

***Agency for Persons with Disabilities
State of Florida
Tacachale***



**INVITATION TO BID
FOR**

STAGE RIGGING, DRAPERY AND LIGHTING

ITB # APD/TAC 2010-6MT-REBID

COMMODITY CODE: 855-990

**Bids will be opened on
September 30, 2010 at 3:00 P.M. (EST)**

**MANDATORY PRE-BID CONFERENCE: September 23, 2010 at
2:00 P.M.**

DEADLINE FOR QUESTIONS: September 27, 2010 at 2:00 P. M.

MAIL OR DELIVER BIDS TO:

Agency for Persons with Disabilities
Purchasing Office, Administration Building
1621 NE Waldo Road
Gainesville, FL 32609
Telephone: (352) 955-5537

CONTACT FOR QUESTIONS:

Agency for Persons with Disabilities
Madelyn Towns, Purchasing Director
Email Address: madelyn_towns@apd.state.fl.us

TABLE OF CONTENTS

SECTION 1 - INTRODUCTION

SECTION 2 - ITB PROCESS

SECTION 3 - VENDOR REQUIREMENTS

SECTION 4 - INSTRUCTIONS TO VENDORS

SECTION 5 - BID RATING AND BID TABULATION SHEET

SECTION 6 - FINANCIAL SPECIFICATIONS

SECTION 7 - CONTRACT PROVISIONS

APPENDIX I - PUR 1000 - GENERAL CONTRACT CONDITIONS

APPENDIX II - PUR 1001 - GENERAL INSTRUCTIONS TO RESPONDENTS

APPENDIX III - CONTACT FOR CONTRACT ADMINISTRATION

APPENDIX IV - DRUG-FREE WORKPLACE PROGRAM CERTIFICATION

APPENDIX V - BID SHEET

APPENDIX VI - BID TABULATION SHEET

APPENDIX VII - VENDOR STATEMENT AND CERTIFICATION

*APPENDIX VII I- PROOF OF SIGNATURE AUTHORITY AND CONFLICT OF
INTEREST STATEMENT*

SECTION 1 - INTRODUCTION

1.1 Background and Statement of Purpose

The Tacachale facility located on Waldo Road in Gainesville, Florida is an Intermediate Care Facility for the Developmentally Disabled. The purpose of this solicitation is to secure competitive bids from qualified vendors to furnish all materials, equipment, labor and services to remove existing stage rigging system, replace, provide and install stage draperies and lighting in the Auditorium at Tacachale. The award will be based on the lowest total dollar amount that meets the specifications.

1.2 Term of Contract

Upon selection of the winning bid, the Agency shall enter into a contract with the successful bidder(s). Purchases from the resulting Contract shall be accomplished through either issuance of purchase order (s) or by utilizing of the Agency's P-Card by authorized Agency employees. By submitting a bid hereunder, the vendor agrees to accept payment by either method.

SECTION 2 – ITB PROCESS

2.1 Contact Person

All questions related to this procurement will be addressed to:

Madelyn Towns, Purchasing Director
Tacachale Purchasing Department
1621 NE Waldo Road
Gainesville, FL 32609
Telephone: (352) 955-5537
E-mail: madelyn_towns@apd.state.fl.us

2.2 Posting

All Notices, decisions and intended decisions and other matters relating to the procurement will be electronically posted on the Florida Communities Network at http://fcn.state.fl.us/owa_vbs/owa/vbs.www.main_menu.

It is the responsibility of those submitting a response to the solicitation to obtain the results from the Internet posting in sufficient time to protect their own interests should they care to do so. Likewise, any faxed information with regard to the results of this procurement will not extend the time limits set out in s. 120.57(3), F.S.

2.3 Vendor Disqualification

To be disqualified as a vendor under this provision, the vendor must have:

- a. Previously failed to satisfactorily perform in a contract with the Agency, been notified by the Agency of the unsatisfactory performance, and failed to correct the unsatisfactory performance to the satisfaction of the Agency.
- b. Detailed information regarding additional disqualifying criteria is found in PUR 1001, Appendix II.

2.4 Limitation on Contacting Departmental Personnel

Prospective vendors are prohibited from contacting Agency personnel regarding this solicitation other than the contact person identified in this document in Section 2.1 above. Any occurrence of a violation may result in the disqualification of the prospective vendor. The Agency point of contact will accept and answer questions regarding this ITB as per Section 2.1 and Section 2.6 of this ITB.

