

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION



INVITATION TO NEGOTIATE

FWC 11/12-13

MANAGEMENT OF PROJECTS FOR BOATING AND WATERWAYS

RELEASED ON: September 2, 2011

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**FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
INVITATION TO NEGOTIATE FWC 11/12-13**

MANAGEMENT OF PROJECTS FOR BOATING AND WATERWAYS

**INVITATION TO NEGOTIATE
RESPONDENT ACKNOWLEDGMENT FORM**

Name of Business: _____

Contact Person Name: _____

Business Address: _____

City: _____ State: _____ Zip code: _____

Phone: _____ Fax: _____ E-Mail: _____

Federal Employer Identification Number (FEID): _____

I certify that this ITN response is submitted without prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same professional services, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this ITN and certify that I am authorized to sign this acknowledgement for the respondent.

PRINTED NAME

AUTHORIZED SIGNATURE

TITLE

DATE

SUBMIT ITN RESPONSE TO:

**FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
PURCHASING OFFICE, ROOM 364
620 SOUTH MERIDIAN STREET
TALLAHASSEE, FLORIDA 32399-1600
PHONE: (850) 488-3427**

**ITN RESPONSES WILL BE OPENED AT 2:00 P.M., EASTERN TIME
ON OCTOBER 31, 2011**

MANAGEMENT OF PROJECTS FOR BOATING AND WATERWAYS ITN FWC 11/12-13

BACKGROUND

The Fish and Wildlife Conservation Commission's mission in Florida is to manage fish and wildlife resources for their long-term well-being and the benefit of people. The Commission administers six major programs including habitat & species conservation, freshwater fisheries management, law enforcement, marine fisheries management, hunting and game management and fish and wildlife research.

The Florida Fish and Wildlife Conservation Commission (FWC), Division of Law Enforcement, Boating and Waterways Section's duties and responsibilities are the oversight and coordination of waterway markers on state waters, providing boating education and boating safety programs, improving boating access, coordinating the removal of derelict vessels from state waters, implementing economic development initiatives to promote boating in the state, and coordinating the submission of state comments on marine events.

PURPOSE OF THIS ITN

The intent of this Invitation to Negotiate (ITN) is to solicit responses from qualified vendors in order to assist the Commission, on a statewide basis, with managing projects to provide the necessary services for the programs and projects to include, but not limited to, the following:

- Management of a program that will assist the Commission with examination, evaluation, and appropriate repair or potential construction of State-Owned and Federally Owned Uniform Waterway Markers or the removal of vessels, including derelict, or debris in a timely manner on a statewide basis;
- Management of programs for disaster preparedness and emergency response that assist the Commission with a timely response for the assessment of waterway management within the Commission's jurisdiction after hurricanes and other storm events; and
- Management of research and studies related to waterway management, boating safety and education, boating access, or additional related activities pursuant to the Commission's statutory authority and specified in each task assignment.

These services shall be negotiated through this ITN and shall meet the minimum requirements set forth in Attachment 1, Scope of Work and the specifications herein. Upon award of the contract, and prior to the commencement of any specific work, the selected contractor and the Commission's Contract or Project Manager shall develop a more detailed Scope of Work for each project/task. The selected contractor's activities under the contract resulting from this solicitation shall be directed by the Commission's Contract or Project Manager for each project.

The Commission and the Boating and Waterways Section administer projects statewide. Therefore, the prospective vendor must have offices and personnel located throughout the state with the ability to respond quickly to an area and have personnel in close proximity to the projects with applicable expertise for the variety of projects described herein. This requirement is stipulated in order to reduce costs and time.

The Commission will allow joint ventures and/or subcontracting among firms in order to develop an optimum team approach for statewide management. Any joint ventures or partnerships must be identified in the respondent's response through letters of intent. The Commission intends to contract with one contractor. The Commission reserves the right to approve or reject any subcontractors or joint participants submitted. The Commission also reserves the right to request additional information on any or all subcontractors or joint participants submitted.

The Commission intends to contract with the responsive and responsible vendor whose proposal is determined by the Commission to provide the best value to the state. "Best Value", as defined in Section 287.12(4), F.S., means the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship.

GENERAL CONDITIONS

The following terms and conditions take precedence over PUR1001 and PUR1000 forms where applicable. For the purposes of this solicitation, the terms vendor, respondent, prospective contractor, contractor and offeror are used interchangeably and mean a person(s) or firm(s) submitting a response to this ITN.

A vendor submitting a response should be registered in the MyFloridaMarketPlace (MFMP) system prior to the ITN opening (see VENDOR REGISTRATION clause). A vendor may not be considered for an award if not registered in the MFMP system. The vendor's MFMP registration address and federal employer identification (FEID) number should match the vendor's address and FEID number listed on the Invitation To Negotiate Respondent Acknowledgment form (page 2).

Certified Minority-owned, Woman-owned and Service-Disabled Veteran Business Enterprises, as certified by the State of Florida Office of Supplier Diversity, are encouraged by the Commission to participate in the ITN process.

CALENDAR OF EVENTS

Listed below are important actions and dates for the actions to be taken or completed.

SCHEDULE	DATE	METHOD
ITN Advertised - Released	September 2, 2011	Posted electronically via the Vendor Bid System: http://vbs.dms.state.fl.us/vbs/main_menu
Deadline for vendor questions to be submitted in writing	September 23, 2011	See "Questions" clause
Answers to questions issued in Addendum	September 30, 2011	Posted electronically via the Vendor Bid System: http://vbs.dms.state.fl.us/vbs/main_menu
Sealed Responses Due and Opened	Must be received PRIOR to: 2:00 pm on October 31, 2011	Submit to: Florida Fish & Wildlife Conservation Commission Attn: Purchasing Office 620 S. Meridian St., Room 364 Tallahassee, Florida 32399-1600
Response Evaluation	November 2, 2011 to November 11, 2011	See " Evaluation Criteria" clause
Posting of Short-list	November 18, 2011	Posted electronically via the Vendor Bid System: http://vbs.dms.state.fl.us/vbs/main_menu
Negotiations	December 5, 2011 to December 9, 2011	See " Selection and Evaluation of Responses/Negotiations" clause
Posting of Intent to Award	December 16, 2011	Posted electronically via the Vendor Bid System: http://vbs.dms.state.fl.us/vbs/main_menu

TERM

The anticipated term for the resulting contract will either be three (3) or five (5) years, however, the final term will be determined upon negotiation.

RENEWAL

The Commission has the option to renew this Contract on a yearly basis for a period equal to the initial Contract period upon the same terms and conditions contained herein.

Exercise of the renewal option is at the Commission's sole discretion and shall be conditioned, at a minimum, on the Contractor's satisfactory performance of this Contract and is subject to the availability of funds. The Contractor if it desires to exercise this renewal option will provide written notice to the Commission no later than thirty (30) days prior to the Contract expiration date. The renewal term shall require written approval from the Commission.

TYPE OF ANTICIPATED CONTRACT

The Commission is seeking a contract for services in which the Commission reserves the right to request services under the resulting contract that may include all services needed for a project from the planning phase, project development and implementation phase, specification development phase, bidding phase, installation phase, and review and approval or inspection phase, as applicable. However, the Commission may choose only to have the successful respondent provide assistance services with only one or a couple of the phases in a project. During the period of this Contract, the Commission may elect to issue solicitations on a project by project basis or use an agency contract vendor for the installation of waterway markers, or the Commission may need to work with the successful respondent to subcontract out this work. The Commission intends to develop and enter into a separate contract for uniform waterway marker installation and repairs. The installation solicitation may result in several regional contractors throughout the state providing marker installation, repairs and related activities. The successful respondent for this ITN is expected to provide management services for the Commission while working with the contractor(s) performing installation and/or repair services pursuant to that future solicitation. Each project, as it is developed and planned, will include discussion on the specific services to be provided. The Commission will make all final decisions on which aspects or phases will be provided by the successful respondent, or possible subcontractors, with the emphasis on cost effectiveness, timeliness, and the best interests of the State.

