



FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION  
1875 ORANGE AVE E  
TALLAHASSEE, FL 32311-6160  
(850) 488-6551

## INVITATION TO BID

FWC 20/21-82C

### APOLLO BEACH HATCHERY (MAIN AQUACULTURE, WATER AND GAS PIPING) IN HILLSBOROUGH COUNTY

#### INTENT

The intent of this Invitation to Bid (ITB) is to obtain competitive pricing for furnishing and installing water/gas piping systems in existing shell hatchery building, in accordance with the contract documents and Chapter 255 of the Florida Statutes.

#### GENERAL DESCRIPTION

Furnishing and installing water/gas piping systems in existing shell hatchery building, per the solicitation documents.

All work done on this project shall be done in accordance with all the Contract Documents referenced, attached to the Vendor Bid System (VBS) advertisement and contained herein, including those documents received as a result of the submission of the Confidentiality Exemption Form (Attachment A). **See Exhibit 2 in the General Terms and Conditions for pricing breakdown.**

Documents may include but not limited to:

- Any Modifications
- Agreement (Exhibit 1 in the General Terms & Conditions)
- Addenda
- Supplementary Terms and Conditions (Attached to this document or the VBS advertisement)
- Solicitation Document
- General Terms and Conditions
- Drawings and Specifications
- FWC Purchase Order Terms and Conditions
- Permits

**Please Note:** The terms “Contract,” “Agreement” and “Purchase Order” are used interchangeably in the document.

#### TECHNICAL SPECIFICATIONS AND CONSTRUCTION PLANS

Follow these directions to access the technical specifications and construction plans:

Email a completed **Confidentiality Exemption Form (Attachment A)** to [Alyssa.delong@myfwc.com](mailto:Alyssa.delong@myfwc.com) to receive an electronic copy of construction plans and all other associated documents.

## CALENDAR OF EVENTS

FWC 20/21-82C

| SCHEDULE  | DUE DATE   | METHOD   |
|---|--|--|
| Bid Advertised  | April 20, 2021   | Posted on the Vendor Bid System:<br><a href="http://vbs.dms.state.fl.us/vbs/mainmenu">http://vbs.dms.state.fl.us/vbs/mainmenu</a>  |
| MANDATORY Pre-Bid Conference  | April 29, 2021<br>@ 10:00 AM ET                                      | See Pre-Bid Conference Clause  |
| Deadline for Questions  | Must be received<br><b>PRIOR</b> to:<br>May 4, 2021<br>@ 5:00 PM ET  | See Deadline for Questions Clause  |
| Anticipated date for Responses to Written Questions                                       | May 14, 2021   | Posted on the Vendor Bid System:<br><a href="http://vbs.dms.state.fl.us/vbs/mainmenu">http://vbs.dms.state.fl.us/vbs/mainmenu</a>  |
| <b>SEALED BIDS DUE</b><br><br>(REMEMBER: Bid number should be clearly marked on envelope) | Must be received<br><b>PRIOR</b> to:<br>May 25, 2021<br>@ 3:00 PM ET | <b>Mailing Address &amp; Public Opening Location:</b><br><br>Florida Fish & Wildlife Conservation Commission<br>Attn: Purchasing<br>1875 Orange Ave E<br>Tallahassee, Florida 32311-6160<br><br><b>Submissions are due BEFORE the date and time of the public opening.</b> |
| Public Bid Opening <sup>1</sup>   | May 25, 2021<br>@ 3:00 PM ET   | <b>Public Opening (Via Teleconference)</b><br><u>Conference call phone number:</u><br>1.888.585.9008<br><u>Conference room number:</u> 218-721-199   |
| Anticipated Date of Intended Award  | May 28, 2021   | Posted on the Vendor Bid System:<br><a href="http://vbs.dms.state.fl.us/vbs/mainmenu">http://vbs.dms.state.fl.us/vbs/mainmenu</a>  |

<sup>1</sup>Based on the Public Health Emergency declared by the State Surgeon General, and the Governor's declaration of a state of emergency for the entire State of Florida due to COVID-19 as outlined in Executive Order 20-52, et. al., the Public Bid Opening related to this solicitation will be conducted telephonically. See the Calendar of Events Public Bid Opening Method provided above for call-in information.

# TERMS AND CONDITIONS

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The Commission objects to and shall not consider any additional terms or conditions submitted by a Contractor, including any appearing in documents attached as part of a Contractor's response. Contractor agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect on the Contract Documents contained herein. Failure to comply with Contract Documents, including those specifying information that must be submitted with a bid, shall be grounds for rejecting a bid.

The General Terms and Conditions and Attachment B, Purchase Order Terms and Conditions, are hereby incorporated into this solicitation. Any contract resulting from this solicitation will include the terms and conditions of this solicitation and the terms and conditions contained in the General Terms and Conditions, Attachment B, and the Contract Documents as defined in Section A - Definitions of the General Terms and Condition.

## **PROCUREMENT MANAGER**

Alyssa DeLong (Alyssa.delong@myfwc.com)

## **ESTIMATED BUDGET**

The Commission has an estimated budget for this project of **\$85,000.00**.

Any bid submitted with a total cost that is 25% over the estimated budget shall be considered non-responsive.

## **TERM**

The contract will be effective one year upon issuance of Purchase Order.

## **MANDATORY PRE-BID CONFERENCE/SITE VISIT**

A **mandatory pre-bid conference/Site Visit** will be held at the date and time specified in the **Calendar of Events (Page 2)**. The purpose of the pre-bid conference/Site Visit is to discuss the contents of this bid and to accept verbal questions from contractors concerning the project.

**This will be the only opportunity to visit the site under proposed construction during the solicitation advertisement period. Contractors are encouraged to bring any and all subcontractors needed to ensure an accurate bid and eliminate the need for additional site visits during the solicitation advertisement period.**

Vendors must attend this pre-bid conference/Site Visit as a requirement of bid responsiveness. Failure to attend the entire conference meeting, from the time it is called to order to the time it is adjourned, shall disqualify a potential respondent.

## **PRE-BID CONFERENCE LOCATION:**

6650 Dickman Road, Apollo Beach, FL.

Park in the Youth Center parking lot and walk south to the Hatchery Building which is adjacent to but southeast of the Youth Center. Meet on the south side of the Hatchery Building.

## **DEADLINE FOR QUESTIONS**

Any questions from Bidders that require an official FWC answer concerning this project shall be submitted in writing to the [Procurement Manager](#). Questions must be received no later than the date and time specified in the Calendar of Events (Page 2). Questions may be sent via email with the solicitation number in the subject line. It is the responsibility of the bidder 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 ([http://vbs.dms.state.fl.us/vbs/main\\_menu](http://vbs.dms.state.fl.us/vbs/main_menu)).

## **LIMITATION ON BIDDER CONTRACT DURING SOLICITATION PERIOD**

Bidders 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, (Note the 72-hour posting period excludes 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 manager or as provided in the Contract documents. Violation of this provision may be grounds for rejecting a response.

## **BIDDER SPECIFICATION INQUIRIES**

If the specifications of this bid could restrict competition for vendors prior to award and contractors after award, the Bidder has 72 hours within which to request to the Commission that the specification(s) be changed. The Procurement Manager must receive the written request within 72 hours after the posting date of the bid.

Requested changes to the Commission's specifications shall include the Bidder's concerns regarding restricting competition, provide detailed justification, and provide recommended changes to the specification(s). A Bidder's failure to request changes by the prescribed date and time shall be considered to constitute the Bidder's acceptance of the Commission's specifications.