2.5 Calendar of Events and Deadlines

Listed below are the important actions and dates/times by which the actions must be taken and completed. If the Agency finds it necessary to change any of these dates/times, it will accomplished by addendum. All listed times are local times in Gainesville, Florida. (Eastern Daylight Time)

ACTIVITY	DUE DATE	TIME	ADDRESS
Advertise/Release ITB on MyFlorida.com Vendor Bid System	9/18/2010	3:00 P.M.	
Mandatory Pre-Bid Conference	9/23/2010	2:00 P.M.	madelyn_towns@apd.state.fl.us
Bid Inquiries Deadline	9/27/2010	2:00 P.M.	Madelyn_towns@apd.state.fl.us
Receive all Sealed Bids & Bid Opening Date	9/30/2010	3:00 P.M.	Tacachale 1621 NE Waldo Road Administration Building Gainesville, Florida 32609
Post the Notice of Intent to Award	10/4/2010	3:00 P.M.	http://fcn.state.fl.us/owa_vbs/owa/vbs.www.main.menu
Bid Award	10/11/2010		
Anticipated Effective	10/25/2010		

Date of Contract			
------------------	--	--	--

2.6 Bidder Inquiries

Any inquiries from bidders concerning this ITB shall be **submitted by email**, identifying the submitter, to the contact person listed above and must be received no later than the date and time specified in the Calendar of Events. It is the responsibility of the bidder to confirm receipt of e-mailed inquiries. Failure to file a protest of the bid specifications 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. A formal written protest must be accompanied by a bond payable to the Agency in the amount of \$5,000 or 1 percent of the Agency's estimate of the total value of the proposed contract, whichever is less. The form of the bond shall be a bond, cashier's check, or money order.

Copies of the responses to all inquiries, including written agency clarifications and/or addenda, if made to the ITB, will be made available through electronic posting on the MyFlorida.com website at http://fcn.state.fl.us/owa_vbs/owa/vbs.www.main_menu. It is the responsibility of all potential bidders to monitor this site for any changing information prior to submitting their bid.

2.7 Withdrawal of Bids

A submitted bid may be withdrawn by submitting a written request for its withdrawal to the Agency, signed by the vendor within seventy-two (72) hours after the bid opening time and date indicated in the Calendar of Events. A request received in accordance with this provision may be granted by the Agency upon proof of the impossibility to perform based upon an obvious error on the part of the vendor.

Any submitted bid shall remain a valid bid for twelve (12) months after the bid submission date.

2.8 Acceptance/Rejection of Bids

Bids must be received by the Agency no later than the time, date and place as indicated in the proceeding Calendar of Events. Any bid submitted shall remain a valid offer at least 90 days after the bid submission date. No changes, modifications or additions to the bids submitted after the deadline for the bid opening has passed will be accepted by or be binding on the Agency.

Bids not received at either the specified place, or by the specified date and time, or both, will be rejected and returned unopened to the vendor by the Agency. The Agency will retain an unopened original for use in the event of a dispute.

The Agency reserves the right to reject any and all bids or to waive minor irregularities when to do so would be in the best interest of the State of Florida. Minor irregularity is defined as a variation from the Invitation to Bid terms and conditions, which do not affect the price of the bid, or give the vendor an advantage or benefit not enjoyed by other vendors, or does not adversely impact the interest of the Agency. At its option, the Agency may correct minor irregularities but is under no obligation to do so whatsoever.

2.9 Bid Opening

Bids will be publicly opened at the time and date specified in the Calendar of Events listed in section 2.5 of this ITB. The name of all bidders submitting bids shall be made available to interested parties upon request to the contact person above.

2.10 Notice of Intent to Award a Contract

The Agency shall award the contract with reasonable promptness by written notice to the responsible and responsive vendor that submits the lowest responsive bid. This bid must be determined in writing to meet the requirements and criteria set forth in the Invitation to Bid.