This solicitation will become part of the contract and any requirements herein must be adhered to by the successful respondent. A copy of the proposed contract, which incorporates this solicitation, is included herein as Attachment A-4. The requirements contained herein, including all attachments, should be closely reviewed by the respondent to become familiar with Commission required provisions.

The Commission will issue a Task Assignment for each management service required under the scope of this ITN with specific tasks detailed in each Task Assignment and made a part of the original contract.

When the Contract is awarded, the Commission may work with the successful respondent to procure services from sub-contractors in accordance with Chapter 287, Florida Statutes.

The Commission currently has a contractor providing the type of management services sought by this ITN that will terminate December 31, 2011 or upon award of a contract from this ITN, whichever occurs first. The successful responsive respondent will work with the current contractor to coordinate efforts to establish tasks to ensure services do not lapse, especially those that are critical to the safety and welfare of the public relating to disaster response, emergency response, and evaluation and appropriate repair of state-owned and federally owned uniform waterway markers.

VENDOR SPECIFICATION INQUIRIES

If the specifications of this ITN could restrict potential Vendor/Contractor competition, the Vendor has 72 hours within which to request to the Commission that the specification(s) be changed. The Purchasing Director must receive the written request within 72 hours after the posting date of the ITN.

Requested changes to the Commission's specifications shall include the Vendor's concerns regarding restricting competition, provide detailed justification, and provide recommended changes to the specification(s) and explain why any such restrictive Commission specifications are not necessary. A vendor's failure to request changes by the prescribed date and time shall be considered to constitute the Vendor's acceptance of the Commission's specifications.

The Commission shall determine what change(s) to the ITN are acceptable to the Commission. If accepted, the Commission shall issue an addendum reflecting the change(s) to the ITN, which shall be posted to the Vendor Bid Advertisement System, internet site http://vbs.dms.state.fl.us/vbs/main_menu .

It is up to the respondent to ensure that everything is included as required by the Commission's Purchasing Office. It is not the Commission's responsibility to mail or fax any forms to a potential Contractor. ITN information may also be requested from The Commission's Purchasing Section by calling 850-488-3427 or by FAXING a request to 850-921-2500. Please have ITN number and Vendor information available when requesting any information.

CONDITIONS AND SPECIFICATIONS

The respondent is required to examine carefully the conditions and specifications of this ITN and to be thoroughly informed regarding any and all requirements of the conditions and specifications.

ITN OPENING LOCATION

The public opening of this ITN will be conducted on the date/time specified in the Calendar of Events, at the address specified below under "Mailing Instructions".
RESPONSES RECEIVED AFTER DATE AND TIME SPECIFIED WILL BE REJECTED.

Any person with a qualified disability shall not be denied equal access and effective communication regarding any bid/proposal/response documents or the attendance at any related meeting or bid/proposal/response opening. If accommodations are needed because of a disability, please contact the Purchasing Section at (850) 488-3427 at least three workdays prior to the occurrence.

MAILING INSTRUCTIONS

The Respondent **shall submit an original hard copy and five (5) electronic copies on separate disks of their response** in a **SEALED ENVELOPE** addressed to the Florida Fish and Wildlife Conservation Commission, Room 364, Bryant Building, 620 South Meridian Street, Tallahassee, Florida 32399-1600, by the date and time specified in the Calendar of Events. **RESPONSES RECEIVED AFTER THE DATE AND TIME SPECIFIED SHALL BE REJECTED.**

THE ENVELOPE SHALL BE PLAINLY MARKED ON THE OUTSIDE WITH: ITN NUMBER, DATE AND TIME OF THE RESPONSE OPENING.

THE COMMISSION IS NOT RESPONSIBLE FOR THE OPENING OF ANY ENVELOPES THAT ARE NOT PROPERLY MARKED.

NOTE: The COMMISSION shall not be responsible for the U.S. Mail or other couriers regarding mail being delivered by the specified date and time so that a response may be considered. Responses received after the opening date and time may be returned to the vendor. The COMMISSION does not accept faxed or electronically mailed responses, and if a faxed or electronic mailed response is received, it will be automatically rejected as non-responsive.

QUESTIONS

Any questions from prospective vendors concerning this ITN shall be raised at the mandatory pre-solicitation conference, however, if prospective vendors have additional questions they must be received in writing no later than the date and time specified in the Calendar of Events. Questions may be sent via e-mail, hard copy by mail, or facsimile. It is the responsibility of the vendor to confirm receipt of questions if needed.

If questions are received, an addendum will be issued and shall be posted on the Vendor Bid System (VBS). Information concerning this ITN will not be available by telephone. Any information received through any oral communication shall not be binding on the Commission and shall not be relied upon by a respondent. Vendors can access the VBS at the following address: http://vbs.dms.state.fl.us/vbs/main_menu.

Questions shall be directed to:

Florida Fish & Wildlife Conservation Commission
Tallahassee Purchasing Office
Attn: Jerilyn Bailey, Procurement Manager
620 South Meridian Street, Room 364
Tallahassee, Florida 32399-1600
850-488-3427
jerilyn.bailey@myfwc.com

LIMITATION ON VENDOR CONTACT DURING SOLICITATION PERIOD

Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the seventy-two (72) hour period following the agency posting the notice of agency decision, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the

procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

MANDATORY RESPONSE SUBMISSION

Interested parties are encouraged to carefully review all the information contained herein and prepare responses accordingly. Failure to organize response as follows and/or failure to return signed forms may result in rejection of the response.

The vendor shall submit one (1) original hard copy and five (5) electronic copies on separate disks of their response. All responses must be submitted by "Response Due Date" as stated in the Calendar of Events and submitted to the Commission in a sealed envelope marked "ITN No. FWC 11/12-13" and response submission shall be organized as follows:

Tab A. RESPONDENT ACKNOWLEDGEMENT FORM AND TRANSMITTAL LETTER

1. Respondent Acknowledgment

In order for a potential Vendor/Contractor's response to be valid, the Respondent Acknowledgment form must be completed in its entirety, signed by the Vendor/Contractor and returned, as part of the ITN response or the response will be rejected. By affixing your signature to the Respondent Acknowledgment form, the Vendor/Contractor hereby states that the Vendor/Contractor has read all ITN specifications and conditions and agrees to all terms, conditions, provisions, specifications, and is currently licensed to do business within the State of Florida, if required by State or Federal Law, for the services or commodities the Vendor/Contractor will provide the Commission under these ITN specifications.

2. Transmittal letter shall include:

Name, title, telephone number and email address of the official contact person and an alternate, if available. These individuals must have the authority to bind the prospective contractor and be available to answer questions, provide clarifications, and attend meetings as may be appropriate regarding this ITN.

Tab B. TECHNICAL RESPONSE

Bidders shall prepare the Technical Response Package in the order outlined below for ease of identification and review by the evaluation committee members. The Technical Response Package shall contain the following sections:

1. Introduction

This section shall contain a statement of the vendor's general strategy and methodology that will be used to perform the management services.

2. Company Background, Qualifications and Experience

This section shall provide the historical aspects of the vendor, the organizational structure (including proposed subcontractors) and locations of the main office and any branch offices. Provide demonstration that the vendor has sufficient qualified personnel who are current employees of the vendor, or proposes to hire subcontractors, to perform the services anticipated herein. Describe the qualifications of

individual personnel proposed for fulfilling the services and the number of years of experience working on related projects. Describe the vendor's ability to provide a multi-discipline approach to the project.

