

STATE FISCAL YEAR 2009-2010



Solicitation Number

DCA 09/10-15-RFP

REQUEST FOR PROPOSALS  
PLANS REVIEW AND MONITORING SERVICES  
FOR THE MANUFACTURED BUILDING PROGRAM

INSTRUCTIONS FOR PREPARATION  
AND  
SUBMISSION OF PROPOSALS

State of Florida  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

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Solicitation Number:

Solicitation Type:

Request for Proposals (RFP) for the Plans Review and Monitoring Services for the Manufactured Building Program

Date Issued:

Issuing Office:

Florida Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

## PURPOSE & BACKGROUND OF THE REQUEST FOR PROPOSAL

### PURPOSE:

The purpose of this Request for Proposal (RFP) is to solicit a qualified contractor to provide plans review services for manufactured buildings intended to be used as public school buildings and monitoring of the Department of Community Affairs-approved manufacturers and plan review and inspection agencies.

### BACKGROUND:

Pursuant to Chapter 553, Part I, Florida Statutes, the Department of Community Affairs (the Department) administers the Manufactured Building Program. The Department serves in lieu of the local authority having jurisdiction (building department) for the Manufactured Building Program. Although the plans review and plan inspection processes are conducted by DCA-approved private entities with professional licenses issued by the Department of Business and Professional Regulation, the Department retains the ultimate code enforcement authority through the issuance of the insignia, which is counterpart to the local building department permit.

Subsection 553.37(2)(d), Florida Statutes, requires the Department to monitor the performance of the manufacturers and plan review and inspection agencies to ensure compliance with Chapter 553, Part I, Florida Statutes, Manufactured Building Program Rule 9B-1, Florida Administrative Code, and the Florida Building Code. Monitoring includes, but is not limited to, audit of building plans reviewed and approved by the agencies, onsite inspections of the manufacturing facilities and inspection processes, and onsite inspection of manufactured buildings.

Section 553.415, Florida Statutes, requires the DCA to conduct a review of the manufacturer's plans, specifications, alterations, and methods of construction for manufactured buildings intended to be used as public school buildings. Subsection 553.415(6), Florida Statutes grants the Department the authority to delegate the plan review to a state agency or public or private entity.

### Description of Work Being Procured/Objectives:

#### **Factory-Built/Manufactured Schools**

The Contractor shall review all construction plans for manufactured buildings intended to be used as public school buildings, as defined in Section 553.415, Florida Statutes, at no cost to the Department (fee-based and subject to approval by the Department) to ensure compliance with the Manufactured Building Program Rule 9B-1, Florida Administrative Code, Florida Building Code, and Florida Fire Prevention and Life Safety Codes. The Florida Building Code review must be conducted by a Modular Plans Examiner licensed by the Department of Business and Professional Regulation. The fire-safety portion of the plans review must be conducted by a Municipal Fire-safety Inspector, certified by the State Fire Marshal's Office and with a minimum of five (5) years experience in accordance with Rule 4A-39, Florida Administrative Code. The review fees will be paid directly to the Contractor by the manufacturer.

The Contractor shall maintain and update a system of all products approved under Section 553.8425, Florida Statutes, and not approved under the State Product Approval System.

The Contractor shall enter approved manufactured school plans into the online Building Code Information System (BCIS) at [www.floridabuilding.org](http://www.floridabuilding.org).

The International Code Council (ICC) Plan Review Fee Schedule should be used as the guide to develop the plans review fee, with provisions for smaller buildings and more complex multiple-module buildings, and specifications for any minimum cost per set of plans review. Proposal should include fees for the following:

- 1) Initial plans review and one additional plans review for any corrections from the initial plans review.
- 2) Reviews after initial and one additional plans review

### **Monitoring Activities**

Conduct onsite monitoring of all active Department approved manufacturers and agencies, at a minimum of once every three (3) years to ensure compliance with the Manufactured Building Program Rule 9B-1, Florida Administrative Code, Chapter 553, Part I, Florida Statutes, and the Florida Building Code. Develop a plan, to be approved by the Department, which designates the number and locations of the manufacturers and agencies to be monitored each year of the three (3) years. Approved manufacturers and agencies can be accessed at [www.floridabuilding.org](http://www.floridabuilding.org), click on Manufactured Building/Type. Proposal should include a separate fee for each plant monitored as designated below:

- 1) Manufacturers and agencies located in Florida, Georgia, and Alabama
- 2) Manufacturers and agencies located in other states
- 3) Manufacturers and agencies located outside the United States

Review at least three (3) sets of plans approved by each approved agency, randomly selected by the Department, within five (5) working days of notification by the Department. **Proposal should include an hourly plans review fee.**

### **Technical Assistance, Investigation of Consumer Complaints, and Expert Witness**

Provide technical assistance on Section 553, Part I, Florida Statutes, Manufactured Building Program Rule 9B-1, Florida Administrative Code, and the Florida Building Code to manufacturers, public schools, agencies, and the general public.

Investigate consumer complaints involving alleged violations of Section 553, Part I, Florida Statutes, Rule 9B-1, Florida Administrative Code, and the Florida Building Code in the construction plans or manufacturing processes for buildings constructed under the Manufactured Building Program.

Act as expert witness with respect to the role of plans examiner and monitor of manufactured buildings and agencies.

**Proposal should include a separate hourly rate for technical assistance, investigation of consumer complaints, and acting as expert witness.**

## ADMINISTRATIVE REQUIREMENTS

For the purposes of this solicitation, the words respondent, proposer, bidder, offeror, vendor, and contractor are used interchangeably and mean a person(s) or firm(s) submitting a response to this solicitation.

Acceptance of Proposals: Proposals will only be accepted from responsible and responsive respondents. All proposals must be received at the location, date, and time specified in this RFP. Proposals not received at the specified place by the specified date and time will be rejected. DCA will not accept proposals submitted electronically; however, other filings such as questions regarding the RFP may be submitted via email to the contact person stated below. The Department has the right to reject any and all proposals when it would be in the best interest of the State of Florida.

Number of Copies of Proposal to Submit: Vendors shall submit one (1) copy of their proposal clearly marked "Original" with an accompanying transmittal letter containing the original signature of the individual authorized to bind the vendor and three (3) additional copies, each individually bound, by the date, time, and at the location specified in this RFP.

Change or Withdrawal of Proposal: Any change to a proposal must be received by the Closing Date for Receipt of Proposals. A respondent may not change its proposal after proposal receipt, except at the request of the Department.

Proposals may be withdrawn, by written or email notice, within 72 hours after the date and time of proposal opening, provided that the respondent provides proof of the impossibility to perform based upon an obvious error on the part of the respondent.

Cost of Preparing Proposal: The respondent must pay all costs for preparing a response to this RFP. The Department will not reimburse respondents for any costs.

Where to Submit the Proposal: Responses to this Request for Proposals must be submitted in a sealed package to:

Mr. Stephen Schmidt, Director of Purchasing  
Florida Department of Community Affairs  
Division of Administrative Services, Room 155K  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

Please mark on the mailing envelope containing your response in LARGE LETTERS:

### **SEALED RESPONSE - DO NOT OPEN REQUEST FOR PROPOSALS**

#### NOTICE TO PROSPECTIVE REPENDENTS

1. All vendors submitting proposals must be registered with the Florida Department of State, Division of Corporations, prior to posting date for Notice of Intent to Award a contract with the Department.
  - a. If you are a Florida For-Profit Corporation, Florida Non-Profit Corporation, Florida Limited Liability Company or Florida Limited Partnership, you can register online with the Department of State at [https://form.sunbiz.org/cor\\_form.html](https://form.sunbiz.org/cor_form.html).
  - b. Out-of-state Corporations, Limited Partnerships and Limited Liability Companies cannot file online, but may download the "Foreign Corporation" forms at [http://form.sunbiz.org/cor\\_fc.html](http://form.sunbiz.org/cor_fc.html) and mail the completed forms to the Department of State.
2. All vendors submitting proposals must also be registered with the Florida Department of Management Services, MyFloridaMarketPlace. For those not already registered, vendors may register on line at: <https://vendor.myfloridamarketplace.com/>.