The Commission shall determine what change(s) to the bid is acceptable to the Commission. If accepted, the Commission shall issue an addendum reflecting the change(s) to the bid, which shall be posted to the Vendor Bid Advertisement System ([http://vbs.dms.state.fl.us/vbs/main\\_menu](http://vbs.dms.state.fl.us/vbs/main_menu)).

It is up to the bidder 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.

## **BIDS DUE**

Bids for this project are due by the date and time specified in the Calendar of Events (Page 2). **BIDS RECEIVED AFTER DATE AND TIME SPECIFIED WILL BE REJECTED.**

## **MAILING INSTRUCTIONS**

All bids shall be submitted in a **SEALED ENVELOPE** addressed to the Florida Fish and Wildlife Conservation Commission, 1875 Orange Ave E, Tallahassee, Florida 32311-6160.

The envelope shall be plainly marked on the outside with:

- Bid Number
- Date and Time of the Bid Opening.

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

**PLEASE NOTE:** The Commission's official business hours of operation are 8:00 AM–5:00 PM ET, exclusive of Saturdays, Sundays and state holidays. Selecting delivery services, such as next day first delivery, may result in attempted delivery prior to opening or closing, and the Commission will not be available to accept those deliveries. **THE COMMISSION IS NOT RESPONSIBLE FOR LATE SUBMISSIONS DUE TO COMPLICATIONS RELATED TO SELECTED DELIVERY SERVICES.**

### **BID OPENING LOCATION**

See Calendar of Events (Page 2).

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

In accordance with Rule 60A-1.033 of the Florida Administrative Code (F.A.C.), each contractor doing business with the State for construction services as defined in Section 287.012, F.S., shall register in the MFMP system, unless exempted under Rule 60A-1.030(3), F.A.C.

Information about the registration process is available, and registration may be completed, from the [Department of Management Services \(DMS\) website for MFMP](#). Interested persons lacking Internet access may request assistance from the MFMP Customer Service at (866-352-3776) or from State Purchasing, 4050 Esplanade Way, Suite 300, Tallahassee, Florida 32399.

### **COMMISSION CONTRACT MANAGER**

The Commission Contract Manager/Project Manager shall perform the following on behalf of the Commission:

1. Ensure all performance and labor and material payment bonds if required are provided prior to issuance of the notice(s) to proceed;
2. Inspect Subcontractors as required in section B-14 of the General Terms and Conditions;
3. Provide the notices to proceed for permitting and construction;
4. Review, verify, and approve any required insurance documentation;
5. Review, verify, and approve receipt of services/deliverables from the contractor;
6. Review requests for change orders/amendments submitted by the Contractor, if applicable;
7. Review, verify, and approve invoices from the contractor; and, if applicable, complete the Certificates of Partial Payment requests, and the Certificate of Contract Completion form; and
8. Maintain an official record of all correspondence between the Commission and the contractor.

**NOTE: Execution of contract or issuance purchase order does not constitute a Notice to Proceed.**

### **MONITORING**

As defined within the Contract Documents. The Commission's Contract Manager shall actively monitor Contractor's performance and compliance with the terms of the Contract Documents. The Commission reserves the right for any Commission staff to make scheduled or unscheduled, announced or unannounced monitoring visits. Specific monitoring terms, conditions, and schedules may be included in the Contract Documents.

**Contractor Performance.** The Contractor shall perform the activities described in the Contract Documents in a proper and satisfactory manner. Unless otherwise provided for in the Contract Documents, any and all

equipment, products or materials necessary or appropriate to perform under this Contract shall be supplied by the Contractor. Contractor shall obtain all necessary local, state, and federal authorizations necessary to complete this project, and the Contractor shall be licensed as necessary to perform under this Contract as may be required by law, rule, or regulation; the Contractor shall provide evidence of such compliance to the Commission upon request. The Contractor shall procure all supplies and pay all charges, fees, taxes and incidentals that may be required for the completion of this Contract. By acceptance of this Contract, the Contractor warrants that it has the capability in all respects totally perform the requirements and the integrity and reliability that will assure good-faith performance as a responsible Contractor. Contractor shall immediately notify the Commission's Contract Manager in writing if its ability to perform under the Contract is compromised in any manner during the term of the Contract. The Commission shall take appropriate action, including potential termination of this Contract in the event Contractor's ability to perform under this Contract becomes compromised.

**Contractor Responsibilities.** Contractor agrees that 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 Commission. The Commission may conduct, and Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by Contractor. The Commission 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 the Commission's security or other requirements. Such refusal shall not relieve Contractor of its obligation to perform all work in compliance with the Contract. The Commission may reject and bar from any facility for cause any of Contractor's employees, subcontractors, or agents.

**Commission Rights to Assign or Transfer.** Contractor agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to Contractor.

### **ELIGIBILITY**

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

By acceptance of this contract, 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 contractor, and that the Contractor shall comport with Chapter 287, F.S., and all other applicable rules and laws.

### **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. The Parties hereto understand that this Contract and any renewal thereof is not a commitment to future appropriations but is subject to appropriation and authority to spend provided by the Legislature. The Commission shall be the final authority as to the availability of funds for this Contract, and as to what constitutes an "annual appropriation" of funds to complete this Contract. If such funds are not appropriated or available for the Contract purpose, such event will not constitute a default on behalf of the Commission or the State. The Commission's Contract Manager shall notify Contractor in writing at the earliest possible time if funds are not appropriated or available.

## **AUTHORIZED COMPENSATION**

It is understood and agreed that all compensation under this bid is specifically limited to the Contractor's bid price accepted by the Commission, and to the specific procedure for payment established in this bid and the **Purchase Order** executed pursuant to it. The Commission is not liable for any costs, fees, expenses or any other compensation whatsoever incurred or charged by the Contractor, other than the bid price paid for the work specifically described in the Contract Documents, which work is actually accomplished and invoiced by the Contractor subsequent to the Commission's notice to proceed (or other notice to begin work). Thus, the Commission is not liable for any costs incurred or charged by the Contractor in anticipation of responding to, or performing work described in, this bid, including but not limited to equipment or personnel procured by the Contractor in anticipation of such work. The Commission is not responsible to the Contractor for any loss or damages resulting from circumstances unforeseen at the time of publication of this bid including, but not limited to, those resulting from a "force majeure".

## **INDEMNIFICATION**

If Contractor is a state agency or subdivision, as defined in Subsection 768.28(2), F.S., pursuant to Subsection 768.28(19), F.S., neither Party indemnifies nor insures the other Party for the other Party's negligence. If Contractor is not a state agency or subdivision as defined above, 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 the Commission, 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 the Contractor, its agents, employees, partners, or subcontractors, provided, however, that Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Commission. This agreement does not constitute a waiver of sovereign immunity or consent by the agency for the state of Florida or its subdivisions to suit by third parties. If this is a Professional Services contract as defined in Subsection 725.08 F.S., then notwithstanding the provisions of Subsection 725.06 F.S., the design professional shall only be liable for, and fully indemnify, defend, and hold harmless the State, the Commission, and their officers, agents, and employees, for actions caused in whole or in part, by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the contract.