This section must also demonstrate:

- *The responsive vendor will work closely with project managers within the Boating and Waterways Section to develop projects. How do you anticipate coordinating these projects with the project managers?*
- *Do you have experience in management of waterway construction projects, including the planning, development, installation and inspection phases? If so, please provide details on how these were managed.*

3. Technical Understanding

This section shall provide the vendor's understanding of the scope of services described in the ITN and Scope of Work. It shall include a detailed description of the understanding for each type of project, demonstrate the understanding of the unique requirements of these projects, and describe any research the vendor may have conducted in to current or past similar projects for which the Commission was responsible.

4. Approach and Organization

Describe the strategy and methods that will be used to manage each project outlined in the Preliminary Scope of Work, as well as the vendor's proposed Schedule of Deliverables for each. Describe the proposed organization of the project workload and the vendor's management structure as it relates to the project workload.

This section must address questions such as:

- *Management services described herein may need to be expanded as additional services within the Boating and Waterways Section or Division of Law Enforcement are needed. What additional management services may be available from your company that would be applicable?*

5. Management

The management section shall include cost and schedule controls, corrective action procedures, tracking procedures, and other management considerations appropriate for each project. The Commission is interested not only in how cost and schedules will be tracked and reported, but specifically what will be done to reduce costs and maintain schedules. This section shall also address the vendor's responsiveness to suggestions, comments or modifications regarding the project's plans or reports.

- *How can you help the Boating and Waterways Section be more efficient and cost effective in all phases of the projects; i.e. planning, development, coordination, installation, inspection and completion?*

Tab C. PAST PERFORMANCE

Prospective vendors shall complete and submit the Client Reference form, Attachment 2, enclosed herein, to provide a minimum of three (3) references for similar scale projects completed. Instructions for completing and submitting the Client Reference form are included on the form. The form must be completed per the instructions, or a reference may not be considered by the Commission. The Commission reserves the right to contact any and all references in the course of this solicitation evaluation and make a fitness determination. The Commission reserves the right to ask for additional references and to contact reference sources not listed in the response. Any negative reference(s) may be cause for vendor disqualification. **Do not list the Commission as a client reference.**

The Commission will attempt to contact each selected reference by phone up to four (4) times. In the event that the contact person cannot be reached following the specified number of attempts, the vendor shall receive a score of zero (0) for that reference evaluation. The Commission **will not** attempt to correct incorrectly supplied information.

Failure to provide the required information for a minimum of three (3) separate and verifiable clients in the spaces provided on Attachment 2 or failure to provide the required information for each reference shall result in the vendor receiving a score of zero (0) for the Past Performance section of the evaluation criteria.

Tab D. COST/BUDGET

Vendors shall provide a fee schedule, list of fixed costs, and type of costs for reimbursement for management of each project outlined in the Preliminary Scope of Work. Fee schedule shall include the type of positions that may be needed to manage each project with hourly rates itemized, by category/classification, for personnel anticipated to be used and the anticipated number of hours necessary for each project. The vendor shall itemize any other expenses anticipated to be incurred during each task (e.g. materials and travel, as well as percentages for the application of overhead, fringe benefits, general and administrative expenses, and fee). The vendor shall itemize any other fixed costs expenses and provide a total cost to manage each project as described in this solicitation and the vendor's response thereto.

In the event a task assignment requires travel in excess of 50 miles from traveler's headquarters, travel must be pre-approved by the Contract Manager and will be reimbursed pursuant to Section 112.061, F.S. No out-of-state travel will be approved.

While the pricing is subject to the negotiation phase of the selection process, the proposed cost/budget will be used for the cost/budget element of the evaluation criteria in the evaluation of responses.

Final negotiation will include a Rate Schedule with negotiated labor rates, overhead, fringe, and profit margin.

Tab E. Completed and Signed Addendum Acknowledgement Forms (if applicable)

PLEASE NOTE: An ITN Checklist is provided as Attachment 4 in order to help vendor ensure all required items are submitted.

RESPONSE REVIEW CRITERIA

The Commission reserves the right to reject any and all responses which fail to meet any of the mandatory requirements or contractual requirements stated in this ITN. Therefore, responses should be submitted initially in the most favorable manner.

The Commission also reserves the right to waive minor irregularities in responses, providing such action is in the best interest of the State. Minor irregularities are defined as those that have no adverse effect on the State's interest and shall not affect the outcome of the selection process by giving any one Vendor an advantage or benefit not enjoyed by other Vendors. The Commission also reserves the right to reject all responses.

A non-responsive proposal shall include, but not be limited to, those that: a) are irregular or are not in conformance with the requirements and instructions contained herein; b) fail to utilize or complete prescribed forms; or c) have improper or undated signatures. **A NON-RESPONSIVE PROPOSAL WILL NOT BE CONSIDERED.**

SELECTION AND EVALUATION OF RESPONSES

A committee composed of five (5) representatives of the Commission shall independently evaluate and score each of the responses received. The Committee will be composed of persons who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program area for which the commodities and/or contractual services are sought. The Committee will be involved in the evaluations, oral presentations, negotiations, and the recommendation for award.

The Committee shall individually score each response in accordance with the evaluation criteria listed below. The Committee's total average score will determine the ranking of the respondents, which will result in a "short-list" of up to three (3) highest scoring vendors. The Commission reserves the right to reject any or all responses at any time during the evaluation process.

EVALUATION CRITERIA

The following information will be used for evaluation criteria by the Committee based on the categories outlined below:

PHASE I (*All responsive respondents*)

Each response received will be reviewed and scored using the evaluation criteria contained in Attachment 3. Each Committee member will use the total point scores to convert to rank by vendor. The Procurement Manager will calculate an average rank for each proposal, combining all rankings of the reviewers, and will then calculate the final ranking.

Example of an Individual Committee Member's Scores/Ranks:

<i>VENDOR</i>	<i>RAW POINTS RECEIVED</i>	<i>RANK</i>
Company A	200	2
Company B	210	1
Company C	180	3.5*
Company D	175	5
Company E	180	3.5*

* *In the event that multiple firms have the same raw point score, the rank places for those firms are averaged and each firm receives that rank. In this case the third and fourth ranks are tied so $3 + 4 = 7$; 7 divided by $2 = 3.5$. Each firm receives a rank of 3.5.*

PHASE II Short List/Negotiations *(Top 3 respondents)*

The "short-list" of up to three (3) highest scoring vendors will be posted as an Agency Decision on the Vendor Bid System on the date and time specified in the Calendar of Events.

The Commission will enter into negotiations with the vendors listed on the "short-list". The vendors selected for the short list will each be scheduled to meet with the Committee to provide an oral/technical presentation of their firm's capabilities and approach to the project. Short listed vendors will be notified of a time and date for the presentation. The presentations will be used to present the vendor's approach and improve understanding about the Commission's needs and expectations with questions and answers at the end of the vendor's presentation. Short listed vendors should be prepared to discuss their response, presentation and pricing and discuss any issues or problems. Due to the urgent need for timely service implementation and delivery, all negotiations will be conducted during a one week or less time period. Vendors shall plan travel accordingly. The Commission will begin negotiations as determined necessary by the Commission. The Commission reserves the right to conduct negotiations sequentially or concurrently. If the Commission is unable to reach agreement with a vendor on any scope of work issue or contractual issue, the Commission may eliminate that vendor from further consideration. Negotiation sessions are not open to the public and all negotiation sessions will be recorded by the Commission

PHASE III BEST AND FINAL OFFERS (BAFO) *(Top 3 respondents only)*

After negotiations, the Commission will request Best and Final Offers (BAFO) for final consideration prior to final award decision. After receipt of BAFO's, the Committee will prepare a summary report of negotiation and recommend an award.

ECONOMY OF PRESENTATION

Each response shall be prepared simply and economically, providing a straightforward, concise delineation of Vendor's capabilities to satisfy the requirements of this ITN. Elaborate binding, colored displays, and promotional materials are not required. Emphasis in each response must be on completeness and clarity of content. In order to expedite the evaluation of responses, it is essential that Vendors follow the format and instructions contained herein.