- a. Government entities and agencies and non-profit organizations must register, but are not subject to the One Percent Transaction Fee.
3. Each contractor shall report and pay the One Percent Transaction Fee on a quarterly calendar basis, using Form PUR 3776 (07/03), which is available on the Department of Management Services website, and incorporated by reference. All information provided by the contractor is material and will be relied upon by the Department in administering MyFloridaMarketPlace. If a contractor fails to file a report, this is deemed a representation by the contractor that it had no reportable services for the quarter and that it owes no Transaction Fees. Any misstatement shall be treated as fraudulent concealment from the State of the true facts relating to the contractor's business with the State. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

Proposal Solicitation Schedule/Timetable

The following Schedule/Timeline identifies the sequence of events that will occur during the RFP procurement process.

|                                                                                                     |                                                                                                              |
|-----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| RFP advertisement posted on the Florida Department of Management Services ("DMS") Vendor Bid System | April 26, 2010                                                                                               |
| Deadline for Vendors to Submit Written Questions                                                    | April 29, 2010 at 4:00 P.M. Local Time                                                                       |
| Deadline for DCA to Post Responses to Vendors Written Questions on VBS.                             | April 30, 2010 at 4:00 P.M. Local Time                                                                       |
| Closing Date for Receipt of Proposals                                                               | <b>Thursday, May 13, 2010 at 4:00 P.M. Local Time</b>                                                        |
| Opening of Proposals and Distribution of Proposals to Evaluation Committee.                         | May 14, 2010 after 10:00 A.M., Local Time<br>Room 250L, Sadowski Building<br>Department of Community Affairs |
| Evaluation Committee Meeting                                                                        | May 20, 2010 at 9:30 A.M. Local Time<br>Room 250L, Sadowski Building<br>Department of Community Affairs      |
| Intent to Award Contract Posted on DMS Vendor Bid System                                            | Tuesday, May 25, 2010 before 4:00 P.M. Local Time                                                            |
| Anticipated Contract Award                                                                          | July 1, 2010                                                                                                 |

The Notice of Award or Notice of Intent to Award will be posted on the DMS Vendor Bid System website at [http://fcf.state.fl.us/owa\\_vbs/owa/vbs\\_www.search.criteria.form](http://fcf.state.fl.us/owa_vbs/owa/vbs_www.search.criteria.form) on the date stated above by no later than 4:00 P.M. Local Time. This date should be used by respondents for planning purposes, and may change. Respondents may contact the DMS Purchasing Office at (850) 488-8583, the Department of Community Affairs Purchasing Office at (850) 922-1622 or the DMS Vendor Bid System website for information about the posting time.

DCA reserves the right to revise the solicitation schedule provided above. Changes to the schedule will be posted on the DMS Vendor Bid System website. Throughout the procurement process respondents shall be responsible for checking the DMS Vendor Bid System website for any addendums to the terms of this RFP.

Contact Person: The DCA contact person for Respondents is:

Mr. Stephen Schmidt, Director of Purchasing  
Florida Department of Community Affairs  
Division of Administrative Services, Room 155K  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

Questions: No verbal questions will be accepted. The contact person will accept written questions by letter or email until the deadline stated in the Proposal Solicitation Schedule/Timetable. Only written questions submitted as directed in the timetable will be addressed. Responses to written questions timely received by the contact person will be posted as an Addendum to this RFP on the DMS Vendor Bid System website on or before the date stated in the Proposal Solicitation Schedule/Timeline. DCA is not responsible for any delay or impact as a result of when a proposer receives this information. **INFORMATION WILL NOT BE AVAILABLE BY PHONE.** Any information received through oral communication is not binding and cannot be relied on by a proposer.

Accommodation of Disability: If an accommodation is needed for a disability in order to participate in this solicitation process, please contact the individual identified above as the Contact Person.

Number of Awards: The Department plans to issue one (1) contract under this solicitation. However, the Department reserves the right to issue more contracts if it will be more advantageous to the Department and the State of Florida.

Obligation to Pay: The State of Florida's performance and obligation to pay under this proposed Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Florida Statutes.

Contract Period: The initial contract period shall be for a three (3) years.

Type of Contract Contemplated: A fixed fee for review of construction plans for manufactured buildings intended to be used as public school buildings and hourly rate for monitoring activities, technical assistance, investigation of consumer complaints, and expert witness is proposed; however, the Department reserves the right to award another type of contract if it would be more advantageous to the Department and the State of Florida.