## **CONFIDENTIALITY/PUBLIC RECORDS LAW**

Bidders are cautioned that Florida law generously defines what constitutes a public record and grants broad rights of public access to those records; see, for example, section 119.07 of the Florida Statutes. If a Bidder believes that its response contains information that is confidential or exempt from disclosure under Florida Law, the Bidder shall clearly segregate and mark that information (for example, stamp each page "Confidential" and place it in an envelope marked "Confidential") and briefly describe in writing the grounds and specific legal citations for claiming exemption from the public records law. If after the notice of intended decision or 30 days after bid opening, whichever is earlier, the Commission receives a public record request related to the solicitation, the Commission will provide copies of public records that are not exempt to the requester. The Commission will endeavor to provide notice to the Bidder of all public records requests received related to documents provided by the Bidder that were marked pursuant to this paragraph. In no event shall the Bidder hold the Commission or any of its employees or agents liable for disclosing, or otherwise failing to protect the confidentiality of, information submitted in response to this solicitation.

## **SECURITY AND CONFIDENTIALITY**

The Contractor shall maintain the security of any information created under this Contract that is identified or defined as “confidential” in the Contract Documents. 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. To ensure confidentiality, the Contractor shall take appropriate steps regarding its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

## **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.



# SUPPLEMENTARY TERMS AND CONDITIONS

## FWC 20/21-82C

The following supplementary terms and conditions shall be added to the Contract Documents in accordance with the General Terms and Conditions, Section A – Definitions, for the **APOLLO BEACH HATCHERY (MAIN AQUACULTURE, WATER AND GAS PIPING)** project:

1. Bids will be accepted from **certified General, Building, Mechanical and Plumbing Contractors. If not a Certified General or Building Contractor, the awarded bidder must be a Certified Mechanical Contractor, and Certified Plumbing Contractor.**
  - a. Bids will be accepted from licensed Contractors as listed above if the bid is in the individual's own name or a fictitious name where the individual is doing business as a sole proprietorship.
  - b. If the bidder is a business organization, including any partnership, corporation, business trust, or other legal entity, or in any name other than the bidder's legal name or a fictitious name where the bidder is doing business as a sole proprietorship, the bidder must be an agent of a qualified construction business organization as required by F.S. 489.119(2).
  - c. Please provide a copy of certification or registration with submittal of bid.
2. The Commission will self-perform the function of Civil Engineering Design for this project. All duties outlined in the General Terms and Conditions where Civil Engineer actions are required, FWC will provide the contact and assume that responsibility.
3. In accordance with the General Terms and Conditions, the number of days from Notice to Proceed with Construction to Substantial Completion for the base bid shall be 90 days and Final Completion shall be 15 days thereafter. If Alternate #1 is added, an additional 10 days will be added to substantial completion. If Alternate #2 is added, an additional 15 days will be added to substantial completion.
4. In accordance with the General Terms and Conditions, the Liquidated Damages amount is **\$100.00 per calendar day.**
5. In accordance with the General Terms and Conditions, the Commission shall allow sixty (60) calendar days from the time of this notice to secure and pay for those required permits and utility connections, if such permits or connection fees are required before construction can start.
6. Project to include all materials, equipment, labor, permits and insurance necessary to complete the scope of work.
7. Contractor shall be responsible for upfront payment of all materials required to complete the project.
8. Any product specified by brand or manufacturer within the plans and specifications may be substituted by the contractor with an equal or better product after obtaining written approval from the owner.
9. Any item not specifically listed as an additional item is considered part of the scope of work.
10. Where compliance with two or more standards is specified, noted, or drawn for the same item or items, and they establish different or conflicting requirements for minimum quantities or quality

levels, the most stringent item or items may be required without additional cost to the owner. All such conflicts are to be referred to the owner for a final determination as what will be required before proceeding with the work in question.

11. **Drawings, Specifications, Copies, Changes, Ownership, etc.:** FWC shall be the owner of all Drawing and Specifications related to this project.
12. Permits provided by the Commission:
  - a. None
13. Permits the Contractor shall obtain:
  - a. Hillsborough County Permits
14. The Contractor's general work hours should be limited to the following, unless approved by FWC Project Manager: 8:00am to 5:00pm, Monday – Friday
15. In addition to other requirements regarding subcontractor's, the Contractor must supply all applicable employee and subcontractor's information to the FWC Project Manager prior to mobilizing work on site for security. The FWC Project Manager will then coordinate the information with TECO (Tampa Electric Company) who is the owner of the property.
16. Awarded contractor to provide a flexible construction fence between the project area and the remainder of the site.
17. Awarded contractor shall provide port-o-let use for their employees.
18. Access is off of Estuary Shore Lane. Awarded contractor will be provided the gate code.
19. All floor surfaces and trench covers must be protected in such a way as to prevent permanent damage such as gouging, scratching, cracking, breaking, and burning. Any damage must be repaired by the Contractor to the satisfaction of FWC.
20. PPE used per the CDC guidelines remain in place for the current pandemic and also to state that head and eye protection is worn at all times; ear protection is worn when working with loud equipment; and tethering devices are required when working from ariel platforms to follow TECO's safety guidance.
21. All equipment and supplies on site are property of FWC and must not be disturbed by contractor without express written consent from the FWC Project Manager.
22. FWC will clear work aisles at the request of contractor within two weeks of written (email) notification to the FWC Project Manager, and acknowledgement of receipt of the request.
23. Storage and staging area will need to be approved by the FWC project manager prior to construction.
24. Contractor shall dispose of all construction debris offsite in a legal manner.
25. Contractor shall take a video prior to construction of current site conditions and provide to the FWC Project Manager in electronic format.
26. Contractor is responsible for completing and submitting the FWC weekly construction log to the FWC Project Manager.
27. Submittals: Contractor shall reference the specification package.

28. Testing: Contractor shall reference the specification package.
29. Additional Items to be submitted with the partial payment include: Exhibit 9 (Owner's Certificate of Partial Payment); Exhibit 10 (Contractor's Status Report of Minority & Disabled Veteran's Business Enterprise); Exhibit 11 (Schedule of Contract Values); EXHIBIT 12 (Contractor's Payment Routing Transmittal)
30. Items to submit with final payment: refer to EXHIBIT 13 (Final Pay Request Check List)
31. Additional items to be submitted with the **final** payment request:
- a. The Contractor shall supply the Commission with an electronic copy of As-Built Drawings in AutoCAD 2016 upon satisfactory completion of the Project and prior to **final** payment.
  - b. As-built drawings shall include at a minimum all invert elevations, finished floor elevations, rim/top elevations for stormwater and sewer structures, and key spot elevations. They shall also include information for underground utilities (location, size, material, ground cover depth, valves, and fittings).
32. The contract/agreement shall be a purchase order and payment shall be made through MyFloridaMarketPlace (MFMP). See **Attachment B, Purchase Order Terms and Conditions**.
33. Notwithstanding section C-1 of the General Terms and Conditions, the Contractor shall furnish the Owner's Contract/Project Manager with a 100% Performance Bond and 100% Labor and Material Payment Bond for any contracts regardless of value and shall be written by a Surety Company acceptable to Owner and authorized to do business in the State of Florida and signed by a Florida Licensed Resident Agent. All language in C-1 not related to contract value shall apply.

# ATTACHMENT A

FWC 20/21-82C

## CONFIDENTIALITY EXEMPTION FORM

I acknowledge that the information I am requesting is exempt from public disclosure pursuant to §119.071(3)(b), Florida Statutes (F.S.). I further acknowledge that all officers, employees, servants, and agents of \_\_\_\_\_ (BUSINESS NAME) shall maintain the exempt status of the requested information as required by §119.071(3)(b)4, F.S. In the event that \_\_\_\_\_ (BUSINESS NAME) anticipates subcontracting any part or all of the work to any third party and as such a potential subcontractor requests to see the exempt material, \_\_\_\_\_ (BUS. NAME) shall require the subcontractor to acknowledge the exemption and provide written assurance that all officers, employees, servants, and agents of the subcontractor will maintain the exempt status of the information as well.