VERBAL INSTRUCTION PROCEDURE

Vendors may not consider any verbal instructions as binding upon the Commission. Only those communications from the Commission that are in writing, may be considered as a duly authorized expression on behalf of the Commission.

ADDENDUMS

If the COMMISSION finds it necessary to supplement, modify or interpret any portion of the specifications or documents or answer any vendor questions during the ITB period an addendum shall be posted on the Vendor Bid System internet site. An Addendum Acknowledgment Form will be included with each addendum and shall be signed by an authorized vendor representative, dated, and returned to the COMMISSION prior to the opening date and time specified in the Calendar of Events. Each vendor is responsible for monitoring the Vendor Bid System site for new or changing information relative to this procurement. The Commission bears no responsibility for any delays, or resulting impacts, associated with a vendor's failure to obtain the information made available through the Vendor Bid System. The Vendor Bid System can be reached at the following internet address:

http://vbs.dms.state.fl.us/vbs/main_menu

ELIGIBILITY

The Vendor shall be licensed as necessary to perform under the contract that may result from this ITN as may be required by law, rule, or regulation; and shall provide evidence of such compliance to the Commission upon request.

By acceptance of the contract that may result from this ITN, the Contractor warrants that it has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good-faith performance as a responsible vendor, and that the Contractor shall comport with Chapter 287, F.S., and all other applicable rules and laws.

Unless otherwise provided herein, the Commission will not reimburse the Contractor for any non-expendable equipment or personal property for use by the Contractor to perform services under this Contract.

DELIVERABLES

The following services or service tasks are identified as deliverables for the purposes of the Contract:

- a.) Performance of all services set forth in the Scope of Work.
- b.) Submission of all invoicing, supporting documentation, Corrective Action Plans, reports etc.

PERFORMANCE AND MONITORING

The vendor shall perform the services described in the Scope of Work in 100% compliance with all of the Terms and Conditions of this Contract and its Task Assignments. The Commission's Contract Manager and/or his designee will monitor the Contractor's service delivery to determine if the Contractor has achieved the required level of performance. The Commission reserves the right for any Commission staff to make scheduled or unscheduled, announced or unannounced monitoring visits. If the Commission determines that the Contractor failed to meet any of the Terms and Conditions of this Contract, the Contractor will be sent a formal written contract notice. Within ten (10) days of receipt of notice the Contractor shall provide with Commission with a formal written Corrective Action Plan in response to all noted deficiencies. The Contractor shall correct all identified deficiencies within

forty-five (45) days of notice. The Commission may conduct follow-up monitoring at any time to determine compliance based on the submitted Corrective Action Plan. Failure to meet 100% compliance with all of the Terms and Conditions of this Contract or failure to correct the deficiencies identified in the notice within the time frame specified may result in liquidated damages, and/or termination of this Contract in accordance with the Termination section.

LIQUIDATED DAMAGES

If the Contractor fails to complete the work or the conditions of the contract that may result from this ITN and/or Amendments by the completion date, the Commission shall have the right to deduct from any amount due and payable to the Contractor, as liquidated damages, an amount up to \$500.00 per calendar day. All liquidated damages assessed after the agreed to work completion date will include every day of the week (weekdays and weekends). Exceptions to this may be made if a delay is attributable to circumstances that are clearly beyond the control of the Contractor. The burden of proof of unavoidable delay shall rest solely with the Contractor and shall be supplied in a written form and submitted to the Contract Manager.

SUBCONTRACTS

The Contractor is fully responsible for all work performed under the Contract resulting from this ITN. The Contractor may, upon receiving prior written consent from the Contract Manager, enter into written subcontract(s) for performance of certain functions under the Contract. No subcontract, which the Contractor enters into with respect to performance of any of its functions under the Contract, shall in any way relieve the Contractor of any responsibility for the performance of its duties. All payments to subcontractors shall be made by the Contractor.

TERMINATION FOR DEFAULT

The contract shall terminate immediately upon the Commission giving written notice to the Contractor in the event of fraud, willful misconduct, failure to perform work in an appropriate and timely manner, or breach of this contract. If this contract is terminated because of failure on part of the Contractor to fulfill his/her undertakings under this contract, the Commission may order the contractor to cease all work and assume the work and services and perform them to completion under the contract specifications or otherwise. Upon such order and completion of work by the Commission, the Contractor shall be liable to the Commission for any excess cost occasioned to the Commission thereby.

In such an event, the Contractor will be found in default and removed from the Commission's approved vendor list as per 60A-1.006 of the Florida Administrative Code; it is also possible the company may be removed from the State of Florida's approved vendor list.

TERMINATION FOR CONVENIENCE

The Commission may terminate this Contract at any time with or without cause by a written notice by certified mail, return receipt requested, from the Commission to the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and services. If the contract is terminated for the convenience of the Commission, payment to the Contractor will be made promptly at the contract price for that portion of work actually performed and accepted.

Upon termination of this Contract, the Contractor shall promptly render to the Commission all property belonging to the Commission. For the purposes of this section, property belonging to the Commission shall include, but shall not be limited to, all books and records kept on behalf of the Commission.

INSURANCE REQUIREMENTS

1. Workers' Compensation

To the extent required by law, the Contractor will either be self-insured for Worker's Compensation claims, or will secure and maintain during the life of this Contract, Workers' Compensation Insurance for all of its employees connected with the work of this project. If any work is subcontracted, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Contract is not protected under Workers' Compensation statutes, the Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Commission, for the protection of his employees not otherwise protected.

Employers who have employees who are engaged in work in Florida must use Florida rates, rules, and classifications for those employees. In the construction industry, only corporate officers of a corporation or any group of affiliated corporations may elect to be exempt from workers' compensation coverage requirements. Such exemptions are limited to a maximum of three per corporation and each exemption holder must own at least 10% of the corporation. Independent contractors, sole proprietors and partners in the construction industry cannot elect to be exempt and must maintain workers' compensation insurance.

2. Vendor's Public Liability and Property Damage Insurance

The vendor shall secure and maintain, during the life of this contract, comprehensive general liability insurance as shall protect him/her from claims based on personal injury, including accidental death, as well as claims for property damage which may arise from operations under this contract whether such operations be by vendor or by vendor's agents or employees in the amount that such insurance shall be the minimum limit as follows:

1. Bodily Injury Liability - \$300,000 each incident
2. Property Damage Liability (other than automobile) - \$100,000 each incident
3. The Contractor accepts full responsibility for identifying and determining the type(s) and extent of insurance necessary to provide reasonable financial protection for the vessel while in the Contractor's possession and to hold such insurance at all times during the existence of the Contract resulting from this ITN

The vendor hereby agrees to indemnify and hold the Commission harmless from any and all claims or demands for any personal injury or property damage resulting or occurring in connection with any activities conducted under the contract and shall investigate all claims of every nature at its expense. In addition, the vendor agrees to be responsible for any injury or property damage resulting from any activities conducted under this agreement.

The Commission shall be exempt from, and in no way be liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the vendor and/or sub-contractor providing such insurance.

The Contractor shall provide and maintain the insurance as set forth in this contract and shall not cause this coverage to lapse for any reason during the life of the contract.

RELATIONSHIP OF THE PARTIES

The parties agree that there is no conflict of interest or any other prohibited relationship between the Vendor/Contractor and the Commission.

NON-DISCRIMINATION

No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Contract.

DISCRIMINATORY VENDOR LIST

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

PUBLIC ENTITY CRIMES

In accordance with Section 287.133(2)(b), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not perform work as a grantee, Vendor/Contractor, supplier, subcontractor, consultant or by any other manner 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 36 months from the date of being placed on the convicted vendor list.

