

State of Florida

Division of Emergency Management



RFP-DEM-10/11-008

Request for Proposal

**PROCUREMENT OF AIRTIME FOR TELEVISION
AND RADIO SPOTS REGARDING EMERGENCY
PREPAREDNESS FOR ALL HAZARDS**

CONTACT FOR QUESTIONS:

Cherie Trainor
cherie.trainor@em.myflorida.com
Fax: 850-488-5777
Phone: 850-413-9942
2555 Shumard Oak Blvd.
Tallahassee, FL 32399

INTRODUCTION SECTION

1) INVITATION

The State of Florida Division of Emergency Management, hereinafter referred to as the "Division", requests written proposals from qualified Proposers to provide distribution and airtime of television and radio spots regarding emergency preparedness for all hazards. It is anticipated that the term of the contract will begin on February 1, 2011 and be effective through November 30, 2011.

The Division intends to award this contract to the responsive and responsible Proposer whose proposal is determined to be the most advantageous to the Division. After the award, said Proposer will be referred to as the "Vendor". For the purpose of this document, the term "Proposer" means the prime Vendor acting on its own behalf and those individuals, partnerships, firms, or corporations comprising the Proposer team. The term "proposal" means the complete response of the Proposer to the Request for Proposals (RFP), including properly completed forms and supporting documentation.

2) SCHEDULE OF EVENTS

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

<u>ACTION / LOCATION</u>	<u>DATE</u>	<u>TIME</u>
ADVERTISE RFP	12-17-2010	5:00 PM
DEADLINE FOR TECHNICAL QUESTIONS - There is no deadline for administrative questions.	12-22-2010	5:00 PM
POSTING OF TECHNICAL QUESTIONS AND ANSWERS - No later than 4:00PM EST.	12-23-2010	4:00 PM
Initial Evaluation Committee Meeting (RFP & Scoring Criteria Review)	12-22-2010	10:00 AM
PROPOSALS DUE (Technical and Price) - 2555 Shumard Oak Blvd. Tallahassee, FL 32399	1-06-2011	2:00 PM
PUBLIC OPENING (Technical Proposal) - 2555 Shumard Oak Blvd. Tallahassee, FL 32399	1-06-2011	3:00 PM
PUBLIC OPENING / MEETING (Price Proposal) - 2555 Shumard Oak Blvd. Tallahassee, FL 32399	1-06-2011	3:30 PM
EVALUATION COMMITTEE MEETING (Scoring Tabulation) 2555 Shumard Oak Blvd. Tallahassee, FL 32399	1-13-2011	10:00 AM
POSTING OF INTENDED AWARD - No later than 4:00PM EST	1-17-2011	4:00 PM

3) SPECIAL ACCOMMODATIONS

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

SPECIAL CONDITIONS

1) MyFloridaMarketPlace

Since July 1, 2003, the State has been using the State of Florida's web-based electronic procurement system, MyFloridaMarketPlace. PROPOSERS MUST BE REGISTERED IN THE STATE OF FLORIDA'S MYFLORIDAMARKETPLACE SYSTEM BY THE TIME AND DATE OF THE TECHNICAL PROPOSAL OPENING OR THEY WILL BE CONSIDERED NON-RESPONSIVE (see Special Condition 18). All prospective proposers that are not registered, should go to <https://vendor.myfloridamarketplace.com/> to complete on-line registration, or call 1-866-352-3776 for assisted registration.

2) QUESTIONS & ANSWERS

In accordance with section 287.057(23), Florida Statutes, respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

Any technical questions arising from this Request for Proposal must be forwarded, in writing, to the procurement agent identified below. Questions must be received no later than the time and date reflected on the Schedule of Events. The Division's written response to written inquiries submitted timely by proposers will be posted on the Florida Vendor Bid System at www.myflorida.com no later than the time and date reflected in Section 2, Schedule of Events. To access the Vendor Bid System (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements"). It is the responsibility of all potential proposers to monitor this site for any changing information prior to submitting their proposal.

WRITTEN TECHNICAL QUESTIONS should be submitted to:

Cherie Trainor

2555 Shumard Oak Blvd.

Tallahassee, FL 32399.

cherie.trainor@em.myflorida.com; Fax Number: 850-488-5777.

Questions regarding administrative aspects of the proposal process should be directed to the Procurement Agent in writing at the address above or by phone: (850) 413-9942

3) ORAL INSTRUCTIONS / CHANGES TO THE REQUEST FOR PROPOSAL (ADDENDA)

No negotiations, decisions, or actions will be initiated or executed by a proposer as a result of any oral discussions with a State employee. Only those communications which are in writing from the Division will be considered as a duly authorized expression on behalf of the Division.

Notices of changes (addenda) will be posted on the Florida Vendor Bid System at http://vbs.dms.state.fl.us/vbs/main_menu. It is the responsibility of all potential proposers to monitor this site for any changing information prior to submitting your proposal. All addenda will be acknowledged by signature and subsequent submission of addenda with proposal when so stated in the addenda.

4) DIVERSITY ACHIEVEMENT

(a) Minority Business Enterprise (MBE) Utilization

The Division encourages the recruitment and utilization of small, minority, women, and service-disabled veteran businesses. The Division, its vendors, suppliers, and consultants should take all necessary and reasonable steps to ensure that small, minority, women, and service-disabled veteran businesses have the opportunity to compete for and perform contract work for the Division in a nondiscriminatory environment.

(b) Vendor Preference Certified Service-Disabled Veteran Business Enterprise Vendor Preference

The Division, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a *certified service-disabled veteran business enterprise*, that are equal with respect to all relevant considerations, including price, quality, and service, shall award such procurement or contract to the certified service-disabled veteran business enterprise.

Notwithstanding F.S. 287.057(11), if a service-disabled veteran business enterprise entitled to the vendor preference under this section and one or more businesses entitled to this preference or another preference provided by law submit bids, proposals, or replies for procurement of commodities or contractual services that are equal with respect to all relevant considerations, including price, quality, and service, then the Division shall award the procurement or contract to the business having the smallest net worth.

(For information on Certification Procedures for Vendor Preference programs, contact Thad Fortune, Certification Administrator, Office of Supplier Diversity, (850) 487-9863 or email: Thad.Fortune@myflorida.com).

5) SCOPE OF SERVICES

Details of the services, information and items to be furnished by the Vendor are described in Exhibit "A", Scope of Work, attached hereto and made a part hereof.

6) INTENDED AWARD

The Division intends to award a contract to the responsive and responsible Vendor with the highest cumulative total points for the evaluation criteria specified herein (See Section 28 Proposal Evaluation). The Intended Award decision will be announced and posted on the Vendor Bid System at http://vbs.dms.state.fl.us/vbs/main_menu after final evaluation and totaling of scores at the Selection Committee meeting specified in the Schedule of Events (See Introduction Section 2, Schedule of Events). If the Division is confronted with identical pricing or scoring from multiple vendors, the Division shall determine the order of award in accordance with Rule 60A-1.011 Florida Administrative Code.