Contractor: \_\_\_\_\_

Name (Print): \_\_\_\_\_

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

Title \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

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

# ATTACHMENT B

FWC 20/21-82C

## FLORIDA FISH & WILDLIFE CONSERVATION COMMISSION

### PURCHASE ORDER TERMS & CONDITIONS

Last Updated: December 30, 2020

#### **Section 1. PURCHASE ORDER.**

##### **A. Composition and Priority.**

The Contractor agrees to provide commodities, contractual services, or professional services to the Commission within the manner and at the location specified in the Purchase Order, and any attachments to the Purchase Order. These Purchase Order Terms and Conditions, whether generic or specific, shall take precedence over any inconsistent or conflicting provision in the State of Florida, General Contract Conditions, PUR 1000. Additionally, the terms of the Purchase Order supersede the terms of any and all prior agreements with respect to this purchase.

##### **B. Initial Term.**

Unless otherwise specified, the Purchase Order begins on the date of issuance. Contractual services or commodities to be provided by the Contractor shall be completed by the date specified on the Purchase Order end date.

#### **Section 2. PERFORMANCE.**

##### **A. Performance Standards.**

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Statement of Work and attachments to the Purchase Order. The Commission shall be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof. Coordination shall be maintained by the Contractor with representatives of the Commission, or of other agencies involved in the project on behalf of the Commission.

##### **B. Performance Deficiency.**

If the Commission determines that the performance of the Contractor is unsatisfactory, the Commission may notify the Contractor of the deficiency to be corrected, which correction shall be made within a time frame specified by the Commission. The Contractor shall provide the Commission with a corrective action plan describing how the Contractor will address all issues of Purchase Order non-performance, unacceptable performance, and failure to meet the minimum performance levels, deliverable deficiencies, or Purchase Order non-compliance. If the corrective action plan is unacceptable to the Commission, the Contractor will be assessed a non-performance retainage equivalent to ten (10) percent of the total invoice amount or as specified in the contractual documents. The retainage will be applied to the invoice for the then-current billing period. The retainage will be withheld until the Contractor resolves the deficiency. If the deficiency is subsequently resolved, the Contractor may invoice the Commission for the retained amount during the next billing period. If the Contractor is unable to resolve the deficiency, the funds retained will be forfeited.

##### **C. Contractor Responsibilities.**

The Contractor agrees that all Contractor employees, subcontractors, or agents performing work under the Purchase Order shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, the Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Purchase Order

must comply with all security and administrative requirements of the Commission. The Commission 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 Commission 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 the Commission's security or other requirements. Such refusal shall not relieve the Contractor of its obligation to perform all work in compliance with the Purchase Order. The Commission may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

#### **D. Assignment.**

The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Purchase Order without the prior written consent of the Commission. In the event of any assignment, the Contractor remains secondarily liable for performance of the Purchase Order, unless the Commission expressly waives such secondary liability. The Commission may assign the Purchase Order with prior written notice to the Contractor.

#### **E. Damages to State Property.**

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

Should any historical or cultural artifacts be uncovered, the Contractor shall immediately halt work and notify the Commission's Contract Manager. **Please note:** The State Archaeologist has the power to halt work if he or she has reason to believe artifacts are being disturbed.

#### **F. Quarterly Minority and Service-Disabled Veteran Business Enterprise Report.**

The Contractor shall provide a quarterly Minority and Service-Disabled Veteran Business Enterprise Report to the Commission's Contract Manager, summarizing the participation of certified and non-certified minority and service-disabled veteran subcontractors/material suppliers for the current quarter and project to date. The report shall include the names, addresses and dollar amount of each certified and non-certified Minority Business Enterprise and Service-Disabled Veteran Enterprise participant and a copy must be forwarded to the Commission's Contract Manager. The Department of Management Services, Office of Supplier Diversity at (850) 487-0915 will assist in furnishing names of qualified minorities. The Commission's Minority Coordinator at (850) 488-6551 will assist with questions and answers.

#### **G. Independent Contractor.**

The Contractor shall perform as an independent contractor and not as an agent, representative, or employee of the Commission. The Contractor covenants that it presently has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of services required. Each party hereto covenants that there is no conflict of interest or any other prohibited relationship between the Contractor and the Commission. The Contractor agrees to include this provision in all its subcontracts under the Purchase Order.

#### **H. Commission Rights to Undertake or Award Supplemental Contracts.**

The Contractor agrees that the Commission may undertake or award supplemental contracts for work related to the Purchase Order. The Contractor and its subcontractors shall cooperate with such other contractors and the Commission in all such cases.

## **Section 3. PAYMENT AND FEES.**

### **A. Payment.**

The Contractor will be paid upon submission of properly certified invoice(s) to the Commission after delivery and acceptance of commodities or contractual services is confirmed in writing by the Commission.

### **B. Invoicing.**

Invoices may be submitted electronically to the Commission's designated Contract Manager, as identified in this Purchase Order. The Contractor acknowledges that the Commission's Contract Manager shall reject invoices lacking documentation necessary to justify invoiced expenses.

### **C. Invoices, Continued.**

All invoices shall be processed in accordance with Section. 215.422, Florida Statutes (F.S.), and Rule 69I-24, Florida Administrative Code (F.A.C.), upon receipt of a proper invoice and approval and inspection of goods or services. The Commission shall record the date of receipt of an invoice on the date on which a proper invoice is first received at the place designated by the Commission. Approval and inspection of goods or services shall take no longer than five (5) working days unless the bid specifications, purchase order, or contract specifies otherwise. Invoices must be legible and shall contain the items below in detail sufficient for a proper audit.

- The invoice number
- The date of the invoice
- "Bill To" information, including address
- The vendor's name and payment remittance address
- The purchase order number
- The Contractor's Federal Employer Identification Number (FEIN) or Social Security Number (SSN)
- Date(s) of service (beginning date – ending date)
- Invoices for commodities must provide a clear description of the item(s), number of units and cost per unit. Numerical code descriptions alone will not be accepted.
- Invoices for services must provide a clear description of the specific deliverables that must be provided and accepted prior to payment.
- Invoices for fixed unit rate agreements must show the number of units and cost per unit.
- Invoices for agreements paid out on a reimbursement basis or a fixed rate for a specific time period (e.g. quarterly, monthly, etc.) must identify the deliverables provided.

### **D. Payment Timeframe.**

Section 215.422, F.S. provides that agencies have five (5) working days to inspect and approve goods and services, unless applicable solicitation specifications or this Purchase Order specify otherwise. With the exception of payments to health care providers for hospital, medical, or other health care services, if payment is not available within forty (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 as described in Section 215.422, F.S., will be due and payable in addition to the amount authorized for payment. Interest penalties less than one dollar (\$1.00) will not be paid unless the Provider requests payment. A Vendor Ombudsman has been established within the Department of Financial Services and

may be contacted at (850) 413-5516, or by calling the Department of Financial Services Consumer Hotline at 1-800-342-2762.

#### **E. MyFloridaMarketPlace Fees.**

The following language is included pursuant to rule 60A-1.031, F.A.C.:

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to Subsection 287.057(22), F.S. Payments issued by Agencies or Eligible Users to Vendors for purchases of commodities or contractual services are subject to Transaction Fees, as prescribed by rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law. Vendors shall submit monthly reports required by the rule. All reports shall be subject to audit. Failure to pay Transaction Fees or submit reports shall constitute grounds for default and exclusion from business with the State of Florida.