Reporting Requirements: The contract will include specific fiscal and program reporting requirements. Anyone receiving an award under this RFP must comply with the legal requirements for audit and record keeping.

Ownership of Material/Public Records: All material submitted by proposers becomes the property of the Department and subject to the provisions of the Florida Public Records Act [Chapter 119, Florida Statutes]. Material which the proposer considers a trade secret or otherwise confidential may be a public record under the Public Records Act. Any claim of confidentiality is waived upon submission.

Disclosures: After the evaluation is completed, the respondents will be provided information in accordance with State statutes and rules applicable to this solicitation.

Insurance: The contractor selected under this RFP shall maintain, for the life of the contract, Workers' Compensation Insurance for all of its employees connected with this contract. The insurance must comply with the Florida Workers' Compensation Law. The contractor selected as a result of this RFP must also maintain, for the life of the contract, other appropriate insurance coverage as considered necessary by Department for the services being performed. The contractor's current certificate of insurance shall contain a provision that the insurance will not be canceled or modified for any reason unless the Department's Contracts Administrator is first given thirty days written notice.

Conflict-of-Interest: The respondent promises and warrants that it and all of its principals have no conflict of interest with the performance of the services required hereunder. They also promise not to acquire anything which would create a conflict of interest.

Laws and Permits: Respondents must comply with all local, state, and federal laws, rules, regulations and codes whenever state work is being performed. All permits and licenses required for this contract shall be obtained by the contractor and maintained for the duration of the contract. The Department will not pay for the cost of licenses or permits required by the respondent for company operations.

Rights to Data and Copyright: Writings, publications, films, technical reports, equipment, computer software, recordings, computer programs, computerized data bases, data processing programs, pictorial reproductions, maps, drawings, specifications, graphical representations, and works of similar nature (whether copyrighted or not copyrighted), which are (1) specified to be delivered under this project contract, or (2) developed or produced and paid for in whole or in part by these contract funds, except as may otherwise be provided in the contract, become the property of the Department.

If any discovery or invention arises or is developed in the course of or as a result of work or services performed under this contract, or in any wise connected herewith, the respondent shall refer the discovery of inventions to the Department to determine whether patent protection will be sought in the name of the State of Florida. Any and all patent rights accruing under or in connection with the performance under this contract are hereby reserved to the State of Florida.

If the respondent owns a pre-existing patent or copyright which it will use to perform the services under the contract, the respondent retains all rights and entitlements to that pre-existing patent or copyright unless the contract provides otherwise.

Within 30 days of execution of the contract, the respondent shall disclose all intellectual properties relevant to the performance of this contract which it knows or should know could give rise to a patent or copyright. The respondent shall retain all rights and entitlements to any pre-existing intellectual property which is so disclosed. Failure to disclose will indicate that no such property exists. The Department shall then have the right to all patents and copyrights which occur during performance of the contract.

## GENERAL INSTRUCTIONS FOR PREPARATION OF THE PROPOSAL

The instructions for this RFP have been designed so that all proposals are reviewed and evaluated consistently. ANY INFORMATION SUBMITTED WHICH VARIES FROM THESE INSTRUCTIONS WILL NOT BE REVIEWED OR EVALUATED AND WILL DECREASE THE SCORE OF THAT SECTION.

Proposals submitted in response to this Request for Proposals will be subject to the terms of State of Florida Form PUR 1001, General Instructions to Respondents (see Appendix A), and State of Florida Form PUR 1000, General Contract Conditions (see Appendix B). These two forms supplement the terms of this Request for Proposals, and Form PUR 1000 will also be incorporated by reference in the contract flowing from this Request for Proposals.

The proposal shall consist of the following parts:

Transmittal Letter (limit 1 page): This letter serves to transmit the proposal package. The letter must provide the name, title, address and telephone number of the official contact and an alternate contact. Those individuals shall have the authority to bind the respondent and shall be available to be contacted by telephone and attend meetings regarding the solicitation. This letter must be signed by the official contact person, who must include documentation of his or her authority to bind the proposer. Failure to include the signed transmittal letter and documentation shall make the proposal non-responsive, and it will not be considered.