7) QUALIFICATIONS

7.1 General

The Division will determine whether the Proposer is qualified to perform the services being contracted based upon their proposal demonstrating satisfactory experience and capability in the work area. The Proposer shall identify necessary experienced personnel and facilities to support the activities associated with this Request for Proposal.

- The Proposer must have a proven history of providing a similar project focusing on broadcasting of radio and television awareness campaigns. Reference must be submitted with proposal.
- The Proposer shall have the financial resources to effectively perform the services required under this solicitation and must furnish an independent certified audit, financial statement or Dunn & Bradstreet report for the last fiscal period prior to submission of its proposal.

- The proposer shall designate at least one individual as a point of contact for contract users and the Division to address all resulting contract issues.

7.2 Qualifications of Key Personnel

Those individuals who will be directly involved in the project should have demonstrated experience in the areas delineated in the Scope of Work (Exhibit A). Individuals whose qualifications are presented will be committed to the project for its duration unless otherwise exempted by the Division's Project Manager. Where State of Florida registration or certification is deemed appropriate, a copy of the registration or certificate should be included in the proposal package.

7.3 Authorized To Do Business in the State of Florida

In accordance with sections 607.1501, 608.501, and 620.169, Florida Statutes, foreign corporations, foreign limited liability companies, and foreign limited partnerships must be authorized to do business in the State of Florida. Such authorization should be obtained by the proposal due date and time, but in any case, must be obtained prior to posting of the intended award of the contract. For authorization, contact:

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

7.4 Licensed to Conduct Business in the State of Florida

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

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

8) WARRANTY/SUBSTITUTIONS

When performance of the services requires the supply of commodities, a warranty is required on all items provided against defective materials, workmanship, and failure to perform in accordance with required industry performance criteria, for a period of not less than ninety (90) days from the date of acceptance by the purchaser. Any deviation from this criteria must be documented in the proposal response or the above statement shall prevail.

All items provided during the performance of the contract found to be poorly manufactured will not be accepted, but returned to the Vendor, at their expense, for replacement. Replacement of all items found defective shall be made without cost to the Division, including transportation, if applicable. As it may be impossible for each facility to inspect all items upon arrival, a reasonable opportunity must be given to these facilities for inspection of the items, and returning those that are defective.

9) LIABILITY INSURANCE

The Vendor shall not commence any work until they have obtained the following types of insurance, and certificates of such insurance have been received by the Division. Nor shall the Vendor allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been so obtained. The Vendor shall submit the required Certificates of Insurance to the **Florida Division of Emergency Management, Procurement Office, Cherie Trainor, 2555 Shumard Oak Blvd. Tallahassee, FL 32399.**

The Vendor must carry and keep in force during the period of the contract a general liability insurance policy or policies with a company authorized to do business in the state of Florida, affording public liability insurance with

combined bodily injury limits of at least \$ 150,000.00 per person and \$ 300,000.00 each occurrence, and property damage insurance of at least \$ 150,000.00 each occurrence, for the services to be rendered in accordance with the contract.

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

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

10) PERFORMANCE BOND AND PAYMENT BOND (Check as appropriate)

☒ [X] No Bond required

11) LIQUIDATED DAMAGES (Check as appropriate)

☒ [X] None required

12) METHOD OF COMPENSATION

See attached Exhibit "C", Method of Compensation

13) CONTRACT DOCUMENT

The Division's "Standard Contract Agreement" is attached hereto and made a part hereof. The terms and conditions contained therein will become an integral part of the contract resulting from this RFP. In submitting a proposal, the proposer agrees to be legally bound by these terms and conditions.

14) REVIEW OF PROPOSER'S FACILITIES & QUALIFICATIONS

After the proposal due date and prior to contract execution, the Division reserves the right to perform or have performed an on-site review of the Proposer's facilities and qualifications. This review will serve to verify data and representations submitted by the Proposer and may be used to determine whether the Proposer has an adequate, qualified and experienced staff and can provide overall management facilities. The review may also serve to verify whether the Proposer has financial capability adequate to meet the contract requirements.

Should the Division determine that the proposal has material misrepresentations or that the size or nature of the Proposer's facilities or the number of experienced personnel (including technical staff) are not adequate to ensure satisfactory contract performance, the Division has the right to reject the proposal.

15) PROTEST OF REQUEST FOR PROPOSAL SPECIFICATIONS

Any person who is adversely affected by the contents of this Request for Proposal must file the following with **Department of Community Affairs, Agency Clerk, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399:**

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

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

Revised 12/14/10

proceedings under Chapter 120, Florida Statutes.

16) UNAUTHORIZED ALIENS

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

17) RESERVATIONS

The Division reserves the right to accept or reject any or all proposals received and reserves the right to make an award without further discussion of the proposals submitted. Therefore, the proposals should be submitted initially in the most favorable manner. It is understood that the proposal will become a part of the Division's official file, without obligation to the Division.

18) ADDITIONAL TERMS & CONDITIONS

No conditions may be applied to any aspect of the RFP by the proposer. Any conditions placed on any aspect of the RFP documents by the proposer may result in their proposal being rejected as a conditional proposal (see "RESPONSIVENESS OF PROPOSALS"). **DO NOT WRITE IN CHANGES ON THIS RFP SHEET.** The only recognized changes to the RFP prior to proposal opening will be written addenda issued by the Division.

19) RESPONSIVENESS OF PROPOSALS

19.1 Responsiveness of Proposals

Proposals will not be considered if not received by the Division on or before the date and time specified as the due date for submission.

All proposals must be typed or printed in ink. A responsive proposal is an offer to perform the Scope of Work called for in this Request for Proposal in accordance with all requirements of this Request for Proposal and receiving sixty (60) points or more on the Technical Proposal. Proposals found to be non-responsive shall not be considered. Proposals may be rejected if found to be irregular or not in conformance with the requirements and instructions contained herein. A proposal may be found to be irregular or non-responsive by reasons that include, but are not limited to, failure to utilize or complete prescribed forms, conditional proposals, incomplete proposals, indefinite or ambiguous proposals, and improper and/or undated signatures.

19.2 Multiple Proposals

Proposals may be rejected if more than one proposal is received from a Proposer. Such duplicate interest may cause the rejection of all proposals in which such Proposer has participated. Subcontractors may appear in more than one proposal.

19.3 Other Conditions

Other conditions which may cause rejection of proposals include, but are not limited to, evidence of collusion among proposers, obvious lack of experience or expertise to perform the required work, failure to perform or meet financial obligations on previous contracts, or in the event an individual, firm, partnership, or corporation is on the United States Comptroller General's List of Ineligible Contractors for Federally Financed or Assisted Projects.