#### **F. Annual Appropriation.**

Pursuant to Section 287.0582, F.S., if this Purchase Order binds the Commission for the purchase of services or tangible personal property for a period in excess of one (1) fiscal year, the State of Florida's performance and obligation to pay under this Purchase Order is contingent upon an annual appropriation by the Legislature. The Parties hereto understand that this Purchase Order and any renewal thereof is not a commitment to future appropriations but is subject to appropriation and authority to spend provided by the Legislature. The Commission shall be the final authority as to the availability of funds for this Purchase Order, and as to what constitutes an "annual appropriation" of funds to complete this Purchase Order. If such funds are not appropriated or available for the agreed-upon purpose, such event will not constitute a default on behalf of the Commission or the State. The Commission's Contract Manager shall notify the Contractor in writing at the earliest possible time if funds are not appropriated or available.

#### **G. Travel.**

Travel expenses are not reimbursable unless specifically authorized in writing, and shall be reimbursed only in accordance with Section 112.061, F.S.

#### **H. Automated Clearing House (ACH)**

To make transaction fee payments, contractors can register for debit ACH at [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/myfloridamarketplace/mfmp\\_vendors/vendor\\_forms](https://www.dms.myflorida.com/business_operations/state_purchasing/myfloridamarketplace/mfmp_vendors/vendor_forms) 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 fourteen (14) days.

#### **I. Electronic Funds Transfer (EFT)**

The Contractor agrees to enroll in Electronic Funds Transfer (EFT), offered by the State's Chief Financial Officer, within thirty (30) days of the date the last Party has signed this Purchase Order. Copies of the Authorization form and a sample blank enrollment letter can be found on the vendor instruction page at <https://www.myfloridacfo.com/Division/AA/Vendors>. Questions should be directed to the State of Florida's EFT Section at (850) 413-5517. Once enrolled, invoice payments will be made by EFT.

#### **J. Return or Recoupment of Funds – Overpayments to Contractor.**

The Contractor shall return to the Commission any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Purchase Order that were disbursed to the Contractor by the Commission. In the event that the Contractor or its independent auditor discovers that overpayment



has been made, the Contractor shall repay said overpayment within forty (40) calendar days without prior notification from the Commission. In the event that the Commission first discovers an overpayment has been made, the Commission will notify the Contractor in writing. Should repayment not be made in a timely manner, the Commission shall be entitled to charge interest at the lawful rate of interest established pursuant to Subsection 55.03(1), F.S., on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to the Commission's Contract Manager and made payable to "Florida Fish and Wildlife Conservation Commission."

**K. Additional Costs or Monetary Loss Resulting from Contractor Non-Compliance.**

If the Contractor's non-compliance with any provision of the Purchase Order results in additional cost or monetary loss to the Commission or the State of Florida, the Commission can recoup that cost or loss from monies owed to the Contractor under this Purchase Order or any other contract between the Contractor and the Commission. In the event that the discovery of this cost or loss arises when no monies are available under this Purchase Order or any other contract between the Contractor and the Commission, the Contractor will repay such cost or loss in full to the Commission within thirty (30) days of the date of notice of the amount owed, unless the Commission agrees, in writing, to an alternative timeframe. If the Contractor is unable to repay any cost or loss to the Commission, the Commission shall notify the State of Florida, Department of Financial Services, for resolution pursuant to Section 17.0415, F.S.

**L. Florida Emergency Supplier Network (FESN).**

Suppliers of products and services needed by government during hurricanes and other emergencies are invited to join a Florida Emergency Supplier Network (FESN). 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. FESN applications and contracts may be obtained at:

[https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/florida\\_emergency\\_networks/](https://www.dms.myflorida.com/business_operations/state_purchasing/florida_emergency_networks/)

**Section 4. LIABILITY.**

**A. Reasonably Associated Insurance.**

During the term of this Purchase Order, the Contractor, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with the Purchase Order. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor, and failure to maintain such coverage may void the Purchase Order. 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 Purchase Order. All insurance policies shall be through insurers licensed and authorized to write policies in Florida.

**B. Workers Compensation.**

To the extent required by Chapter 440, F.S., the Contractor will either be self-insured for Workers' Compensation claims, or will secure and maintain during the life of this Purchase Order, Workers' Compensation Insurance for all of its employees connected with the work of this project, with minimum employers' liability limits of **\$100,000.00** per accident, **\$100,000.00** per person, and **\$500,000.00** policy aggregate. Such policy shall cover all employees engaged in any contract work. 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 Florida's Workers' Compensation laws (Chapter 440, F.S.). In case any class of employees engaged in hazardous work under this Purchase Order 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 its 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.

### **C. General Liability Insurance.**

By execution of this Purchase Order, unless the Contractor is a state agency or subdivision as defined by Subsection 768.28(2), F.S., or unless otherwise provided for in the Scope of Work, the Contractor shall provide reasonable and adequate commercial general liability insurance coverage and hold such liability insurance at all times during the term of the Purchase Order. A self-insurance program established and operating under the laws of the State of Florida may provide such coverage.

### **D. Insurance Required for Performance.**

During the Purchase Order term, the Contractor shall maintain any other types and forms of insurance required for the performance of this Purchase Order as required in the Scope of Work.

### **E. Written Verification of Insurance.**

Upon execution of this Purchase Order, the Contractor shall provide the Commission written verification of the existence and amount for each type of applicable insurance coverage. Within ten (10) days of the execution date of the Purchase Order, the Contractor shall furnish proof of applicable insurance coverage to the Commission's Contract Manager by standard Association for Cooperative Operations Research and Development (ACORD) form certificates of insurance. In the event that any applicable coverage is cancelled by the insurer for any reason, the Contractor shall immediately notify the Commission's Contract Manager in writing of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage. Copies are acceptable and may be faxed to (850) 922-8060.

### **F. Commission Not Responsible for Insurance Deductible.**

The Commission shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor providing such insurance.

### **G. Indemnification, Generally.**

If the Contractor is a state agency or subdivision, as defined in Subsection 768.28(2), F.S., pursuant to Subsection 768.28(19), F.S., neither Party indemnifies nor insures the other Party for the other Party's negligence. If the Contractor is not a state agency or subdivision as defined above, then to the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the State of Florida, its officers, employees and agents harmless from all fines, claims, assessments, suits, judgments, or damages, consequential or otherwise, including court costs and attorney's fees, arising out of any acts, actions, breaches, neglect or omissions of the Contractor, its employees, agents, subcontractors, assignees or delegates related to the Purchase Order, as well as for any determination arising out of or related to the Purchase Order, that the Contractor or Contractor's employees, agents, subcontractors, assignees or delegates are not independent contractors in relation to the Commission.

### **H. Professional Services.**

If this is a Professional Services Purchase Order as defined in Section 725.08, F.S., then notwithstanding the provisions of Section 725.06, F.S., the design professional shall only be liable for,

and fully indemnify, defend, and hold harmless the State, the Commission, and their officers, agents, and employees, for actions caused in whole or in part, by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the Purchase Order.

### **I. Sovereign Immunity.**

Nothing contained in this Purchase Order shall constitute a waiver by the Commission of its sovereign immunity or, consent by the Commission or the State of Florida or its subdivisions to suit by third parties, or a waiver of the provisions of Section 768.28, F.S.