Response Section: The response package shall be prepared by each respondent using 8.5" x 11" paper. Each respondent shall limit the Response Section to no more than the page limits specified below. If the page limit for a particular section or subsection is exceeded, the extra pages for that section or subsection may not be reviewed and/or scoring may be reduced. Pages not used for a particular section cannot be added to the page allowance for another section. Any photos, maps, diagrams, charts or other non-text material which provides information about the response shall be included in the page limitation of the response package.

The Response Section package shall contain the following sections with all pages consecutively numbered:

- A. Executive Summary: Limit the summary to no more than two (2) pages. The Respondent shall provide an Executive Summary in non-technical language to summarize the respondent's overall capabilities and approaches for accomplishing the services specified herein.
- B. General Information: (Limit this part to no more than ten (10) pages).
  1. Name and mailing address of the legal entity submitting proposal.
  2. Respondent's telephone, facsimile numbers, and e-mail address.
  3. Legal status of organization (e.g. - corporation, sole proprietorship, partnership) and date established.
  4. Federal Employee Identification (FEID) Number.
  5. Location of the facility(ies) where the respondent will be performing the services if it is awarded the contract from this RFP.
  6. Primary business of the respondent, total number of employees, and the number of personnel directly engaged in the activities in the proposal.
  7. Current financial information, e.g., corporate balance sheet and a statement of income.

- C. References: (Limit this part to no more than five (5) pages.) The respondent must provide written references from three different previous clients for similar work. The references should describe the projects with enough detail to allow the evaluation committee to easily determine whether the work is similar to what is being requested in this RFP, and whether the organization is a federal or state governmental entity, a private corporation, or is comparable to the Florida Department of Community Affairs in terms of its nature, size, and mission. Reference information shall include firm name, contact name, telephone number, position, and a description of the work performed. The evaluation committee may, but is not required to, contact the references. In addition, the evaluation committee is not prohibited from contacting previous clients (not listed as references) regarding the respondent's work performance prior to final scoring.
- D. Scope of Work (Project Work Plan): (Limit this part to no more than ten (10) pages.) This part must include a preliminary work plan narrative which describes the respondent's concept of the work activities (primary tasks) that must occur, responsibilities of the respondent and the deliverables that will be produced in each phase as specified in this RFP. The following items must be included:
1. A description of the approach to be used in meeting the scope of work, including how the respondent has met similar objectives with other clients.
  2. Past operations similar to those identified in the RFP.
  3. Any assumptions or constraints considered by the respondent in developing the work plan.
  4. Responsibilities and estimates of hours of work required for each work activity, and identification of the persons who will be doing the work.
  5. Explanation of how the respondent will make use of other resources and time to accomplish the requirements of the contract.
  6. Description of how incoming Department requests will be handled; proposed communication policy with Department staff; frequency and method of progress reporting, and any other relevant procedures.
  7. Milestone chart/timeline outlining production goals and objectives.
- E. Qualifications of Personnel: (Limit this part to no more than fifteen (15) pages.) This section must name all personnel who will administer or perform the services to be provided by the respondent. At a minimum, the proposal shall include the following information:
1. Within each area in the proposal, the personnel who will staff, direct, and manage that portion of the scope of work, and the extent of each person's involvement. All personnel who will be involved with the project must be identified by name, expertise, level of involvement, amount of time each individual will spend on the project, and the relationship between that person and the respondent (i.e., employee, independent contractor, etc.). A complete, up to date resume must be provided for all personnel involved in the project.
  2. Any partner or subcontractor whose expertise is required to carry out the tasks in respondent's proposal must provide documentation of its commitment to carry out the defined tasks. Ideally, the respondent will provide firm, legally binding commitments from each subcontractor or partner as a part of the proposal, contingent only upon respondent's proposal being selected for award. Only those entities for which the respondent provides a clear, firm, legally binding written commitment of time, support and acceptance of defined responsibilities will be considered as "personnel" for purposes of the respondent's proposal.