PRIDE

It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this Contract may be purchased from the corporation identified under Chapter 946, F.S., if available, in the same manner and under the same procedures set forth in Section 946.515(2), F.S. The "Corporation identified" is PRISON REHABILITATIVE INDUSTRIES AND DIVERSIFIED ENTERPRISES, INC. (P.R.I.D.E.) which may be contacted at:

P.R.I.D.E.
12425 28th Street North
St. Petersburg, Florida 33716
Phone (727) 572-1987

POSTING OF RESPONSE TABULATION

Response Tabulation, with recommended award, will be posted for review by interested parties on the Vendor Bid System (VBS) on or about the date indicated in the calendar of events, and will remain posted for a period of seventy-two (72) hours, which does not include weekends or state observed holidays. Any Contractor who desires to protest the recommended award must file a notice of protest with the Purchasing Office, Florida Fish & Wildlife Conservation Commission, 620 S. Meridian Street, Room 364, Tallahassee, Florida 32399-1600, within the time prescribed in Section 120.57(3), Florida Statutes. Vendors can access the VBS on at the following internet address http://vbs.dms.state.fl.us/vbs/main_menu.

Failure to file a protest within time prescribed in Section 120.57(3)(b), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, F. S. Either failure to file a notice of protest or failure to file a petition will constitute such waiver.

USE OF CONTRACT BY OTHER STATE AGENCIES AND ELIGIBLE USERS

As provided in Chapter 60A-1.047, F.A.C., and Section 287.042(16)(a) F.S., other State of Florida agencies may purchase from the resulting contract of this Invitation to Negotiate, provided that the Department of Management Services has determined the contract's use is cost effective and in the best interest of the State, and with the Vendor's consent.

Other State of Florida governmental entities and eligible users may also request of the Vendor to be able to use this contract. If the Vendor agrees to other entities to utilize this Invitation to Negotiate contract, such agencies shall coordinate their use of this contract with the Florida Fish and Wildlife Conservation Commission in order to reduce scheduling conflicts.

FLORIDA EMERGENCY SUPPLIER NETWORK

Suppliers of products and services needed by government during hurricanes and other emergencies are invited to join a Florida Emergency Supplier Network. Suppliers will identify emergency products and services available, emergency contact information, plans to maintain their operations and supply chain in emergency circumstances, and pricing arrangements.

This information will be organized and furnished to buyers at State and County Emergency Operations Centers, and suppliers will be recognized with a certificate identifying their business as a member of the Florida Emergency Supplier Network. Please go to the following website to obtain a FESN application and contract:

http://dms.myflorida.com/dms/purchasing/florida_emergency_network/florida_emergency_supplier_network_fesn

FEDERAL DEBARMENT/SUSPENSION CERTIFICATION FORM

Enclosed is a certification form regarding debarment and suspension that must be completed, signed and returned to this office. This certification is required by Federal Government Executive Order 12549, Debarment and Suspension 34 CFR Part 8B, for all lower tier transactions meeting the threshold and tier requirements stated in Section 85.510. Federal OMB Circular No. A-102, Grants and Cooperative Agreements with State and Local Governments, states, in part, that "agencies shall not award assistance to applicants that are debarred or suspended, or otherwise excluded from

or ineligible for participation in Federal assistance programs under Executive Order 12549.

COMMITMENT OF FUNDS

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

CERTIFICATE OF PARTIAL PAYMENT

The Vendor will be required to complete a Certificate of Partial Payment form to receive partial payments if such provision is included in the contract or purchaser order. This form must be submitted to the Contract Manager with each invoice requesting partial payment. The Contract Manager shall supply copies of these forms to the Vendor upon request. A minimum of ten percent (10%) of the total project cost shall be held back for final payment. Final payment will only be made once the Commission Contract Manager has agreed to project completeness.

INVOICING

The Vendor shall be paid upon submission of properly certified invoice(s) to the Commission after delivery and acceptance of commodities or services as expressed in writing by the Contract or Project Manager. Invoices shall contain detail sufficient for a proper pre-audit and post-audit thereof and shall contain the purchase order/contract number and the vendor's Federal Employer Identification Number or Social Security Number. FAILURE TO SUPPLY INVOICE WHICH PROPERLY CORRESPONDS TO THE PURCHASE ORDER/Written AGREEMENT, MAY DELAY THE VENDOR PAYMENT PROCESS. Upon award of the ITN, the Vendor shall provide a sample invoice for review and approval by the Commission prior to submission of any invoices for payment.

PAYMENT OF FUNDS

The Commission shall pay the Vendor for satisfactory service upon submission of invoices, accompanied by required reports or deliverables, and after acceptance of services and deliverables in writing by the Commission's Contract Manager. Each invoice shall include the Commission Contract Number and the Vendor's Federal Employer Identification (FEID) Number. An original and two (2) copies of the invoice shall be submitted. The Commission shall not provide advance payment. All bills for amounts due under this Contract shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices shall be submitted to the Contract Manager or designee.

ELECTRONIC FUNDS TRANSFER (EFT)

The State of Florida can deposit vendor payments directly into your bank account. Vendors can register for EFT at the following internet address:

http://www.myfloridacfo.com/aadir/direct_deposit_web/Vendors.htm.

Note: Your business name registered for EFT, must match the name listed in MFMP VIP registration to receive direct deposit payments. There can only be one financial institution's account information on file for one federal tax identification number (SSN or FEIN). Payments cannot be sent to two or more financial institutions.

AUTOMATED CLEARING HOUSE (ACH)

To make transaction fee payments, vendors can register for debit ACH at http://dms.myflorida.com/business_operations/state_purchasing/myflorida_marketplace/mfmp_vendors/vendor_toolkit/forms_for_vendors and download the ACH form. Complete the ACH form and submit it electronically (per the instructions on the form) to the Department of Management Services to process. *Note:* Registering for ACH can take up to 14 days.

PROMPT PAYMENT CLAUSE

Section 215.422, F.S. provides that agencies have 5 working days to inspect and approve goods and services, unless ITN specifications or the P.O. specifies otherwise. With the exception of payments to health care providers for hospital, medical, or other health care services, if payment is not available within 40 days, measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty set by the Comptroller pursuant to Section 55.03, F.S., will be due and payable in addition to the invoice amount. To obtain the applicable interest rate, please contact the Agency's Fiscal Section at 850/488-3323 or Purchasing Office at 850/488-3427. Payments to health care providers for hospitals, medical or other health care services, shall be made not more than 35 days from the date of eligibility for payment is determined, and the daily interest rate is .03333%. Invoices returned to a vendor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the agency. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payments from a State agency, may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.

VENDOR REGISTRATION

Each vendor desiring to do business with the State through the on-line procurement system is pre-qualified to do so, and shall register, unless exempted, in the MyFloridaMarketPlace system. Vendor agrees to self-register for MyFloridaMarketPlace. For more information and to register please go to <https://vendor.myfloridamarketplace.com> and navigate to the Online Vendor Registration section under Vendors.

The address the company has registered under has to be the address entered on the Respondent Acknowledgment form in order for the response to be valid. Information about the registration process is available, and registration may be completed, at the MyFloridaMarketPlace website above. Interested persons lacking Internet access may request assistance from the MyFloridaMarketPlace Customer Service at 866-FLA-EPRO, (866-352-3776) or from State Purchasing, 4050 Esplanade Drive, Suite 300, Tallahassee, Florida 32399.

VENDOR TRANSACTION FEES

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to section 287.057(23), Florida Statutes (2002), all payments, unless exempt under Rule 60A-1.030(3), F.A.C., shall be assessed a Transaction Fee of one percent (1.0%), which the vendor shall pay to the State.

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

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

Failure to comply with these requirements shall constitute grounds for declaring the vendor in default and recovering re-procurement costs from the vendor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES SHALL BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

PROHIBITION AGAINST LOBBYING

The Contractor certifies that no Federal appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding, renewal, amending or modifying of any Federal contract, grant, or cooperative agreement. If any non-Federal funds are used for lobbying activities as described above in connection with this Contract, the Contractor shall submit Standard Form-LLL, "Disclosure Form to Report Lobbying", and shall file quarterly updates of any material changes. The Contractor shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly.