## **Section 5. COMPLIANCE WITH FLORIDA LAWS.**

### **A. Familiarity and Compliance with Laws, Generally.**

The Contractor is required to be familiar and comply with all state and local laws, ordinances, rules and regulations that in any manner affect the work. The Contractor shall comply with all laws and rules applicable to the Contractor(s) that shall provide the required commodities or services to the Commission. Ignorance on the part of the Contractor will in no way relieve him or her from responsibility. Violation of such laws shall be grounds for termination of the agreement.

### **B. Non-Discrimination in Performance.**

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 Purchase Order.

### **C. Discriminatory Vendor List.**

In accordance with Section 287.134, F.S., an entity or affiliate who has been placed on the Department of Management Services' discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. The Contractor has a continuing duty to disclose to the Commission, in writing, whether the Contractor or any of its affiliates appear on the discriminatory vendor list.

### **D. Convicted Vendor List.**

The Contractor hereby certifies that neither it, nor any person or affiliate of the Contractor, has been convicted of a Public Entity Crime as defined in Section 287.133, F.S., nor placed on the convicted vendor list. Pursuant to Subsection 287.133(2)(a), F.S., a person or affiliate who has been placed on the Department of Management Services' (DMS) convicted vendor list following a conviction for a Public Entity Crime may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. The Contractor shall have a continuing obligation to disclose, to the Commission, in writing, if the Contractor or any of its affiliates are on the convicted vendors list maintained by DMS pursuant to Subsection 287.133(3)(d), F.S. The Contractor must notify DMS and the Commission, in writing, within thirty (30) days after conviction of a Public Entity Crime applicable to the Contractor or an affiliate of the Contractor as defined in Section 287.133, F.S.

### **E. Scrutinized Companies List.**

The Contractor hereby certifies that it is not a scrutinized company as identified in Section 287.135, F.S. In addition, the Contractor agrees to observe the requirements of Section 287.135, F.S., for the term of this Agreement. Pursuant to Section 287.135, F.S., the Commission may immediately terminate this Agreement for cause if the Contractor is found to have submitted a false certification; or if the Contractor is placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

### **F. Lobbying.**

In accordance with Sections 11.062 and 216.347, F.S., the Purchase Order funds are not for the purpose of lobbying the Legislature, the judicial branch, or an agency. Pursuant to Subsection 287.058(6), F.S., the Purchase Order does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Purchase Order, after the Purchase Order's execution and during the Purchase Order's term.

### **G. Gratuities.**

The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, give, or agree to give anything of value to 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 anything of value for the benefit of, or at the direction or request of, any State officer or employee.

### **H. Public Records.**

- i. All records in conjunction with this Purchase Order shall be public records and shall be treated in the same manner as other public records are under Chapter 119, F.S.
- ii. This Purchase Order may be unilaterally canceled by the Commission 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 Purchase Order, unless exemption for such records is allowable under Florida law.
- iii. If the Contractor meets the definition of "Contractor" in Subsection 119.0701(1)(a), F.S., the Contractor agrees to do the following as required under Florida law:
  - a. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS PURCHASE ORDER, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 488-6553, [RecordsCustodian@myfwc.com](mailto:RecordsCustodian@myfwc.com), and 620 South Meridian Street, Tallahassee FL 32399.**
  - b. Keep and maintain public records required by the Commission to perform the service.
  - c. Upon request from the Commission's custodian of public records, provide the Commission with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
  - d. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the

duration of the Purchase Order term and following completion of the Purchase Order if the Contractor does not transfer the records to the Commission.

- e. Upon completion of the Purchase Order, transfer, at no cost, to the Commission all public records in possession of the Contractor or keep and maintain public records required by the Commission to perform the service. If the Contractor transfers all public records to the Commission upon completion of the Purchase Order, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Purchase Order, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Commission, upon request from the Commission's custodian of public records, in a format that is compatible with the information technology systems of the Commission.

### **I. Communications and Confidentiality.**

The Contractor agrees that it shall make no statements, press releases, or publicity releases concerning the Purchase Order or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Purchase Order, or any particulars thereof, during the period of the Purchase Order, without first notifying the Commission's Contract Manager or the Commission's designated contact person and securing prior written consent. The Contractor shall maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to the Purchase Order and shall comply with all state and federal laws, including, but not limited to Sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures shall be consistent with the most recent version of the Commission's security policies, protocols, and procedures. The Contractor shall also comply with any applicable professional standards with respect to confidentiality of information.

### **J. Intellectual Property.**

- i. **Contractor's Preexisting Intellectual Property (Proprietary) Rights.** Unless specifically addressed otherwise in the Scope of Work, intellectual and other intangible property rights to the Contractor's preexisting property will remain with the Contractor. If the Contractor is a state agency or subdivision, as defined in Subsection 768.28(2), F.S., pursuant to Subsection 768.28(19), F.S., neither Party indemnifies nor insures the other Party for or on account of any copyrighted, patented, or un-patented invention, process or article manufactured or supplied by the Contractor. If the Contractor is not a state agency or subdivision as defined above, the Contractor shall indemnify and hold harmless the Commission and its employees from any liability, including costs, expenses, and attorney's fees, for or on account of any copyrighted, patented, or un-patented invention, process or article manufactured or supplied by the Contractor.
- ii. **Proceeds Related to Intellectual Property Rights.** Proceeds derived from the sale, licensing, marketing or other authorization related to any intellectual and other intangible property right created or otherwise developed by the Contractor under this Purchase Order for the Commission shall be handled in the manner specified by applicable Florida State Statute and/or Federal program.
- iii. **Commission Intellectual Property Rights.** Where activities supported by this Purchase Order produce original writing, sound recordings, pictorial reproductions, drawings or other graphic representation and works of any similar nature, the Commission and the State of Florida have

the unlimited, royalty-free, nonexclusive, irrevocable right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others acting on behalf of the Commission to do so. If this Purchase Order is supported by federal funds, the federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

#### **K. Real Property.**

If this Purchase Order is for the purchase or improvement of real property and supported by state funds, the Contractor shall comply with Section 287.05805, F.S. This section requires the Contractor to grant a security interest in the property to the State of Florida, the type and details of which are provided in the Scope of Work. Title to state-owned real property remains vested in the state.

State-owned real property will be used as provided in the Scope of Work.

#### **L. Non-Expendable Property.**

For the requirements of this section of the Purchase Order, “non-expendable property” is the same as “property” as defined in Section 273.02, F.S. (equipment, fixtures, and other tangible personal property of a non-consumable and non-expendable nature, with a value or cost of \$5,000.00 or more, and a normal expected life of one (1) year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of \$25.00 or more; and uncirculated hardback-covered bound books, with a value or cost of \$250.00 or more).

Title (ownership) to all non-expendable property acquired with funds from this Purchase Order shall be vested in the Commission and said property shall be transferred to the Commission upon completion or termination of the Purchase Order unless otherwise authorized in writing by the Commission or unless otherwise specifically provided for in the Scope of Work.

#### **M. Cooperation with Inspector General.**

Pursuant to Subsection 20.055(5), F.S., the Contractor, and any subcontractors to the Contractor, understand and will comply with their duty to cooperate with the Commission’s Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any 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 Agreement. 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.

#### **N. Employment Eligibility Verification.**

- i. **Requirement to Use E-Verify.** Section 448.095(2), F.S. requires the Contractor to: 1.) utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the Purchase Order term; and 2.) include in all subcontracts under this Purchase Order, the requirement that subcontractors performing work or providing services pursuant to this Purchase Order utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the subcontract.