- F. **Budget:** (Limit this section to no more than five (5) pages.) The cost-effectiveness of each proposal will be taken into account in the scoring of the budget/price category. A detailed cost analysis is required to support the proposal. The budget proposal should reflect annualized costs;

**Fixed Fee:** Review of construction plans for manufactured buildings intended to be used as public school buildings.

The International Code Council (ICC) Plan Review Fee Schedule should be used as the guide to develop the plans review fee, with provisions for smaller buildings and more complex multiple-module buildings, and specifications for any minimum cost per set of plans review. (See pages 4-5)

**Hourly Rates:** Provide a separate hourly rate for each of the following: monitoring activities, technical assistance, investigation of consumer complaints, and expert witness. Designate how hourly rates are calculated for each (monitoring activities, technical assistance, investigation of consumer complaints, and expert witness), using the following information (See page 5):

1. Personnel
    - a. Salaries and Wages: Identify each person required to carry out this project. Specify title and provide a concise descriptive position statement. List the annualized estimated number of hours each will work and his or her wage rate or equivalent.
    - b. Fringe Benefits: Enter the percentage for fringe benefits given to each of the individuals listed in the Salaries and Wages category. Include FICA, Worker's Compensation, Unemployment Insurance, and Health/Life Insurance, if applicable.
  2. Other Direct Costs
    - a. Travel: List annualized costs for travel required to conduct the project.
    - b. Equipment: List all required items on a separate budget summary sheet. Provide total costs for items.
    - c. Other Costs: List any other annualized costs necessary to complete this project.
  3. Subcontractor Costs: The scope of services to be performed by subcontractors or other third parties hired by the respondent must be included in the proposal and summarized on a separate budget summary sheet. Information provided should follow the format and requirements of 1 and 2 above.
- G. **Vendor Information Sheet:** The respondent is required to complete all the information on this form and have it executed by an individual authorized to bind the respondent. Execution of the Vendor Information Sheet indicates that the respondent has registered in the MyFloridaMarketPlace system (see Appendix C)
- H. **Certification of Drug-Free Workplace:** Any respondent which operates a drug-free workplace within the meaning of Section 287.087, Florida Statutes, whose proposal is awarded a score equal to any other respondent's score, shall be accorded preference over any other respondent with the same score, other than a minority business. As a condition to such preference, the respondent must certify compliance by submitting a properly completed Certification of Drug-Free Workplace form. Failure to provide the information as directed shall result in the respondent receiving no consideration for this element of the evaluation criteria; refer to Evaluation Criteria section of this document. (see Appendix D)

## EVALUATION CRITERIA

### 1. General:

- A. All proposals properly submitted and responsive will be accepted by the Department. The Department reserves the right, however, to reject any or all proposals received, or cancel this RFP, or any part dealing with a specific project identified in the Scope of Work, according to the best interests of the State of Florida. The Department reserves the right to make a final selection without further discussion of the responses submitted.

### **B. Proposals will be considered non-responsive and will not be evaluated if they:**

1. fail to include a transmittal letter signed by an individual authorized to bind the proposer;
2. are irregular or are not in conformance with the requirements and instructions contained herein;
3. have improper or undated signatures;
4. fail to utilize or complete prescribed forms;
5. are conditional proposals;
6. are incomplete proposals;
7. are not received on or before the closing deadline;
8. propose a project that cannot be completed within the contract period, will require additional funding to implement, or cannot be implemented upon completion for any reason.

**WHETHER A PROPOSAL IS NON-RESPONSIVE SHALL BE DETERMINED BASED UPON THE DOCUMENTS SUBMITTED WITH THE PROPOSAL. A NON-RESPONSIVE PROPOSAL WILL NOT BE CONSIDERED.**

- C. DCA may waive minor irregularities in the proposals received if they are merely a matter of form and not substance, and the correction of them IS NOT PREJUDICIAL to other respondents. Variations which are not minor shall not be waived.

2. Evaluation Process: A evaluation committee will be established to review and evaluate each proposal submitted in response to the RFP. The evaluation committee shall be comprised of three persons with background, experience, and/or professional credentials in related or relevant service areas. Each vendor proposal will be evaluated by each member of the evaluation committee. The individual committee member's scores for a given vendor's proposal will be totaled and divided by the number of evaluation committee members for a final averaged total score. The proposals will be evaluated with reference to the terms of this Request for Proposals, and the Evaluation Score Sheet below.