20) PROPOSAL FORMAT INSTRUCTIONS

20.1 General Information

This section contains instructions that describe the required format for the proposal. All proposals submitted shall contain two parts and be marked as follows:

PART I TECHNICAL PROPOSAL NUMBER RFP-DEM-10/11-008
(One Separately Sealed Package for Technicals)

PART II PRICE PROPOSAL NUMBER RFP-DEM-10/11-008
(One Separately Sealed Package for Prices)

THE SEPARATELY SEALED PACKAGES MAY BE MAILED TOGETHER IN ONE ENVELOPE OR BOX.

20.2 Technical Proposal (Part I) (6 copies)
(Do not include price information in Part I)

The Proposer must submit one (1) original and (5) copies of the technical proposal which are to be divided into the sections described below. Since the Division will expect all technical proposals to be in this format, failure of the Proposer to follow this outline may result in the rejection of the proposal. The technical proposal must be submitted in a separate sealed package marked "TECHNICAL PROPOSAL NUMBER RFP-DEM-10/11-008".

1. EXECUTIVE SUMMARY (Limit 2 pages)

The Proposer shall provide an Executive Summary to be written in nontechnical language to summarize the Proposer's overall capabilities and approaches for accomplishing the services specified herein. Current financial information, i.e. independent certified audit, financial statement or Dunn & Bradstreet report for the last fiscal year; shall be also be provided under this section..

2. PROPOSER'S MANAGEMENT PLAN (Limit 5 pages)

The Proposer shall provide a management plan which describes administration, management and key personnel.

a. Administration and Management

The Proposer should include a description of the organizational structure and management style established and the methodology to be used to control costs, services reliability and to maintain schedules; as well as the means of coordination and communication between the proposer and the Division.

b. Identification of Key Personnel

The Proposer should provide the names of key personnel on the Proposer's team, as well as a resume for each individual proposed and a description of the functions and responsibilities of each key person relative to the task to be performed. The approximate percent of time to be devoted exclusively for this project and to the assigned tasks should also be indicated.

3. PROPOSER'S TECHNICAL PLAN (Limit 3 pages)

The Proposer shall provide a technical plan which explains technical approach and facility capabilities.

a. Technical Approach

The Proposer should explain the approach, capabilities, and means to be used in accomplishing the tasks in the Scope of Work, and where significant development difficulties may be anticipated and resolved. Any specific techniques to be used should also be addressed.

b. Facility Capabilities

The Proposer should provide a description and location of the Proposer's facilities as they currently exist

and as they will be employed for the purpose of this work.

4. WORK PLAN (Limit 5 pages)

The Proposer shall provide a Work Plan which sets forth on an average the estimated staff-hours for each skill classification that will be utilized to perform the work required to demonstrate the proposers understanding of the work required to complete this project.

5. REFERENCES (Limit 3 pages)

The Proposer must have a proven history of providing similar projects focusing on Satellite Communications Systems. The Proposer must show how they have been active in this type of work for three (3) years. Proposals must include references with contact information and a description of the project.

20.3 Price Proposal (Part II) (___6___ copies)

The price proposal information is to be submitted in a separate sealed package marked "PRICE PROPOSAL NUMBER RFP-DEM-10/11-008". The Price Proposal information shall be submitted on the forms provided in the Request for Proposal.

The Proposer shall complete the Price Proposal form, Exhibit "B", and submit it as part of the Price Proposal Package. Any proposal in which this form is not used or in which the form is improperly executed may be considered non-responsive and the proposal will be subject to rejection. The vendor's completed form shall become a part of the contract upon award.

The Procurement Office will open Price Proposals in accordance with Section 27, Proposal Openings. The Procurement Office and/or the Project Manager/Technical Review team will review and evaluate the price proposals and prepare a summary of its price evaluation. The Procurement Office and/or the Project Manager/Technical Review team will assign points based on price evaluation criteria identified herein.

20.4 Presenting the Proposal

The proposal shall be limited to a page size of eight and one-half by eleven inches (8½" x 11"). Foldout pages may be used, where appropriate, but should not exceed five (5) percent of the total number of pages comprising the proposal. Type size shall not be less than 10 point font. Proposals should be indexed and all pages sequentially numbered. Bindings and covers will be at the Proposer's discretion. Unnecessarily elaborate special brochures, art work, expensive paper and expensive visual and other presentation aids are neither necessary nor desired.

It is recognized that existing financial reports, documents, or brochures, such as those that delineate the Proposer's general capabilities and experience, may not comply with the prescribed format. It is not the intent to have these documents reformatted and they will be acceptable in their existing form.

21) "DRUG-FREE WORK PLACE" PREFERENCE

Whenever two or more proposals which are equal with respect to price, quality, and service are received, the Division shall determine the order of award in accordance with Rule 60A-1.011 Florida Administrative Code, which includes a preference for solicitation responses that certify the business has implemented a drug-free workplace program in accordance with Section 287.087, F.S.. The "Drug-Free Workplace Program Certification" must be completed and submitted with the solicitation response for this preference.

22) COPYRIGHTED MATERIAL

Copyrighted material will be accepted as part of a technical proposal only if accompanied by a waiver that will allow the Division to make paper and electronic copies necessary for the use of Division staff and agents. It is
Revised 12/14/10

noted that copyrighted material is not exempt from the Public Records Law, Chapter 119, Florida Statutes. Therefore, such material will be subject to viewing by the public, but copies of the material will not be provided to the public.

23) ATTACHMENT TO RFP SUBMITTAL - CONFIDENTIAL MATERIAL

The Proposer must include any materials it asserts to be exempted from public disclosure under Chapter 119, Florida Statutes, in a separate bound document labeled "Attachment to Request for Proposals, Number RFP-DEM-(RFP #10/11-008) - Confidential Material". The Proposer must identify the specific Statute that authorizes exemption from the Public Records Law. Any claim of confidentiality on materials the Proposer asserts to be exempt from public disclosure and placed elsewhere in the proposal will be considered waived by the Proposer upon submission, effective after opening.

24) COSTS INCURRED IN RESPONDING

This Request for Proposal does not commit the Division or any other public agency to pay any costs incurred by an individual firm, partnership, or corporation in the submission of a proposal or to make necessary studies or designs for the preparation thereof, nor to procure or contract for any articles or services.

25) MAIL OR DELIVER PROPOSAL TO: (DO NOT FAX or E-MAIL)

**Florida Division of Emergency Management
Cherie Trainor
2555 Shumard Oak Blvd.
Tallahassee, FL 32399**

It is the proposer's responsibility to assure that their proposal (Technical and Price proposal) is delivered to the proper place on or before the proposal due date and time (See Introduction, Section 2, Schedule of Events). Proposals which for any reason are not so delivered, will not be considered.

By submitting a proposal, the Proposer represents that it understands and accepts the terms and conditions to be met and the character, quality and scope of services to be provided.