- ii. **E-Verify Online.** E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States. The Department of Homeland Security's E-Verify system can be found online at <https://www.e-verify.gov>.
- iii. **Enrollment in E-Verify.** As a condition precedent to entering a Purchase Order with the Commission, Contractors and Subcontractors shall register with and use the E-Verify system. Failure to do so shall result in the Purchase Order not being issued, or if discovered after issuance, termination of the Purchase Order.
- iv. **E-Verify Recordkeeping.** 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. If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract.
- v. **Employment Eligibility Verification & Compliance.** Compliance with the terms of the Employment Eligibility Verification provision is made an express condition of this Purchase Order and the Commission may treat a failure to comply as a material breach of the agreement. If the Commission terminates the Purchase Order pursuant to Section 448.095(2)(c), F.S., the contractor may not be awarded a public contract for at least 1 year after the date on which the contract was terminated and the Contractor is liable for any additional costs incurred by The Commission as a result of the termination of this Purchase Order.

## **O. RESPECT.**

In accordance with Subsection 413.036(3), F.S., if a product or service required for the performance of the Purchase Order is on the procurement list established pursuant to Subsection 413.035(2), F.S., the following statement applies:

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>.

**P. PRIDE.**

In accordance with Subsection 946.515(6), F.S., if a product or service required for the performance of the Purchase Order is certified by or is available from Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) and has been approved in accordance with Subsection 946.515(2), F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; 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 THIS AGENCY INSOFAR AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the products it offers is available at <http://www.prideenterprises.org>.

**Q. Recycled Products.**

The Contractor agrees to procure any recycled products or materials which are the subject of or are required to carry out this Purchase Order in accordance with Section 403.7065, F.S.

**R. Prompt Disclosure of Litigation, Investigations, Arbitration, or Administrative Proceedings.**

Throughout the term of the Purchase Order, the Contractor has a continuing duty to promptly disclose to the Commission’s Contract Manager, in writing, upon occurrence, all civil or criminal litigation, investigations, arbitration, or administrative proceedings (Proceedings) relating to or affecting the Contractor’s ability to perform under this Purchase Order. If the existence of such Proceeding causes the Commission concern that the Contractor’s ability or willingness to perform under the Purchase Order is jeopardized, the Contractor may be required to provide the Commission with reasonable assurances to demonstrate that: a.) the Contractor will be able to perform under the Purchase Order in accordance with its terms and conditions; and, b.) the Contractor and/or its employees, agents or subcontractor(s) have not and will not engage in conduct in performing services for the Commission which is similar in nature to the conduct alleged in such Proceeding.

**S. Eligibility and Licensure.**

The Contractor shall be licensed as necessary to perform under this Purchase Order as may be required by law, rule, or regulation; and shall provide evidence of such compliance to the Commission upon request. By acceptance of this Purchase Order, the Contractor warrants that it has the capability in all respects to fully perform the Purchase Order requirements and the integrity and reliability that will assure good-faith performance as a responsible Bidder, and that the Contractor shall comport with Chapter 287, F.S., Chapter 60A, F.A.C., 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 Purchase Order.

**Section 6. COMPLIANCE WITH FEDERAL LAWS.**

**A. Federal Compliance, Generally.**

As applicable, the Contractor shall comply with all federal laws, rules, and regulations, including but not limited to:



- a. **Clean Air Act and Water Pollution Control Act.** All applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. §§ 7401-7671), and the Water Pollution Control Act (33 U.S.C. §§ 1251-1387, as amended).
- b. **Lacey Act, 16 U.S.C. §§ 3371-3378.** This Act prohibits trade in wildlife, fish and plants have been illegally taken, possessed, transported or sold.
- c. **Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1884.** This Act governs marine fisheries in Federal waters.
- d. **Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712.** The Act prohibits anyone, unless permitted, to pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried by any means whatsoever, receive for shipment, transport of carriage, or export, at any time, or in any manner, any migratory bird, or any part, nest, or egg of such bird.
- e. **Endangered Species Act, 16 U.S.C. § 1531, et seq.** The Act provides a program for the conservation of threatened and endangered plants and animals and the habitat in which they are found. The Act also prohibits any action that cause a “taking” of any listed species of endangered fish or wildlife. Also, generally prohibited are the import, export, interstate, and foreign commerce of listed species.

#### **B. Debarment and Suspension Contractor Federal Certification.**

If this Purchase Order relies on federal funds, in accordance with Federal Executive Order 12549 and 2 C.F.R. Part 1400 regarding, Debarment and Suspension, the Contractor 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; and, that the Contractor shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction.

#### **C. Drug Free Workplace.**

If this Purchase Order relies on federal funds, pursuant to the Drug-Free Workplace Act of 1988, the Contractor attests and certifies that the Contractor will provide a drug-free workplace compliant with 41 U.S.C. § 81.

#### **D. Prohibition Against Lobbying.**

If this Purchase Order relies on federal funds, the Contractor certifies that no Federal appropriated funds have been or will be paid, 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. The Contractor also certifies that it has not engaged any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the Contractor with respect to this Purchase Order and its related federal contract, grant, loan, or cooperative agreement; or, if the Contractor has engaged any registrant with respect to this Purchase Order and its related Federal contract, grant, loan, or cooperative agreement, the Contractor shall, prior to or upon execution of this Purchase Order, immediately provide the Commission Contract Manager a signed declaration listing the name of any said registrant. During the term of this Purchase Order, and at the end of each Calendar quarter in which any event occurs that materially affects the accuracy of this certification or declaration, the Contractor shall file an updated declaration with the Commission’s Contract Manager. If any nonfederal

funds are used for lobbying activities as described above in connection with this Purchase Order, 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.

## **Section 7. SUBCONTRACTS.**

### **A. Subcontractors and Liability.**

If the Contractor is authorized to subcontract, the Contractor shall ensure, and provide assurances to the Commission's Contract Manager upon request, that any subcontractor selected for work under this Purchase Order has the necessary qualifications and abilities to perform in accordance with the terms and conditions of this Purchase Order. The Contractor must provide the Commission's Contract Manager with the names of any subcontractor considered for work under this Purchase Order; the Commission reserves the right to reject any subcontractor. The Contractor agrees to be responsible for all work performed and all expenses incurred with the project. Any subcontract arrangements must be evidenced by a written document available to the Commission's Contract Manager upon request. The Contractor further agrees that the Commission shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and the Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. The Contractor, at its expense, will defend the Commission against such claims. The following provisions apply, in addition to any terms and conditions included in the Scope of Work.

### **B. Subcontractors as Independent Contractors.**

If subcontracting is permitted, the Contractor agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State of Florida.

### **C. Contractor Payments to Subcontractor.**

If subcontracting is permitted, the Contractor agrees to make payments to its subcontractor(s) within seven (7) working days after receipt of full or partial payments from the Commission in accordance with Section 287.0585, F.S., unless otherwise stated in the contract between the Contractor and subcontractor(s). The Contractor's failure to pay its subcontractor(s) within seven (7) working days will result in a penalty charged against the Contractor and paid to the subcontractor(s) in the amount of one-half of one percent (0.5%) of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed fifteen percent (15%) of the outstanding balance due.

## **Section 8. TERMINATION AND OTHER REMEDIES.**

### **A. Financial Consequences.**

In accordance with Subsection 287.058(1)(h), F.S., the Scope of Work contains clearly defined deliverables. If the Contractor fails to produce each deliverable within the time frame specified by the Scope of Work, the budget amount allocated for that deliverable will be deducted from the Contractor's payment. The Commission shall apply any of these additional financial consequences:

- a. Temporarily withhold payments pending correction of the deficiency by the Contractor
- b. Reduction of payment if correction of deficiency is not made by the Contractor.
- c. Disallow all or part of the cost of the activity or action not in compliance.
- d. Request refund of previously disbursed payments.