Pursuant to the Lobbying Disclosure Act of 1995, the Contractor agrees to refrain from entering into any subcontracts under this Agreement with any organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the subcontract.

PUBLIC RECORDS OF NONGOVERNMENT CONTRACTORS

All records in conjunction with this contract shall be public records, unless specifically exempt by law, and shall be treated in the same manner as other public records are under Chapter 119, Florida Statutes.

PUBLIC RECORDS

The Commission reserves the right to unilaterally cancel this contract for refusal by the Contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 F.S., and made or received by the Contractor in conjunction with this contract.

RECORD KEEPING REQUIREMENTS

The Contractor shall maintain accurate books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract, in accordance with generally accepted

accounting principals. The Contractor shall allow the Commission, the State, or other authorized representatives, access to periodically inspect, review or audit such documents as books, vouchers, records, reports, canceled checks and any and all similar material. Such audit may include examination and review of the source and application of all funds whether from the state, local or federal government, private sources or otherwise. These records shall be maintained for five (5) years following the close of this contract. In the event any work is subcontracted, the Contractor shall require each subcontractor to similarly maintain and allow access to such records for audit purposes.

DAMAGES TO STATE PROPERTY

Any damages to state property (i.e. structures, roads, culverts, fences, trees, or other natural resources) caused by the Vendor while working on this project shall be the responsibility of the vendor to remedy, as determined by the Commission. The vendor shall be responsible for the conduct of all vendor personnel at all times while on the job site.

Should any historical or cultural artifacts be uncovered the vendor shall immediately halt work and notify the Contract Manager. Please note: The State Archeologist has the power to halt work if he or she has reason to believe artifacts are being disturbed.

PROHIBITION OF UNAUTHORIZED ALIENS

In accordance with Executive Order 96-236, the Commission shall consider the employment by the Contractor of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Contract if the Contractor knowingly employs unauthorized aliens.

EMPLOYMENT ELIGIBILITY VERIFICATION

The Contractor shall enroll in and use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification System to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract. Vendors can enroll in the Verify Employment Eligibility Verification System at the following internet address: <http://www.uscis.gov/portal/site/uscis>.

The Contractor shall include in any subcontracts for the performance of work or provision of services pursuant to this Contract the requirement that the subcontractor use the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

The Contractor further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Commission or other authorized state entity consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program (which can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).

Compliance with the terms of the Employment Eligibility Verification provision is made an express condition of this Contract and the Commission may treat a failure to comply as a material breach of the Contract.

OWNERSHIP OF DOCUMENTS/DATA/REPORTS/RESEARCH/SURVEYS ETC.

The Contractor hereby agrees that all documents (data, reports, research, surveys, etc.) in hard copy or electronic that are collected or used for this project are the sole property of the Commission. The Contractor also hereby agrees to unconditionally transfer and assign to the Commission all copyright claims, trade secrets or other proprietary rights with respect to such documents. Upon request by the Commission at any time during and for 5 years after the expiration of this agreement, Contractor shall immediately deliver, transfer, and transmit to the Commission all originals and all copies of said documents and materials referenced herein.

FAMILIARITY WITH LAWS

The Vendor is required to be familiar with all Federal, State and Local laws, ordinances, rules and regulations that in any manner affect the work. The vendor shall comply with all laws and rules applicable to the vendor(s) that shall provide the required commodities or services to the Commission. Ignorance on the part of the Vendor will in no way relieve him from responsibility.

COMPLIANCE WITH LAWS

The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example, the Contractor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Contractors submitting responses to this solicitation must also provide electronic and information technology resources in complete compliance with the accessibility standards provided in Rule 60-8.002, F.A.C.; these standards establish a minimum level of accessibility. Violation of such laws shall be grounds for Contract termination.

INDEMNITY

The Contractor shall save, hold harmless and indemnify the State of Florida and the Commission against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of any person or persons and for the loss or damage to any property resulting from the use, service, operation or performance of work under the terms of this Contract, resulting from the acts or omissions of the Contractor, his sub-Contractor, or any of the employees, agents or representatives of the Contractor or sub-Contractor.

SEVERABILITY AND CHOICE OF VENUE

This Contract has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida.

JURY TRIAL WAIVER

As consideration of this Contract, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Contract.

ADDITIONAL LEGAL REQUIREMENT

All corporations seeking to do business with the State shall, at the time of submitting a response, be on file with the Department of State in accordance with provisions of Chapter 607, Florida Statutes; similarly, partnerships seeking to do business with the State shall, at the time of submitting such response, have complied with the applicable provisions of Chapter 620, Florida Statutes. For further information on required filing and forms, please go to the following sites: <http://www.sunbiz.org/index.html> or <http://www.dos.state.fl.us/doc/index.html>.

**FWC 11/12-13
ATTACHMENT 1
SCOPE OF SERVICES - PRELIMINARY**

Background

The Florida Fish and Wildlife Conservation Commission (FWC or Commission), Division of Law Enforcement, Boating and Waterways Section, manages and promotes the use of state waterways for safe and enjoyable boating. Duties and responsibilities of this Section include, but are not limited to, oversight and coordination of waterway markers on state waters, providing boating education and boating safety programs, improving boating access, coordinating the removal of derelict vessels from state waters, developing economic initiatives for promoting boating in the state, and coordinating the submission of state comments on marine events. Sections within the Boating and Waterways Section include Waterway Management, Boating Safety, and Boat Access.

Preliminary Scope of Work

FWC is soliciting contractors to assist with planning, developing, installing, implementing, or the overall management of projects to provide the necessary services to residents and visitors throughout the State of Florida associated with state-owned and federally-owned waterway markers and buoys, boating education and safety, and additional related activities within the responsibilities of Boating and Waterways such as disaster preparedness, emergency response, on-call services, research and studies, design services, engineering services, and permitting services for projects within the Boating and Waterways Section or the Division of Law Enforcement. As part of the submission, the bidder should submit services that may be available to the Boating and Waterways or the Division of Law Enforcement during the period of the Contract.

It is understood and agreed that installation services may need to be subcontracted, if the services cannot be performed directly by the successful, responsive respondent, or if the services cannot be performed by a possible Agency Term Contract provider. Any and all services procured from a subcontractor will be procured in compliance with Chapter 287, Florida Statutes. All procurement for subcontractors will be approved by FWC, and subsequent award to a subcontractor will be approved by FWC prior to award and initiation of work.

Primary services required include, but are not limited to, the following:

Management of a Program that will assist the Commission with Examination, Evaluation, and Appropriate Repair or Potential Construction of State-Owned and Federally-Owned Uniform Waterway Markers or the Removal of Vessels or Debris in a timely manner on a statewide basis

- Services for uniform waterway markers may include, but not be limited to, uniform waterway marker plan development and implementation, specification development, bidding that is consistent with state purchasing rules and regulations, installation, and inspection.
- Assistance with federal, state, and local permitting.
- Geographical information system (GIS) support as related to uniform waterway markers.
- Services for removal of vessels or debris may include, but not limited to, inventory or assessment of the vessels or debris, permitting, and coordination of removal.

Management of Programs for Disaster Preparedness and Emergency Response that Assist the Commission with a Timely Response for the Assessment of Waterway Management within the Commission's Jurisdiction after Hurricanes or other Storm Events

- Services for the management of uniform waterway markers that are hazards to navigation from being damaged from accidents, natural disasters, or abuse. These services may include field assessment, planning and coordination for repairs or removals, repairs or removals, and inspections. In addition, these services may include the planning and development of a statewide system for the immediate response to emergency situations involving damages that are hazards to navigation.
- Assessing and evaluating waterway emergencies and recommending potential solutions;
- Conducting assessments relating to waterway management emergency issues.
- Coordination with federal, state, and local emergency management agencies before and during natural disasters for waterway management issues, boating safety issues, repairs of facilities, derelict vessels, and additional areas relating to boating issues occurring after natural disasters

Management of Research and Studies Related to Waterway Management, Boating Safety and Education, Boating Access, or Additional Activities Related

Studies that may be needed to assist with planning, developing or implementing of safety issues, waterway management, legislative issues, or risk assessments.