All proposals and associated forms shall be signed and dated in ink by a duly authorized representative of the Proposer.

Each Proposer shall fully acquaint itself with the conditions relating to the performance of the services under the conditions of this Request for Proposal. This may require an on-site observation

26) MODIFICATIONS, RESUBMITTAL AND WITHDRAWAL

Proposers may modify submitted proposals at any time prior to the proposal due date. Requests for modification of a submitted proposal shall be in writing and must be signed by an authorized signatory of the Proposer. Upon receipt and acceptance of such a request, the entire proposal will be returned to the Proposer and not considered unless resubmitted by the due date and time. Proposers may also send a change in a sealed envelope to be opened at the same time as the proposal. The RFP number, due date and time should appear on the envelope of the modified proposal.

27) PROPOSAL OPENING

All proposal openings are open to the public. Technical Proposals will be opened by the Division at the date, time and location in the Schedule of Events (See Introduction, Section 2, Schedule of Events). Price Proposals, which have a corresponding responsive Technical Proposal, will be opened by the Division at the date, time and location in the Schedule of Events (See Introduction, Section 2, Schedule of Events).

28) PROPOSAL EVALUATION

28.1 Evaluation Process:

A Technical Evaluation team will be established to review and evaluate each proposal submitted in response to this RFP. The Technical Evaluation team will be comprised of at least three persons with background, experience, and/or professional credentials in relative service areas.

The Procurement Office will distribute to each member of the Technical Evaluation team a copy of each technical proposal. The Technical Evaluation team members will independently evaluate the proposals on the criteria established in the section below entitled "Criteria for Evaluation" in order to assure that proposals are uniformly rated. Individual team members scores for each proposal will be totaled and that total divided by the number of team members to obtain an average total score for each proposal. Proposing firms must attain an averaged score of sixty (60) points or higher on the Technical Proposal to be considered responsive. Should a Proposer receive fewer than sixty (60) points for their Technical Proposal score, the Technical and Price Proposal will not receive any further consideration.

During the process of evaluation, the Procurement Office will conduct examinations of proposals for responsiveness to requirements of the RFP. Those determined to be non-responsive will be automatically rejected.

28.2 Criteria for Evaluation

Proposals will be evaluated and graded in accordance with the criteria detailed below.

a. Technical Proposal (85 Points)

Technical evaluation is the process of reviewing the Proposer's Executive Summary, Management Plan, Technical Plan and Work Plan for understanding of project, qualifications, approach and capabilities, to assure a quality product.

The following point system is established for scoring the technical proposals:

	<u>Point Value</u>
1. Executive Summary	5
2. Management Plan	5
3. Technical Plan	15
4. Work Plan	30
5. References	30

c. Price Proposal (15 Points)

Price evaluation is the process of examining a prospective price without evaluation of the separate cost elements and proposed profit of the potential provider. Price analysis is conducted through the comparison of price quotations submitted.

The criteria for price evaluation shall be based upon the following formula:

$$(\text{Low Price/Proposer's Price}) \times \text{Price Points} = \text{Proposer's Awarded Points}$$

29) POSTING OF INTENDED AWARD

29.1. General

The Division's decision will be posted on the Florida Vendor Bid System, at:

http://vbs.dms.state.fl.us/vbs/main_menu, on date and time in the Schedule of Events, and will remain

posted for a period of seventy-two (72) hours. Any proposer who is adversely affected by the Division of Emergency Management's recommended award or intended decision must file the following with the Division of Emergency Management, **Department of Community Affairs, Agency Clerk, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399**:

1. A written notice of protest within seventy-two (72) hours after posting of the Intended Award, and
2. A formal written protest and protest bond in compliance with Subsection 120.57(3) and 287.042 (2)(c), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed. At the time of filing the formal written protest, a bond (a cashier's check or money order may be accepted) payable to the Division must also be submitted in an amount equal to one percent (1%) of the estimated contract amount based on the contract price submitted by the protestor.

Failure to file a protest within the time prescribed in Subsection 120.57(3), Florida Statutes, or failure to post the bond or other security required by Subsection 287.0412 (2)(c), Florida Statutes, within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

29.2 - Inability to Post:

If the Division is unable to post as defined above, the Division will notify all proposers by electronic notification on the Florida Vendor Bid System (see special condition 29.1, above) or by mail, fax, and/or telephone. The Division will provide notification of any future posting in a timely manner.

29.3 - Request to Withdraw Proposal:

Requests for withdrawal will be considered if received by the Division, in writing, within seventy-two (72) hours after the price proposal opening time and date. Requests received in accordance with this provision will be granted by the Division upon proof of the impossibility to perform based upon obvious error on the part of the proposer.

30) AWARD OF THE CONTRACT

Services will be authorized to begin when the Vendor receives the following document(s), as appropriate, indicating the encumbrance of funds and award of the contract:

- The Division's Contractual Services Agreement executed by both parties.

31) ATTACHED FORMS

Price Proposal Form, Exhibit "B" (To be submitted with proposal.)
Drug-Free Workplace Program Certification, Exhibit "E" (To be submitted with proposal.)
Minimum Qualifications Statement, Exhibit "D" (To be submitted with proposal.)
Evaluation Worksheet, Exhibit "F" (For informational use only.)

32) ATTACHED TERMS AND CONDITIONS

Exhibit "A" Scope of Services
Exhibit "C" Method of Compensation
Contractual Services Agreement
Addendum I (Terms for Federal Aid Contracts)
Instructions to Respondents (PUR 1001)
General Conditions (PUR 1000)

33) TERMS AND CONDITIONS

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

Special Conditions
Scope of Work
Price Proposal Form
Contractual Services Agreement
Addendum I (Terms for Federal Aid Contracts)
Instructions to Respondents (PUR 1001)
General Conditions (PUR 1000)
Introduction Section

34) ATTACHED FORMS PUR 1000, GENERAL CONTRACT CONDITIONS AND PUR 1001, GENERAL INSTRUCTIONS TO REPENDENTS

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

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

EXHIBIT "A"

SCOPE OF WORK

1. Purpose

The State of Florida, Division of Emergency Management (FDEM), Office of External Affairs, needs to implement its' State Fiscal Year 2010-11 statewide "Get A Plan!" public education and outreach media campaign. The contract resulting from this RFP will provide airtime and distribution of TV and radio spots.

"Get A Plan, Florida!" (working title) will be the generic theme around the State Fiscal Year 2010-11 media campaign that will strengthen the FDEM's efforts to prepare and protect all Floridians who are vulnerable to hurricanes and related severe weather. This phase of the multi-faceted campaign will include the distribution and airing of TV and radio spots in order to provide Floridians with the information they need to better protect themselves, their families, and mitigate future loss of life and property loss. Throughout the year event specific spots will be aired based on the FDEM's preparedness campaign with each spot being 30 seconds in length.