3. Criteria for Evaluation: Proposals will be evaluated and graded in accordance with the criteria detailed below.

Proposal (100 points)

The following point system is established for scoring the proposals.

|                                   |             |
|-----------------------------------|-------------|
| References                        | 0-10 points |
| Scope of Work (Project Work Plan) | 0-20 points |
| Qualifications of Personnel       | 0-35 points |
| Budget                            | 0-35 points |

|                             |
|-----------------------------|
| <b>EVALUATION WORKSHEET</b> |
|-----------------------------|

Proposal # \_\_\_\_\_

Total Points Awarded: \_\_\_\_\_

Proposer Name: \_\_\_\_\_

Proposals will be awarded up to 100 points based upon the completeness and quality of the proposal, as well as proposer's familiarity and experience with and ability to perform the proposed services in accordance with the goals and objectives of the program.

| <u>Criteria</u> | <u>Maximum<br/>Points</u> | <u>Points<br/>Awarded</u> |
|-----------------|---------------------------|---------------------------|
|-----------------|---------------------------|---------------------------|

**Response Section:**

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |    |       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|-------|
| A. References .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 10 | _____ |
| <ul style="list-style-type: none"> <li>Limited to five (5) pages</li> <li>Five (5) written references</li> <li>Detailed description of each referenced project</li> <li>Structure of each referenced organization, i.e., a private corporation, non-profit, etc.</li> <li>Referenced firm's name and contact person's name, telephone number, and position</li> </ul>                                                                                                                                       |    |       |
| B. Scope of Work (Project Work Plan).....                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 20 | _____ |
| <ul style="list-style-type: none"> <li>Limited to ten (10) pages</li> <li>Statement of Approach</li> <li>Description of Work Activities, Responsibilities, Staffing Levels</li> <li>Communications and Reporting</li> <li>Milestone Chart/Timeline</li> </ul>                                                                                                                                                                                                                                               |    |       |
| C. Qualifications of Personnel.....                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 35 | _____ |
| <ul style="list-style-type: none"> <li>Limited to fifteen (15) pages</li> <li>Quality of Project Management</li> <li>Adequacy of Staffing Levels</li> <li>Capacity of Proposer to Accomplish Project</li> <li>Prior Experience of Staff for this Project</li> <li>Level of Involvement by Individuals in this Proposal</li> </ul>                                                                                                                                                                           |    |       |
| D. Budget .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 35 | _____ |
| <ul style="list-style-type: none"> <li>Limited to five (5) pages</li> <li>Personnel, Salaries and Wages, Fringe Benefits including FICA, Worker's Compensation, Unemployment Insurance, and Health/Life Insurance, if applicable</li> <li>Other Direct Costs, including such items as travel to conduct the project, total costs for equipment, and other costs necessary to complete the project;</li> <li>Subcontractor Costs</li> </ul>                                                                  |    |       |
| E. Drug-Free Workplace Certification (see APPENDIX D)                                                                                                                                                                                                                                                                                                                                                                                                                                                       |    |       |
| (Zero point value; may be used for tiebreaker only. Any respondent which operates a drug-free workplace within the meaning of Section 287.087, Florida Statutes, whose proposal is awarded a score equal to any other score, shall be accorded preference over any other respondent with the same score, other than a minority business. As a condition to such preference, the respondent must certify compliance by properly completing and submitting the attached Certification of Drug-Free Workplace. |    |       |

|                                       |                   |
|---------------------------------------|-------------------|
| <b>Maximum Total Points Possible:</b> | <b><u>100</u></b> |
|---------------------------------------|-------------------|

# **APPENDIX A**

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

### **Contents**

1. Definitions.
2. General Instructions.
3. Electronic Submission of Responses.
4. Terms and Conditions.
5. Questions.
6. Conflict of Interest.
7. Convicted Vendors.
8. Discriminatory Vendors.
9. Respondent's Representation and Authorization.
10. Manufacturer's Name and Approved Equivalents
11. Performance Qualifications.
12. Public Opening.
13. Electronic Posting of Notice of Intended Award.
14. Firm Response.
15. Clarifications/Revisions.
16. Minor Irregularities/Right to Reject.
17. Contract Formation.
18. Contract Overlap.
19. Public Records.
20. Protests.
21. Limitation on Vendor Contact with Agency during Solicitation Period

1. Definitions. The definitions found in section 60A-1.001, Florida Administrative Code, shall apply to this agreement. The following additional terms are also defined:

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

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

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

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

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

- Technical Specifications,
- Special Conditions and Instructions,
- Instructions to Respondents (PUR 1001),

- General Conditions (PUR 1000), and
- Introductory Materials.