Management and Responsibilities of Additional Boating Related Activities

- Federal, state, or local permitting issues relating to waterway and boating facilities
- Derelict vessel removal contracting and project management
- Site design, bid specifications and construction of FWC-managed facilities GIS support

Specific Requirements

These requirements do not include the total Scope of Work for each type of service. The respondent shall submit sample task assignments for proposed work and work products described in the Preliminary Scope of Work as part of the submission for the ITN. These will be used as additional information to assess the understanding and approach to the work. These are just samples and are not meant to be specific tasks. Upon award of the Contract, specific tasks, schedule of work and deliverables for projects will be negotiated and finalized prior to initiation of any work during the period of the Contract.

Specific requirements of the primary services listed below include:

Management of a Program that will Assist the Commission with the Examination, Evaluation and Appropriate Repair or Potential Construction of State-Owned and Federal-Owned Waterway Markers (includes signs and buoys) or the Removal of Vessels or Debris in a Timely Manner on a Statewide Basis

The Commission will provide data for the contractor to review and make an assessment of the uniform waterway marker data to develop a plan for new markers and/or revise marker locations because of boating restricted or safety zones. The contractor will analyze the data and identify and propose locations to FWC. Analysis may require a site visit to the proposed area. The contractor will work with the Project Manager to review and verify the plan. FWC will have final approval of all uniform waterway marker plans.

As part of the workplan development, FWC may request the contractor to inventory an area with specific instructions on the method and means to inventory the signs and markers in the proposed area.

Upon completion of the workplan, the contractor will work with the Project Manager to develop specifications, bidding and installation, if FWC has requested these services. As stated herein, depending on staff availability FWC may deem it more cost effective to perform any of the types of project tasks described herein with internal staff, and may decide to contract for only portions of a particular project. The Commission intends to develop and enter into separate regional contracts for construction activities related to waterway marker installation and repairs. The Commission intends to develop and enter into separate regional contracts for activities related to uniform waterway marker installation and repairs. The selected contractor for this ITN is expected to provide management services for the Commission As stated herein, subcontractors are allowed for phases of the work but must comply with all provisions stated herein.

If tasked with installation responsibilities or management of installation, the contractor will ensure that signs, buoys or tape are installed in accordance with specifications provided by FWC. FWC will have the final inspection and approval of all work.

The Commission has Agency Term Contracts that provide for the manufacture of all required signage and buoys. A copy of the Agency Term Contracts will be provided to

the contractor. These Agency Term Contracts will be used for all uniform waterway marker projects during the term of the Contract.

The Commission currently has a database for vessels requiring removal from state waters, along with a program that coordinates with local governments on the removal of the vessels and debris. The contractor will assist the Commission with further coordination, statewide assessments, permitting, services to assist or remove vessels and debris, and other related duties.

Management of Programs for Disaster Preparedness and Emergency Response that Assist the Commission with a Timely Response for the Assessment of Waterway Management within the Commission's Jurisdiction after Hurricanes or Other Storm Events

Uniform Waterway Markers

Signs and buoys that are state-owned, or federally-owned and FWC is maintaining, may become damaged during accidents, natural disasters or abuse and become hazards to navigation and need to be handled immediately. Some markers may be derelict, needing repair, or damaged and not be hazards to navigation. These markers would not need to be to be handled on an emergency basis.

The contractor will be required to develop a statewide notification system that the public can contact 24 hours a day, 7 days a week to report any damaged or derelict markers. The contractor will receive the report and notify the project manager for FWC. FWC's project manager will determine whether the incident is considered an emergency or not and may coordinate with the contractor on the appropriate next steps.

Management of Research and Studies Related to Waterway Management, Boating Safety and Education, Boating Access or Additional Activities Related Boat Ramp Management – The Boat Access Field Unit may request design, engineering, and permitting assistance for construction of new facilities.

Site design, bid specifications and construction for other facilities – the Boating and Waterways Section, Division of Law Enforcement and FWC may have the need for these services for facilities and projects funded during the period of the Contract.

**FWC 11/12-13
ATTACHMENT 2
CLIENT REFERENCE FORM**

In the spaces provided below, the vendor shall list all names under which it has operated during the past five (5) years.

On the following pages, the vendor must provide the required information for a minimum of three (3) clients of the vendor, **(not intended subcontractors)**. **Do not list projects completed for FWC (see next paragraph)**. Information on each project must be provided on this Attachment. Any information not submitted on this attachment shall not be considered. The projects listed shall be for services similar in nature to that described in this solicitation. Confidential clients shall not be included. Any additional references listed, over the minimum of three required, will be considered in determining if the vendor has satisfied the requirements for the three references as set out herein.

FWC will review its records to identify all contracts that the vendor has undertaken with the FWC, where the vendor was the prime contractor, during the last five (5) years (contracts in effect on or after June 1, 2006) for use in the evaluation of Past FWC Performance, if applicable. **The vendor shall not list any previous FWC projects on this form.**

Firms that the vendor has listed as subcontractors in their proposal may not be used as Past Performance references under this solicitation. Firms that are currently parent or subsidiary companies to the vendor will not be accepted as Past Performance references under this solicitation.

In the event that the vendor has had a name change since the time work was performed for a listed reference, the name under which the vendor operated at the time that the work was performed must be given, at the end of the project description for that reference.

The same client may not be listed for more than one (1) reference (for example, if the vendor has completed for project for the Florida Department of Transportation – District One and one project for the Florida Department of Transportation – District Two, only one of the projects may be listed because the client, the Florida Department of Transportation, is the same).

In the event that the vendor submits a response as a joint venture, at least one (1) past performance reference client must be listed for each member of the joint venture. However, the total minimum number of clients to be listed remains three (3).

Note: The Project Performance Period dates must verify that the project has been completed.

**FWC 11/12-13
CLIENT REFERENCE FORM**

Client #1

Client Name: _____

Address: _____

Contact Person: _____ Phone Number: (____) _____

Project Performance Period: _____ to _____
Dates should be in mm/yy format

Location of
Project: _____

Brief description of the services performed for this project:

**FWC 11/12-13
CLIENT REFERENCE FORM**

Client #2

Client Name: _____

Address: _____

Contact Person: _____ Phone Number: (____) _____

Project Performance Period: _____ to _____
Dates should be in mm/yy format

Location of
Project: _____

Brief description of the services performed for this project:

**FWC 11/12-13
CLIENT REFERENCE FORM**

Client #3

Client Name: _____

Address: _____

Contact Person: _____ Phone Number: (____) _____

Project Performance Period: _____ to _____
Dates should be in mm/yy format

Location of
Project: _____

Brief description of the services performed for this project:

**FWC 11/12-13
ATTACHMENT 3
EVALUATION CRITERIA**

	Maximum Raw Score Possible		Weight Factor		Maximum Points Possible
A. Acknowledgement Form (disqualify proposal if not completed & signed)	0	X	0	=	0
B. Transmittal Letter	0	X	0	=	0
C. Technical Response					
1. Introduction	0	X	0	=	0
2. Company Background ¹	4	X	2	=	8
3. Qualifications & Experience					
a. Qualifications of Personnel ¹	4	X	4	=	16
b. Experience w/Similar Projects ¹	4	X	3	=	12
c. Multi-Discipline Approach ¹	4	X	5	=	20
4. Technical Understanding ¹	4	X	5	=	20
5. Project Approach					
a. Strategy & Methods ¹	4	X	5	=	20
b. Schedule/Project Timeline ¹	4	X	4	=	16
6. Project Management					
a. Project Organization ¹	4	X	4	=	16
b. Management Methods					
i. Schedule Control ¹	4	X	2	=	8
ii. Work Plan/Report Modification & Corrective Action ¹	4	X	2	=	8
7. Proposed Cost/Budget ^{1,3}	60	X	1	=	60
8. Past Performance ² (Not inc. FWC)					
a. Client #1	20	X	1	=	20
b. Client #2	20	X	1	=	20
c. Client #3	20	X	1	+	20
Total Numerical Rating ⁴					264

Notes:

- 1 Evaluation points awarded for these components will be based on the following point structure:

Score

- 0 = The element of the evaluation criteria was **not addressed**.
- 1 = The element of the evaluation criteria is **unsatisfactory**.
- 2 = The element of the evaluation criteria is **average**.
- 3 = The element of the evaluation criteria is **above average**.
- 4 = The element of the evaluation criteria is **superior**.