2.11 Protests and Disputes

Any person who is adversely affected by the terms, conditions and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract shall file a notice of protest in writing within 72 hours (Saturdays, Sundays and state holidays excluded) after the posting of the solicitation or decision or intended decision. **FAILURE TO FILE A PROTEST WITHIN THE TIME PRESCRIBED IN SECTION 120.57(3), F.S., SHALL CONSTITUTE A WAIVER OF PROCEEDINGS UNDER CHAPTER 120, FLORIDA STATUTES.**

When protesting a decision or intended decision the protestor must post a bond equal to one percent (1%) of the Agency's estimated contract amount. The estimated contract amount shall be based upon the contract price submitted by the protestor. If no contract price was submitted, the Agency shall provide the estimated contract amount to the protestor within 72 hours (excluding Saturdays, Sundays and state holidays) after the notice of protest has been filed. The estimated contract amount is not subject to protest pursuant to section 120.57(3) F. S. The bond shall be conditioned upon the payment of all costs and charges that are adjudged against the protestor in the administrative hearing in which action is brought and in any subsequent appellate court proceeding. **FAILURE TO FILE THE PROPER BOND AT THE TIME OF FILING THE FORMAL WRITTEN PROTEST WILL RESULT IN A REJECTION OF THE PROTEST.** In lieu of a bond the Agency may accept a cashiers check, official bank check, or money order in the amount of the bond.

SECTION 3 - VENDOR REQUIREMENTS

3.1 Bid Sheet

Appendix V

3.2 Description of Work and Technical Specifications

The project location is the Agency for Persons with Disabilities at Tacachale, 1621 NE Waldo Road in Gainesville, Florida 32609. The work associated with this solicitation includes furnishing all labor, materials, equipment, services, and supervision necessary for the removal and replacement of the stage rigging system. The successful bidders must also provide and install stage draperies. The stage rigging system is located within Tacachale's auditorium. Any unknown or unforeseen problems or findings that may develop during this project will be addressed at that time.

Normal work weeks will be five (5) days per week and normal work hours will be between 8:00 A.M. and 5:00 P.M.

3.3 Products

- a. Condition of Equipment: All materials shall be new and of first quality.
- b. Safety Factors: all cables, tracks, mounting hardware, etc. shall be capable of supporting design loads with no or minimum safety factor, and shall be of corrosion resistant materials. All equipment shall be installed securely.
- c. Standards Authorities: All equipment and installation shall conform to applicable provisions, standards, codes, regulations, laws, etc.
- d. All equipment installed by the Contractor shall be tested, inspected and certified as working properly, meeting all applicable standards required by the authority having jurisdiction of the State of Florida, etc.

3.4 Warranty

- a. The Contractor shall warranty all of the work this is performed under this contract, including all materials and workmanship, for a period not less than one (1) year.
- b. This contract shall include maintenance and inspections supervised by the owner's representative. Inspect all system components for proper adjustment and wear and repair any components in need of work.

3.5 Contractor Qualification

- a. The contractor shall furnish capable skilled, licensed and knowledgeable personnel and equipment to perform the services required for completion of this project.

b. Contractor must be licensed and in good standing or certified in accordance with Florida Statute and in compliance with any and all state and local laws and requirements, if applicable. The contractor must be experienced with no less than five years with equipment and systems to meet the requirements of this project.

3.6 Bidding Documents

The Bidder must complete all required identified documents and return as part of the Bid package. Any Bid which does not include the required documents may be considered non-responsive and the bid may be subject to rejection.

- (a) Appendix III - Contact for Contract Administration
- (b) Appendix IV - Drug-Free Workplace Program Certification
- (c) Appendix V - Bid Price Sheet
- (d) Appendix VII - Vendors Statement and Certifications
- (e) Appendix VIII - Proof of Signature Authority and Conflict of Interest Statement

3.7 Mandatory Pre-Bid Conference

Prior to bidding, a mandatory Pre-Bid Conference for participating bidders and/or bidders' representatives is required. Bidders and/or bidders' representatives shall call (352) 955-5537, prior to the Conference, to confirm attendance. All contractors must sign in at Tacachale Administration Building prior to completing the tour. Failure to sign in will result in the disqualification of submitted bid(s). The site visit during the Conference is to familiarize with conditions which may in any manner affect the work to be done, or the equipment, materials and labor required. Other relevant information will also be discussed at this conference. Drawings and other specifications for this project will be provided at this conference. The bidder shall examine this ITB carefully. Ignorance of any requirements contained herein or of conditions existing at the site will not relieve the Contractor of liability and obligations under the Contract.