2. Background

"Get A Plan!" is an on-going effort by the State of Florida, launched in 2006, to raise awareness and involvement by millions of Floridians in a culture of preparedness, hurricane safety, and mitigation.

3. Service Tasks

3.1 Distribution of TV and Radio Public Education Program:

The vendor shall plan and conduct a statewide "Get A Plan, Florida" media campaign that meets the following distribution requirements:

- A. Distribution of Division approved TV and radio spots through the Public Education Partnership Program (PEP).
- B. In conjunction with Division staff, develop monthly schedules for airing TV and radio spots.
- C. Distribution emphasis will be placed on media markets identified by the Division that include certain counties, regions, stations, dates and times.
- D. The majority of the TV and radio spots shall be scheduled during the month leading up to the hurricane season.

Special Notes:

- **In-kind Match and Not-for-profit corporation requirements:** The funds appropriated for this project are subject to language in the state's Fiscal Year 2010-11 budget, specifically: "From the funds in Specific Appropriation 1572, \$250,000 shall be used for a statewide public education program on television and radio to promote hurricane preparedness. Such funds shall be provided

to a not-for-profit corporation, and must be matched on a 3 to 1 basis. For each TV or radio spot paid for by the Division, the vendor shall provide 3 TV or radio spots at no cost to the Division.

- **The cost of the Vendor proposed number of 30 second spots will not exceed the \$250,000 appropriation.**

- **All materials and products produced and distributed shall be the property of the State of Florida.**

“EXHIBIT “B”
RFP-DEM-10/11-008
PRICE PROPOSAL PAGE

Deliverables:

No. 1 Radio Airtime: _____ X \$ _____ = \$ _____
Number of Spots Cost per Spot

No. 2 Television Airtime: _____ X \$ _____ = \$ _____
Number of Spots Cost per Spot

Total Price = \$ _____

Award will be based on the proposer scoring the highest total points of as evaluated on the criteria in section 28 of this request for proposal.

NOTE: In submitting a response, the proposer acknowledges they have read and agree to the solicitation terms and conditions and their submission is made in conformance with those terms and conditions.

ACKNOWLEDGEMENT: I certify that I have read and agree to abide by all terms and conditions of this solicitation and that I am authorized to sign for the proposer. I certify that the response submitted is made in conformance with all requirements of the solicitation.

Proposer: _____ FEID # _____

Address: _____ City, State, Zip _____

Authorized Signature: _____ Date: _____

Printed / Typed: _____ Title: _____

EXHIBIT "C"

METHOD OF COMPENSATION

1.0 PURPOSE:

This Exhibit defines the limits and method of compensation to be made to the vendor for services set forth in Exhibit "A" and the method by which payments shall be made.

2.0 COMPENSATION:

For the satisfactory performance of the services detailed in Exhibit "A", the Vendor shall be paid monthly for those task and deliverables shown in Exhibit "A" that have been received and approved by the Division's Project Manager identified below. The total compensation for the contract period shall not exceed \$250,000.00 and is based on the availability of funds.

3.0 PAYMENTS:

The Vendor shall submit a monthly invoice (3 copies) in a format acceptable to the Division. Payment for tasks and deliverables shall be made at the unit rates shown in Exhibit "B", as approved by the Division's Project Manager. The unit rates will be for airtime spots provided.

Invoices shall be submitted to:
Florida Division of Emergency Management
John Cherry, Project Manager
2555 Shumard Oak Blvd.
Tallahassee, FL. 32399-2100

4.0 DETAILS OF COSTS AND FEES:

Details of the Vendor's unit rates for services are contained in Exhibit "B", attached hereto and made a part hereof.

EXHIBIT "D"

MINIMUM QUALIFICATIONS STATEMENT

How many years has your business performed the type of services being requested? _____

Provide a written statement detailing your qualifications:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

EXHIBIT E

CERTIFICATION OF DRUG-FREE WORKPLACE

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more proposals are received from respondents which are both certified minority businesses (as set forth above), and 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. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- B. Inform employees about the dangers of drug abuse in the workplace, the business's 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.
- C. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection A.
- D. In the statement specified in subsection A, 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, F.S., 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.
- E. 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.
- F. 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.

VENDOR'S SIGNATURE

DATE

PRINT VENDOR'S NAME

EXHIBIT "F"
EVALUATION WORKSHEET

Evaluator Name (Print): _____

Maximum Points: 100

Evaluator Signature (Print): _____

Total Points Awarded: _____

RFP-DEM-10/11-008

Proposer Name: _____

Proposals will be awarded up to 100 points based upon the completeness, 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.

PART I

<u>Maximum Points</u>	<u>Points Awarded</u>
----------------------------------	----------------------------------

Technical Response:

A. Executive Summary	5	_____
B. Management Plan	5	_____
• Quality of Project Management		
• Adequacy of Number of Staff		
• Capacity of Proposer to accomplish project		
• Prior Experience of Staff for this project		
• Level in Involvement of Individuals		
C. Technical Plan	15	_____
D. Work Plan	30	_____
• Description of Work Activities		
• Deliverables		
• Technical Understanding		
• Capacity and Equipment		
• Method and Materials		
E. References	30	_____

PART II

Price Response:

F. Budget	15	_____
• Cost Effectiveness		
• Overall Cost		
• 3 to 1 In-kind Match (As required in the State's FY 10-11 budget)		
• Not for profit corporation (As required in the State's FY 10-11 budget)		
G. Drug-Free Workplace Certification (see form on next page)		

STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

Contract Number: _____

CONTRACTUAL SERVICES AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2010 by and between the State of Florida, Division of Emergency Management, hereinafter called ("Division"), and _____, duly authorized to conduct business in the State of Florida, hereinafter called ("Vendor"). In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. PURPOSE OF THE AGREEMENT

- A. The purpose of this Agreement is to provide products and/or services as described in Scope of Services attached hereto as Exhibit "A" and made part hereof.

2. TERM

- A. The term shall begin upon execution of the Agreement and shall end _____ unless terminated earlier in accordance with the provisions of section 7 of this Agreement. No work shall commence until both parties have signed the Agreement.
- B. This Agreement may be renewed, at the Division's sole discretion, for a period that may not exceed three (3) years or the term of the original Agreement, whichever period is longer, specifying the renewal price and subject to the availability of funds. Pursuant to section 287.057 (5) (a), Florida Statutes, exceptional purchase contracts may not be renewed.