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

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

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

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

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

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

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

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

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

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

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

11. **Performance Qualifications.** The Buyer reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by Respondent meet the Contract requirements. Respondent shall at all times during the Contract term remain responsive and responsible. In determining Respondent's responsibility as a vendor, the agency shall consider all information or

evidence which is gathered or comes to the attention of the agency which demonstrates the Respondent's capability to fully satisfy the requirements of the solicitation and the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bidders/Proposers/Respondents are advised that when the terms & conditions in PUR1001 conflict with the conditions stated in the Department's terms and conditions in this solicitation, the Department's terms and conditions will prevail. Specifically, Paragraphs #3 & #5 of PUR1001 do not apply to the Department of Community Affairs at this time.

## **APPENDIX B**

### State of Florida PUR 1000 - General Contract Conditions

#### **Contents**

1. Definitions.
2. Purchase Orders.
3. Product Version.
4. Price Changes Applicable only to Term Contracts.
5. Additional Quantities.
6. Packaging.
7. Inspection at Contractor's Site.
8. Safety Standards.
9. Americans with Disabilities Act.
10. Literature.
11. Transportation and Delivery.
12. Installation.
13. Risk of Loss.
14. Transaction Fee.
15. Invoicing and Payment.
16. Taxes.
17. Governmental Restrictions.
18. Lobbying and Integrity.
19. Indemnification.
20. Limitation of Liability.
21. Suspension of Work.
22. Termination for Convenience.
23. Termination for Cause.
24. Force Majeure, Notice of Delay, and No Damages for Delay.
25. Changes.
26. Renewal.
27. Purchase Order Duration.
28. Advertising.
29. Assignment.
30. Antitrust Assignment.
31. Dispute Resolution.
32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
35. Insurance Requirements.
36. Warranty of Authority.
37. Warranty of Ability to Perform.
38. Notices.
39. Leases and Installment Purchases.
40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).
41. Products Available from the Blind or Other Handicapped.
42. Modification of Terms.
43. Cooperative Purchasing.
44. Waiver.
45. Annual Appropriations.
46. Execution in Counterparts.
47. Severability.

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

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

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

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

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

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

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

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

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

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

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

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

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

and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

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

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

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

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

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

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

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

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

13. Risk of Loss. Matters of inspection and acceptance are addressed in section 215.422, Florida Statutes. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with

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

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

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

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

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

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

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

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

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

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

18. Lobbying and Integrity. Customers shall ensure compliance with Section 11.062, Florida Statutes and Section 216.347, Florida Statutes. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit

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

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

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

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

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

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

by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

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

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

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

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

expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

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

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

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

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

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

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

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

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

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

29. Assignment. The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written

consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.

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

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

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

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

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

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

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

policies in Florida.

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

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

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

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

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

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

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

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

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

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

45. Annual Appropriations. The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Florida Statutes.

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

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

**APPENDIX C**

**VENDOR INFORMATION SHEET**

(1) Name of respondent's firm: \_\_\_\_\_

(2) Complete address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Telephone Number: ( \_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

(4) E-Mail Address: \_\_\_\_\_

(5) Federal Employer Identification Number: \_\_\_\_\_

Signature below signifies that respondent has registered the company within the MyFloridaMarketPlace system on the following date \_\_\_\_\_ (see page 5, Notice to Prospective Bidders) and has agreed to terms & conditions therein:

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

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

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

## **APPENDIX D**

|                                             |
|---------------------------------------------|
| <b>CERTIFICATION OF DRUG-FREE WORKPLACE</b> |
|---------------------------------------------|

**IDENTICAL TIE BIDS** - Whenever there are tie bids from the scoring, the business that has a drug-free workplace program will be given preference in the following manner: If two or more proposals are received from respondents which are equal with respect to price, quality and service, the proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

- I-1            Publish a statement which notifies employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and which states the actions that will be taken against employees for violations of such prohibition.
- I-2            Inform employees about the dangers of drug abuse in the workplace, the business' policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- I-3            Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- I-4            In the statement specified in subsection (1), notify the employees that as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- I-5            Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- I-6            Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

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

\_\_\_\_\_  
RESPONDENT'S SIGNATURE

\_\_\_\_\_  
DATE