- 2 References: Past performance will be scored based on answers to a standard group of questions received from two (2) of the vendor's clients. The FWC will

attempt to contact the reference by phone up to a maximum of four (4) times. In the event that the contact person for the reference cannot be reached following the specified number of attempts, the vendor shall receive a score of zero (0) for this element of the evaluation.

- 3 The vendor submitting the lowest total cost will receive the maximum points for the cost element of the evaluation. The other vendors' scores will be based on a relative percentage of the dollar amount higher than the lowest cost or price submitted by the lowest priced vendor.
- 4 Failure of the vendor to provide any of the information required in the technical response portion of the ITN response shall result in a score of zero (0) for that element of the evaluation.

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**FWC 11/12-13
ATTACHMENT 4
ITN RESPONSE CHECKLIST**

To ensure that your response package can be accepted, please be sure the following items are fully completed and enclosed:

1. _____ The Respondent Acknowledgement Form must be fully completed and signed.
2. _____ Transmittal letter which includes the name, title, address, telephone number and e-mail address of the vendor's official contact and an alternate, if available, who have the authority to bind the vendor.
3. _____ Technical Response, which addresses the following subjects:
 - a. Introduction;
 - b. Company Background, Qualifications and Experience;
 - c. Technical Understanding;
 - d. Project Approach and Organization;
 - e. Management
 - f. Past Performance (*must use pages provided as Attachment 2*)
 - g. Project Cost/Budget; and,
 - h. Addendum Acknowledgement Form(s) (*if applicable*)
4. _____ One (1) original hard copy and five (5) electronic copies on separate disks, of the entire response must be submitted.
5. _____ Completed Federal Debarment/Suspension Certification Form (*Attachment 5*)

This checklist is provided merely for the convenience of the vendor and may not be relied upon in lieu of the instructions or requirements of this solicitation.

Attachment 5
CERTIFICATION REGARDING DEBARMENTS, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION-LOWER TIER FEDERALLY FUNDED TRANSACTIONS
FWC 11/12-13

Required for all Vendor/Contractors and Subcontractors under contracts funded through a FEDERAL GRANT.

1. The undersigned hereby certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. The undersigned also certifies that it and its principals:
 - a) Have not within a three-year period preceding this response been convicted of or had a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - b) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 2.(a) of this Certification; and
 - c) Have not within a three-year period preceding this certification had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the undersigned is unable to certify to any of the statements in this certification, an explanation shall be attached to this certification.

Dated this _____ day of, _____ 20____.

By: _____
Authorized Signature Vendor/Contractor

Typed Name/Title

Vendor/Contractor's Firm Name

Street Address

Building, Suite Number

City/State/Zip Code

Area Code/Telephone Number

**INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION- LOWER TIER FEDERALLY FUNDED
TRANSACTIONS**

1. By signing and submitting this form, the certifying party is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the certifying party knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Florida Fish and Wildlife Conservation Commission (FWC) or agencies with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The certifying party shall provide immediate written notice to the person to which this contract is submitted if at any time the certifying party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this contract is submitted for assistance in obtaining a copy of those regulations.
5. The certifying party agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier contract, or other covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the FWC or agency with which this transaction originated.
6. The certifying party further agrees by executing this contract that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all contracts or lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (Telephone No. (202) 501-4740 or (202) 501-4873.)
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the FWC or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Contents

1. Definitions.
 2. Purchase Orders.
 3. Product Version.
 4. Price Changes Applicable only to Term Contracts.
 5. Additional Quantities.
 6. Packaging.
 7. Inspection at Contractor's Site.
 8. Safety Standards.
 9. Americans with Disabilities Act.
 10. Literature.
 11. Transportation and Delivery.
 12. Installation.
 13. Risk of Loss.
 14. Transaction Fee.
 15. Invoicing and Payment.
 16. Taxes.
 17. Governmental Restrictions.
 18. Lobbying and Integrity.
 19. Indemnification.
 20. Limitation of Liability.
 21. Suspension of Work.
 22. Termination for Convenience.
 23. Termination for Cause.
 24. Force Majeure, Notice of Delay, and No Damages for Delay.
 25. Changes.
 26. Renewal.
 27. Purchase Order Duration.
 28. Advertising.
 29. Assignment.
 30. Antitrust Assignment
 31. Dispute Resolution.
 32. Employees, Subcontractors, and Agents.
 33. Security and Confidentiality.
 34. Contractor Employees, Subcontractors, and Other Agents.
 35. Insurance Requirements.
 36. Warranty of Authority.
 37. Warranty of Ability to Perform.
 38. Notices.
 39. Leases and Installment Purchases.
 40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).
 41. Products Available from the Blind or Other Handicapped.
 42. Modification of Terms.
 43. Cooperative Purchasing.
 44. Waiver.
 45. Annual Appropriations.
 46. Execution in Counterparts.
 47. Severability.
1. Definitions. The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:
- (a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.
- (b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.
- (c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.
- (d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).
2. Purchase Orders. In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.
3. Product Version. Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.
4. Price Changes Applicable only to Term Contracts. If this is a term contract for commodities or services, the following provisions apply.
- (a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

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

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

(d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

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

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

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

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

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

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

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

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

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

13. Risk of Loss. Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the

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

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

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

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.

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

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

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

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

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

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

Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

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

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

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

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

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

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

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

23. Termination for Cause. The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other

sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

24. Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33. Security and Confidentiality. The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

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

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

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

37. Warranty of Ability to Perform. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on

the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

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

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

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

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

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

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

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

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

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

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

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

State of Florida
PUR 1001
General Instructions to Respondents

Contents

1. DEFINITIONS.
2. GENERAL INSTRUCTIONS.
3. ELECTRONIC SUBMISSION OF RESPONSES.
4. TERMS AND CONDITIONS.
5. QUESTIONS.
6. CONFLICT OF INTEREST.
7. CONVICTED VENDORS.
8. DISCRIMINATORY VENDORS.
9. RESPONDENT'S REPRESENTATION AND AUTHORIZATION.
10. [MANUFACTURER'S NAME AND APPROVED EQUIVALENTS.](#)
11. PERFORMANCE QUALIFICATIONS.
12. PUBLIC OPENING.
13. ELECTRONIC POSTING OF NOTICE OF INTENDED AWARD.
14. FIRM RESPONSE.
15. CLARIFICATIONS/REVISIONS.
16. MINOR IRREGULARITIES/RIGHT TO REJECT.
17. CONTRACT FORMATION.
18. CONTRACT OVERLAP.
19. PUBLIC RECORDS.
20. PROTESTS.
21. Limitation on Vendor Contact with Agency During Solicitation Period

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

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

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

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

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

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

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

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

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

6. Conflict of Interest. This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns,

directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.

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

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

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

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

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

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

with any of the statements and representations made in the response.

- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

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

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

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

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

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

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

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

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

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

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

19. Public Records. Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any respondent

claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption.

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

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

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

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

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

PUR 1001 (10/06)
60A-1.002(7), F.A.C