3. COMPENSATION AND PAYMENT

- A. The total amount of the Agreement which shall be expended in the State Fiscal Year for the performance for the activities is described in Exhibit "A" of the agreement and is shown in Exhibit ____.
- B. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under section 215.422 (16), Florida Statutes.
- C. Invoices for fees, commodities, or other compensation for services or expenses shall be submitted in detail sufficient for payment and a proper preaudit and postaudit thereof.
- D. As required by section 287.0582, Florida Statutes, if this Agreement binds the Division for the purchase of services or tangible personal property for a period in excess of one fiscal year, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."
- E. The Vendors providing goods and services to the Division should be aware of the following time frames. Pursuant to section 215.422 (1), Florida Statutes, an invoice submitted to an agency of the state shall be recorded in the financial systems of the state, approved for payment by the Division, and filed with the Chief Financial Officer not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, except that in the case of a bona fide dispute the invoice recorded in the financial systems of the state shall contain a statement of the dispute and authorize payment only in the amount not disputed. The Division has five (5) working days to inspect and approve the goods and services, unless otherwise specified herein. Pursuant to section 215.422 (3) (b), Florida Statutes, the Division shall issue payment to the Vendor within forty (40) days after the invoice has been accepted. Failure to issue the warrant within forty (40) days shall result in the Division

paying interest at the rate established under section 55.03(1), Florida Statutes. The invoice payment requirements do not start until a properly completed invoice is provided to the Division, inspected and approved.

- F. **Transaction Fee.** The State of Florida, through the Department of Management Services (DMS), has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to section 287.057 (23), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1 %), which the vendors shall pay to the State. On-line filing is available at <http://dms.myflorida.com/mfmp>. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall self-report and pay the transaction fee pursuant to rule 60A-1.031 (2), Florida Administrative Code. By submission of these reports and corresponding payments, the Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Vendor shall receive a credit for any transaction fee paid by the Vendor for the purpose of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Vendor in default and recovering reprocurement costs from the Vendor in addition to all outstanding fees. A VENDOR'S DELINQUENCY IN PAYING TRANSACTION FEES MAY RESULT IN BEING EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.
- G. The Vendor's shall report and pay the transaction fee on a quarterly calendar basis using the Department of Management Service's Form PUR 3776 (July 03), which is incorporated by reference. Any misrepresentation shall be punishable under law, including but not limited to: Chapter 817, Florida Statutes.
- H. The Vendor's may call (850) 413-7269 Monday through Friday to inquire about the status of payments by State Agencies. The Division is responsible for all payments under the Agreement. The Division's failure to pay, or delay in payment, shall not constitute a breach of the Agreement and shall not relieve the Vendor of its obligations to the Division.
- I. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The vendor Ombudsman may be contacted at 850.410.9724 or by calling the Chief Financial Officer's Hotline, 1.800.848.3792.
- J. The Division, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Division shall require a statement from the Chief Financial Officer of the Division that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.
- K. All refunds or repayments due to the Division under this Agreement shall be made payable to the order of the "Department of Community Affairs" and mailed directly to the attention of: **Cashier, Finance and Accounting, 2555 Shumard Oaks Boulevard, Tallahassee, Florida 32399.** The Vendor shall also notify the Division Agreement Manager (identified in section 13. A.) that it has issued a refund to the Division.

4. INDEMNITY AND PAYMENT FOR CLAIMS

- A. **INDEMNITY.** The Vendor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and the Division, and their officers, agents, and employees, from suits, actions, damages, and costs, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Vendor, its agents, employees, partners, or subcontractors; provided, however, the Vendor shall not indemnify for

that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Division.

Further, upon prompt notice to the Vendor by the Division of a claim, the Vendor shall fully indemnify, defend, and hold harmless the State from any suits, actions, damages, and costs, 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 the Division's misuse or modification of the Vendor's products or the Division's operation or use of the Vendor's products in a manner not contemplated by the Agreement. If any product is the subject of an infringement suit or in the Vendor's opinion is likely to become the subject of such a suit, the Vendor may at its sole expense procure for the Division the right to continue using the product or to modify it to become non-infringing. If the Vendor is not reasonably able to modify or otherwise secure for the Division the right to continue using the product, the Vendor shall remove the product, and refund to the Division the amounts paid in excess of a reasonable rental for past use. The Division shall not be liable for any royalties.

Any vendor which is a state agency or subdivision, as defined in section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any vendor to which sovereign immunity applies.

Nothing herein shall be construed as consent by a state agency or subcontractor of the State of Florida to be sued by third parties in any matter arising out of any contract.

- B. **PAYMENT OF CLAIMS.** The Vendor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Vendor or any subcontractor, in connection with the Agreement.
- C. **LIABILITY INSURANCE.** The Vendor shall carry and keep in force during the term of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$150,000.00 per person and \$300,000.00 each occurrence, and property damage insurance of at least \$150,000.00 each occurrence, for the services to be rendered in accordance with this Agreement.
Providing and maintaining adequate insurance coverage is a material obligation of the Vendor. Upon request, the Vendor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Vendor shall not be interpreted as limiting the Vendor liability and obligations under the Agreement.
- D. **WORKERS COMPENSATION.** The Vendor shall also carry and keep in force Worker's Compensation insurance as required for the State of Florida under Worker's Compensation Law.

5. **COMPLIANCE WITH LAWS:**

- A. This Agreement shall be governed by applicable state and federal laws, rules and regulations.
- B. The Vendor must be registered with the Florida Department of State, Division of Corporations. Online-filing is available at: <http://www.sunbiz.org>.
- C. The Vendor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Failure by the Vendor to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Division.
- D. The Vendor shall not make any statements, or publicly release information concerning this Agreement or its subject matter or otherwise disclose any the information obtained or furnished under this Agreement without first notifying the Division's Agreement Manager and securing prior written consent. The Vendor shall not publish; copyright or patent any of the data developed under this Agreement, it being understood that such data or information are works made for hire and are the sole property of the Division.

- E. The Vendor shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- F. If regulated by the Florida Department of Business and Professional Regulation, the Vendor and its employees shall be bound by the standard of conduct provided in applicable Florida Statutes and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Vendor further covenants and agrees that when a former state employee is employed by the Vendor, the Vendor will require strict adherence by a former state employee to section(s) 112.313 and 112.3185, Florida Statutes, as a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Vendor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter for the work performed under this Agreement.
- G. A person or affiliate who has been placed on the convicted Vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals or replies on leases of real property to a public entity, may not be awarded or perform work as a Vendor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months following the date of being placed on the convicted Vendor list.
- H. An entity or affiliate who has been placed on the discriminatory Vendor list may not submit a bid, proposal or reply on a contract to provide any goods or service to a public entity, may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals or replies on leases of real property to a public entity, may not be awarded or perform work as a Vendor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- I. The Division shall consider the employment by any Vendor of unauthorized aliens a violation of section 274A (c) of the Immigration and Nationality Act. If the Vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.
- J. Pursuant to section 216.347, Florida Statutes, the Vendor shall not expend any state funds for the purpose of lobbying the State Legislature, the Judiciary, or Executive Branch Agencies.