- e. Wholly or partly suspend or terminate this agreement.
- f. Withhold future awards for FWC projects.
- g. Take other remedies that may be legally available.

Further financial consequences may be identified in the Scope of Work.

#### **B. Commission Unilateral Termination.**

The Commission may unilaterally terminate this Purchase Order for convenience by providing the Contractor with fifteen (15) calendar days of written notice of its intent to terminate. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

#### **C. Termination – Fraud or Willful Misconduct.**

This Purchase Order shall terminate immediately in the event of fraud or willful misconduct on the part of the Contractor. In the event of such termination, the Commission shall provide the Contractor with written notice of termination.

#### **D. Termination – Funds Unavailability.**

In the event funds to finance this Purchase Order become unavailable or if federal or state funds upon which this Purchase Order is dependent are withdrawn or redirected, the Commission may terminate this Purchase Order upon no less than twenty-four (24) hours' notice in writing to the Contractor. Said notice shall be delivered by certified mail, return receipt requested or in person with proof of delivery. The Commission shall be the final authority as to the availability of funds and will not reallocate funds appropriated for this Purchase Order to another program thus causing "lack of funds." In the event of termination of this Purchase Order under this provision, the Contractor will be compensated for any work satisfactorily completed prior to notification of termination.

#### **E. Prohibition of Unauthorized Aliens.**

In accordance with Executive Order 96-236, signed August 1, 1996, by the Governor of Florida, the Commission shall consider the employment by the Contractor of unauthorized aliens a violation of Subsection 274A(e) of the federal Immigration and Nationalization Act. Such violation shall be cause for unilateral termination of this Purchase Order if the Contractor knowingly employs unauthorized aliens.

#### **F. Termination – Other.**

The Commission may terminate this Purchase Order if the Contractor fails to:

1. comply with all terms and conditions of this Purchase Order;
2. produce each deliverable within the time specified by the Purchase Order or extension;
3. maintain adequate progress, thus endangering the performance of the Purchase Order; or,
4. abide by any statutory, regulatory, or licensing requirement

Rule 60A-1.006(3), F.A.C., governs the procedure and consequences for default. The rights and remedies of the Commission in this clause are in addition to any other rights and remedies provided by law or under the Purchase Order. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

#### **G. Contractor Discontinuation of Activities Upon Termination Notice.**

Upon receipt of notice of termination, the Contractor shall, unless the notice directs otherwise, immediately discontinue all activities authorized hereunder. Upon termination of this Purchase Order, 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.

## **Section 9. RECORD-KEEPING REQUIREMENTS.**

### **A. Contractor Responsibilities for Record-Keeping.**

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 Purchase Order, in accordance with generally accepted accounting principles.

### **B. State Access to Contractor Books, Documents, Papers, and Records.**

The Contractor shall allow the Commission, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or authorized representatives of the state or federal government to have access to any of the Contractor's books, documents, papers, and records, including electronic storage media, as they may relate to this Purchase Order, for the purposes of conducting audits or examinations or making excerpts or transcriptions.

### **C. Contractor Records Retention.**

Unless otherwise specified in the Scope of Work, these records shall be maintained for five (5) fiscal years following the completion of this Purchase Order, if the Purchase Order is for commodities or services; or for ten (10) years following the completion of this Purchase Order, if the Purchase Order is for construction; or for the period otherwise required for this particular type of project by the General Records Schedules maintained by the Florida Department of State (available at <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>). The Contractor shall cooperate with the Commission to facilitate the duplication and transfer of such records upon the Commission's request.

### **D. Contractor Responsibility to Include Records Requirements – Subcontractors.**

In the event any work is subcontracted under this Purchase Order, the Contractor shall include the aforementioned audit and record keeping requirements in all subcontract agreements.

### **E. Compliance with Federal Funding Accountability and Transparency.**

Any federal funds awarded under this Purchase Order must comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006. The intent of the FFATA is to empower every American with the ability to hold the government accountable for each spending decision. The result is to reduce wasteful spending in the government. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website: [www.USASpending.gov](http://www.USASpending.gov). Grant recipients awarded a new Federal grant greater than or equal to \$25,000.00 are subject to the FFATA. The Contractor agrees to provide the information necessary, over the life of this Purchase Order, for the Commission to comply with this requirement.

## **Section 10. MISCELLANEOUS.**

### **A. Governing Law, Severability and Venue.**

This Purchase Order 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 Purchase Order shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Purchase Order 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 Purchase Order. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida, to the exclusion of all other lawful venues.

**B. Waiver.**

As part of the consideration for this Purchase Order, 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 Purchase Order, or with the products or services provided under this Purchase Order, including but not limited to any claim by the Contractor of *quantum meruit*. The delay or failure by the Commission to exercise or enforce any of its other rights under the Purchase Order shall not constitute waiver of such rights.

**C. Modification.**

The Purchase Order may only be modified by a Change Order agreed to by the Commission and the Contractor. If a Purchase Order Change Order is required for any portion of any job, the Contractor shall not commence to purchase materials for the amended work to be performed, nor proceed with the outlined duties described without prior written approval and receiving a revised copy of the approved Purchase Order in his/her possession. The Contractor shall request a Change Order in writing, outlining the reasons and the itemized costs required for the Change Order. The Parties agree to renegotiate this agreement if federal and/or state revisions of any applicable laws or regulations make changes in the Purchase Order necessary.

**D. Time is of the Essence.**

Time is of the essence with regard to each and every obligation of the Contractor. Each such obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

**E. Entire Agreement.**

This Purchase Order, with all incorporated attachments and exhibits, represents the entire agreement of the Parties. Any alterations, variations, changes, modifications or waivers of provisions of this Purchase Order shall only be valid when they have been reduced to writing, and duly signed by each of the Parties hereto, unless otherwise provided herein. In the event of conflict, the following order of precedence shall prevail; this Purchase Order and its attachments, the terms of the solicitation, then the Contractor's response to the solicitation.

**F. Force Majeure**

Neither Party shall be liable to the other for any delay or failure to perform under this Purchase Order if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents 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 Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available.

However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Purchase Order. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Purchase Order to either Party.

In the case of any delay, the Contractor believes is excusable under this paragraph, the Contractor shall notify the Commission's Contract Manager in writing of the delay or potential delay and describe the cause of the delay either: (a) within ten (10) calendar 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 (b) within five (5) calendar days after the date the Contractor first had reason to believe that a delay

could result, if the delay is not reasonably foreseeable. 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.

The Commission, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify the Contractor of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against the Commission. The Contractor shall not be entitled to an increase in the Purchase Order price or payment of any kind from the Commission 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 Commission determines, in its sole discretion, that the delay will significantly impair the value of the Purchase Order to the Commission or the State, in which case, the Commission may do any or all of the following: (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Commission with respect to products or services subjected to allocation; (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 or services that are the subject of the delay, which purchases may be deducted from the Purchase Order quantity; or (3) terminate the Purchase Order in whole or in part.

**G. Other Miscellaneous Provisions.**

No firearms, alcohol or illegal substances are allowed on any Commission project site. Neither the Contractor nor any of its employees may possess firearms or alcohol while on the job site. The Parties do not intend, nor shall this Purchase Order be construed, to grant any rights, privileges or interest to any person not a party to this agreement.