited to, certification requirements.

RESPONDENT NAME (COMPANY):

\_\_\_\_\_

NAME OF AUTHORIZED REPRESENTATIVE:

\_\_\_\_\_

AUTHORIZED REPRESENTATIVE SIGNATURE:

\_\_\_\_\_

SIGNATURE DATE:

\_\_\_\_\_

**DEPARTMENT OF FINANCIAL SERVICES  
Business Reference Form**

**Attachment D**

**The Respondent shall require its references to complete the form providing all the requested information. References should be directly relevant to the services in the solicitation. Incomplete forms (i.e., blanks left on the form and not notarized) will not be submitted to evaluators.**

This form must be completed by the person giving the reference for the Respondent. The Respondent is submitting a reply to a solicitation. For purposes of this form, the Respondent is the business entity that currently or has previously provided services to your organization. This business reference is for (Respondent's Name): \_\_\_\_\_

Upon completion of this form, please return original to Respondent.

<b>REFERENCE INFORMATION</b>	
<b>Organization Name:</b>	<b>Phone #:</b> (        )        -
<b>Reference Name:</b>	<b>Title:</b>

<b>BUSINESS RELATIONSHIP WITH RESPONDENT</b>	
<b>Relationship with Respondent:</b> (e.g., subcontractor, customer).	<b>Years of Relationship:</b> _____ <b>Dates:</b>
If a customer, please describe the primary service the Respondent provides your organization:	<b>Respondent acted as:</b> <input type="checkbox"/> primary provider <b>or</b> <input type="checkbox"/> subcontractor <b>or</b> <input type="checkbox"/> N/A
Do you have a business or professional interest in the Respondent's organization?: <input type="checkbox"/> Yes <b>or</b> <input type="checkbox"/> No	
If yes, please describe:	

<b>PERFORMANCE OF RESPONDENT</b>
Have you experienced any performance problems with the Respondent's organization?: <input type="checkbox"/> Yes <b>or</b> <input type="checkbox"/> No
If yes, please describe:

As the person authorized to sign the statement, I certify that the above information is correct. I also certify that I am not:

- a current employee of the Department;
- a former employee of the Department, within the past three (3) years;
- a person currently or formerly employed by the Respondent's organization;
- a board member of the Respondent's organization; or
- a relative of any of the above.

I further certify that:

- the business organization that I work for is not based solely in a foreign country; and
- a member of the Respondent's organization, has not has written and/or otherwise completed this form on my behalf.

\_\_\_\_\_  
**Reference's Original Signature**

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

\_\_\_\_\_  
**Reference Name**

**STATE OF FLORIDA**  
**COUNTY OF** \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of 20\_\_\_\_, by \_\_\_\_\_.

(Seal)

Signature of Notary Public

Print, Type/Stamp Name of Notary

Personally known: \_\_\_\_\_

OR Produced Identification: \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

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**DEPARTMENT OF FINANCIAL SERVICES**  
**Award Preferences for Identical Evaluations of Responses**

**Attachment E**

**This form must be completed by the Respondent in the event of a tie if requested by the Department. If the Department discovers that any information on this form is false after the award to the Respondent is made, the Department reserves the right to terminate the Contract and hold the Respondent liable for costs associated with re-procuring the services.**

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Respondents shall certify one or more of the following by checking the adjacent box(es):

- A. The response is from a certified minority-owned firm or company and the net worth of the company is \_\_\_\_\_;
  - B. The response is from a veteran-owned business certified according to section 295.187, F.S., and the net worth of the company is \_\_\_\_\_;
  - D. The response is from a Florida-domiciled entity;
  - D. The commodities used in this contract are manufactured, grown, or produced within this State;
  - E. The response is from a foreign manufacturer with a factory in the State employing over 200 employees working in the State;
  - F. The response is from a business that certified at the time of the Response that it has implemented a drug-free workplace program in accordance with section 287.087, F.S.;
  - G. **The response is from a company that is not eligible for any of the above preferences.**
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As the person authorized to sign the statement, I certify that this organization complies fully with the above requirements.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

Name of Organization: \_\_\_\_\_

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

Print Name \_\_\_\_\_