6. COPYRIGHT, PATENT AND TRADEMARK

- A. All plans, specifications, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived from them shall be the exclusive property of the Division without restriction or limitation on their use and shall be made available, upon request, to the Division at any time during the performance of such services and/or upon completion or termination of this Agreement.
- B. The Vendor shall not copyright any material and products or patent any invention developed under this Agreement. Any and all patent rights and any and all copyright accruing under or in connection with the performance of this Agreement are hereby reserved to the State of Florida. If the Vendor brings to the performance of this Agreement a pre-existing patent or copyright, the Vendor shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.
- C. If any discovery or invention arises or is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with this Agreement, the Vendor shall refer the discovery or invention to the Division for a determination 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 of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the

Vendor shall notify the Division. Any and all copyrights accruing under or in connection with the performance under this Agreement are transferred by the Vendor to the State of Florida.

- D. Within thirty days (30) of execution of this Agreement, the Vendor shall disclose all intellectual properties relevant to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Vendor shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under subsection C, have the right to all patents and copyrights which occur during performance of the Agreement.

7. TERMINATION

- A. **TERMINATION FOR CONVENIENCE.** The Division, by written notice to the Vendor, may terminate this Agreement, in whole or in part, when the Division determines in its sole discretion that it is in the Division's interest to do so. In the event of termination the Vendor will not incur any new obligations for the terminated portion of the Agreement after the Vendor has received notification of termination.
- B. **TERMINATION FOR CAUSE.** The Division may terminate the Agreement if the Vendor fails to (1) deliver the product within the time specified in the Agreement or any extension, (2) maintain adequate progress, thus endangering performance of the Agreement, (3) honor any term of the Agreement, (4) timely cure a default, or (5) abide by any statutory, regulatory, or licensing requirement (Rule 60A-1.006 (3), F.A.C., governs the procedure and consequences of default). The Vendor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Vendor shall not be liable for any excess costs if the failure to perform the Agreement arises from events completely beyond the control, and without the fault or negligence, of the Vendor. 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 Vendor and the subcontractor, and without the fault or negligence of either, the Vendor 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 Vendor to meet the required delivery schedule. If, after termination, it is determined that the Vendor 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.
- C. If the Agreement is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount that is the same percentage of the Agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Division and shall be turned over promptly by the Vendor.

8. REMEDIES

In the event the Vendor fails to satisfactorily perform or has failed to adhere to the terms and conditions under this Agreement, the Division may, upon fifteen (15) calendar days written notice to the Vendor and upon the Vendor's failure to cure within those fifteen (15) calendar days, exercise any one or more of the following remedies, either concurrently or consecutively:

- A. Withhold or suspend payment of all or any part of a request for payment.
- B. Require that the Vendor refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- C. Exercise any corrective or remedial actions, to include but not be limited to:
- requesting additional information from the Vendor to determine the reasons for or the extent of non-compliance or lack of performance;
 - issuing a written warning to advise that more serious measures may be taken if the situation is not corrected;

- advising the Vendor to suspend, discontinue or refrain from incurring costs for any activities in question; or
- requiring the Vendor to reimburse the Division for the amount of costs incurred for any items determined to be ineligible.

D. Pursuing any of the above remedies will not keep the Division from pursuing any other rights or remedies which may be otherwise available under law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Vendor, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Vendor.

9. ASSIGNMENT AND SUBCONTRACTS

The Vendor shall maintain an adequate and competent staff so as to enable the Vendor to timely perform under this Agreement and may associate with such subcontractors, for the purpose of its services hereunder, without additional cost to the Division. The Vendor is fully responsible for satisfactory completion of all subcontracted work. The Vendor, however, shall not sublet, assign or transfer any work under this Agreement to other than subcontractors specified in the proposal, bid and/or Agreement without consent of the Division. Furthermore, the subcontractor shall hold the Division and the Vendor harmless against all claims arising out of the subcontractor's performance of work under this Agreement and comply with all applicable State and Federal laws and regulations.

All subcontractors or employees hired by the Vendor shall have all current licenses and permits required for all of the particular work for which they are hired by the Vendor.

10. MODIFICATION OF CONTRACT

The Agreement contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Division and the Vendor. The Agreement may only be modified or amended upon mutual written agreement of the Division and the Vendor. No oral agreements or representations shall be valid or binding. No alteration or modification of the Agreement terms, including substitution of product, shall be valid or binding against the Division unless there is a written modification signed by both parties. The Division's acceptance of product or processing of documentation on forms furnished by the Vendor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions. Any modification must be agreed to by both parties and shall only be valid when in writing, signed by the parties, and attached to the original of this Agreement.

11. MONITORING

The Vendor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division or its agents, employees, or designee, including the Florida Chief Financial Officer, or Florida Auditor General. In the event the Division determines that a limited scope audit of the Vendor is appropriate, the Vendor agrees to comply with any additional instruction provided by the Division to the Vendor regarding such audit. The Vendor further agrees to comply and cooperate with any inspection reviews, investigation or audits deemed necessary by the Florida Chief Financial Officer or Florida Auditor General.

12. NOTICE AND CONTACT

All notices required under the Agreement shall be delivered to the following:

For DIVISION	For VENDOR
2555 Shumard Oak Boulevard	
Tallahassee, Florida 32399	
Tele:	Tele:
Email:	Email:

13. MISCELLANEOUS

- A. The Division Agreement Manager is _____.
- B. All services shall be performed by the Vendor to the satisfaction of the Division who shall decide all questions, difficulties and disputes of any nature that may arise under this Agreement, the prosecution and fulfillment of the services under it and the character, quality, and value thereof; and the decision upon all claims, questions and disputes shall be final and binding upon all parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and Amendments(s) shall be entered into by the parties in accordance with the changes.
- C. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Division at all times during the period of this Agreement and for five (5) years after completion of the work pursuant to this Agreement. Copies of these documents and records shall be furnished to the Division, its agents, employees or designee, including agents of other state agencies or the federal government upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records, of the Vendor and all subcontractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Division for a proper audit of project costs.
- D. For the purposes of this Agreement, the Vendor and its employees, agents, representatives, or subcontractors agree that it is not an employee of the Division, but is an independent Vendor, and is not entitled to any State benefits. Except to the extent expressly authorized herein, the Vendor and its employees, agents, representatives or subcontractors are not agents of the Division or State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Division or State. The Division shall not be bound by any unauthorized act or conduct of the Vendor or its employees, agents, representatives, or subcontractor. The Vendor agrees to include this provision in all its subcontracts under this Agreement.
- E. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- F. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.
- G. It is understood and agreed by the parties that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term of provision held to be invalid.
- H. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- I. In any legal action related to this Agreement, instituted by either party, the Vendor waives any and all privileges and rights it may have under Chapter 47, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in Leon County, Florida and in the event that any such legal action is filed by the Vendor, the Vendor hereby consents to the transfer of venue to Leon County, Florida upon the Division filing a motion requesting the same.
- J. If this Agreement is the result of a formal solicitation (Invitation to Bid, Request for Proposal or Invitation to Negotiate), the Department of Management Services Form(s) PUR1000 and PUR1001, included in the

solicitation, are incorporated herein by reference and made part of the Agreement. Otherwise, the Vendor is subject to the terms and conditions as outlined in Form PUR 1000, incorporated by reference and made part of this Agreement.

K. The following exhibits are incorporated and made a part of this Agreement. In case of discrepancy in any of the provisions of these exhibits with this Agreement, the provisions of this Agreement shall govern. In case of discrepancy among the exhibits, the exhibits are listed in governing order as follows:

- Exhibit "A" –
- Exhibit "B" -
- Exhibit "C" -
- Attachment – Federal Requirements

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

VENDOR

DIVISION OF EMERGENCY MANAGEMENT

By: _____
(Authorized Signature) (Date)

By: _____
(Authorized Signature) (Date)

(Print/Type Name)

David Halstead
(Print/Type Name)

Title: _____

Title: Director

Federal Tax ID# _____

APPROVED:

(Procurement)

(Legal)

Addendum I (Terms for Federal Aid Contracts)

Article I. Records Maintenance.

- A. If applicable, Vendor's performance under this Agreement shall be subject to the federal "Common Rule: Uniform Administrative Requirements for State and Local Governments" (53 Federal Register 8034) or OMB Circular No. A-110, "Grants and Agreements with Institutions of High Education, Hospitals, and Other Nonprofit Organizations," and either OMB Circular No. A-87, "Cost Principles for State and Local Governments," OMB Circular No. A-21, "Cost Principles for Educational Institutions," or OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations." If this Agreement is made with a commercial (for-profit) organization on a cost-reimbursement basis, the Vendor shall be subject to Federal Acquisition Regulations 31.2 and 931.2.
- B. All original records pertinent to this Agreement shall be retained by the Vendor for five years following the date of termination of this Agreement or of submission of the final close-out report, whichever is later, with the following exceptions:
 - 1. If any litigation, claim or audit is started before the expiration of the five year period and extends beyond the five year period, the records will be maintained until all litigation, claims or audit findings involving the records have been resolved.
 - 2. Records for the disposition of non-expendable personal property valued at \$5,000 or more at the time of acquisition shall be retained for five years after final disposition.
 - 3. Records relating to real property acquisition shall be retained for five years after closing of title.
- C. All records, including supporting documentation of all costs, shall be sufficient to determine compliance with the requirements and objectives of the Scope of Work (Attachment A), Vendor's proposal (Attachment D), and Estimated Time Schedule (Attachment E), and all other applicable laws and regulations.
- D. The Vendor, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to the Division, its employees, and agents. "Reasonable" shall be construed according to the circumstances but ordinarily shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the Division.

Article II. Audit.

- A. The Vendor agrees to maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditure of funds under this Agreement.
- B. These records shall be available at all reasonable times for inspection, review, or audit by state personnel and other personnel duly authorized by the Division. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.
- C. The Vendor shall also provide the Division with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement.
- D. If the funding source hereunder is federal funds, and the contract amount is \$500,000 or more, then the Vendor shall also provide the Division with an annual financial audit report which meets the requirements of the Single Audit Act of 1984, 31 U.S.C. ss. 7501-7507, OMB Circular A-133 for the purposes of auditing and monitoring the funds awarded under this Agreement.
 - 1. If an annual financial audit report is required, it shall include all management letters and the Vendor's response to all findings, including corrective actions to be taken.
 - 2. The annual financial audit report shall include a schedule of financial assistance specifically identifying all Agreement and other revenue by sponsoring agency and Agreement number.
 - 3. The complete financial audit report, including all items specified in 1 and 2 above, shall be sent directly to:

Division of Emergency Management
Office of Audit Services
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

[An electronic copy shall also be submitted to Ms. Auriall Parrish]

at aurilla.parrish@dca.state.fl.us]

- E. In the event an audit shows that the entire funds disbursed hereunder, or any portion thereof, were not spent in accordance with the conditions of this Agreement, the Vendor shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Vendor of such non-compliance.
- F. The Vendor shall have all required audits completed by an independent certified public accountant (IPA) who shall either be a certified public accountant or a public accountant licensed under Chapter 473, Florida Statutes. The IPA shall state that the audit complied with the applicable provisions noted above.
- G. If required, the audit is due nine (9) months after the end of the fiscal year of Vendor or by the date the audit report is issued by the state Auditor General, whichever is later.

Article III. Noncompliance. If the Vendor violates this Agreement or any regulation, statute, rule or other legal requirement applicable to the performance of this Agreement, the Division may withhold any disbursement otherwise due Vendor under this Agreement with respect to which the violation has occurred until the violation is cured or has otherwise come to final resolution. If the violation is not cured, Division may terminate this Agreement and invoke its remedies under the Agreement as per paragraph(s) 7. and 8. of this Agreement.

Article IV. Reports.

- A. At a minimum, the Vendor shall provide the Division with quarterly reports, and with a close-out report. These reports shall include the current status and progress by the Vendor and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to such other information as requested by the Division.
- B. Quarterly reports are due to be received by the Division no later than 30 days after the end of each quarter of the program year and shall continue to be submitted each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.
- C. The close-out report is due 60 days after termination of this Agreement or upon completion of the activities contained in this Agreement.
- D. If all required reports and copies, prescribed above, are not sent to the Division or are not completed in a manner acceptable to the Division, the Division may withhold further payments until they are completed or may take such other action as set forth in paragraph 8. (REMEDIES). "Acceptable to the Division" means that the work product was completed in accordance with the Scope of Work.
- E. The Vendor shall provide such additional program updates or information as may be required by the Division.

Article V. Monitoring. The Vendor shall monitor its performance under this Agreement, as well as that of its subcontractors and consultants who are paid from funds provided under this Agreement, to ensure that performance under this Agreement are achieved and satisfactorily performed and in compliance with applicable state and federal laws and rules.

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised and Section 215.97, Florida Statutes (see Article II. above), monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the Vendor agrees to comply and cooperate with all monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Vendor is appropriate, the Vendor agrees to comply with any additional instructions provided by the Division to the Vendor regarding such audit. The Vendor further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Comptroller or Auditor General.

In addition, the Division will monitor the performance and financial management by the Vendor throughout the contract term to ensure timely completion of all tasks.

**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, F.A.C. shall apply to this agreement. The following additional terms are also defined:

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Packaging. Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to

accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

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

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

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

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

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

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

Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

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

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

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

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

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

15. Invoicing and Payment. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may

require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

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

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

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

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

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

General Records Schedules maintained by the Florida Department of State (available at: <http://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 s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

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

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

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

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

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

Contents

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

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

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

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

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

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

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

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

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

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

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

disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.

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

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

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

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

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

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
- The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential

respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.

- The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
 - Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
 - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The product offered by the respondent will conform to the specifications without exception.
- The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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