3.8 Damage to Property

All Agency property shall be protected against damage by the Contractor that might occur during or as a result of performance of the Contract. The Contractor shall move in and move out all necessary personnel and equipment, set up and remove equipment, and remove all remaining debris, unused materials, and other miscellaneous items resulting from or used in the performance of the work. The Contractor shall keep the work site free at all times from accumulation of waste materials and rubbish resulting from the work and at the completion thereof shall clean up the work site in a manner satisfactory to the site owner. The Contractor shall clean and remove from the property all excess material, equipment, debris, and rubbish caused by the work.

3.9 Completion

Upon completion of the work specified, the Contractor shall reconnect any utilities or equipment removed in the course of work during performance of the work. Any debris or rubbish resulting from work performed shall be removed and the premises left clean.

3.10 Scheduling

Scheduling of work must be coordinated with Tacachale and shall not disturb the normal operation of the facility.

Upon completion and acceptance, and before payment will be made, the Contractor must furnish to the owner a Certificate of Warranty guaranteeing the work against any defect in materials or workmanship.

3.11 Subcontractors

No use of subcontractors shall be allowed under the contract.

3.12 Bonds and Insurance Requirement

Upon notification of award of contract, the successful bidder will be required to furnish a Performance Bond in the form of a cashiers' check or money order. The Performance Bond is 10% of the total bid amount and must be provided 5-7 days following the bid award to the Purchasing Director to remain as a part of the file until completion of the work.

Also the successful bidder shall provide proof of insurance in the following minimum amounts:

General Liability - Bodily Injury/Property \$1,000,000 per occurrence and
\$2,000,000 aggregate

Auto Liability – Owned/Non-Owned/Hired \$1,000,000 per occurrence

Workers' Compensation/Employers Liability Statutory Limits

SECTION 4 - INSTRUCTIONS TO VENDORS

4.1 MyFloridaMarketPlace Transaction Fee

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement System, Pursuant to subsection 287.057(23), Florida Statutes, all payments shall be assessed a Transaction Fee of one percent (1.0%), which the vendor shall pay to the State.

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

The vendor shall receive a credit of any Transaction Fee paid by the vendor for the purchase 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 procurement costs from the vendor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

4.2 Vendor Registration in MyFloridaMarketPlace

Any vendor awarded the resulting contract from this bid shall provide a copy of the registration certification from the Florida Department of State to the Agency for Persons with Disabilities at Tacachale upon execution of the contract. No contract may be awarded by any state agency to any vendor who is not registered in the MyFloridaMarketPlace eProcurement system unless exempted by Rule 60A-1.030(3), F.A. C.

4.3 General Instructions to Respondents, PUR 1001

This form, required by the Florida Department of Management Services (DMS), contains instructions explaining the solicitation process and the actions necessary to respond to a solicitation. By submitting a bid, the vendor agrees to comply with all terms and conditions of the ITB. Failure to comply with all terms and conditions shall be grounds for rejecting the bid.

4.4 Title Page

Require that each copy of the bid has a title page that contains the following:

- (a) ITB number;
- (b) Title of the bid;
- (c) Vendor's name (person, organization, firm);
- (d) Name of Organization to which bid is submitted;
- (e) Name, title, phone number, and address of person who can respond to inquiries regarding the bid; and,
- (f) Name of the vendor's project director (if known)

4.5 Required Vendors' Statement or Certifications

See Appendix VII

4.6 Cost of Preparation of Bid

The Agency is not liable for any costs incurred by a vendor responding to this ITB.

4.7 Submission of Bid

Bids are due at the time and date specified in the Calendar of Events, Section 2.5 of this ITB, at the Agency for Persons with Disabilities, Tacachale, 1621 NE Waldo Road, Administration Building, Gainesville, Florida 32609, and shall be sealed and submitted to the attention of the Purchasing Director listed above by the date and time listed in the Calendar of Events and Deadlines. Bids received late will not be considered. The vendor may choose, and is responsible for, the method of delivery to the Agency except that facsimiles or electronic transmissions will not be accepted at anytime. The envelope must be clearly marked "Bid" with bid number on the outside of the envelope.

4.8 Verbal Instructions

No negotiations, decisions, or actions shall be initiated or executed by the vendor as a result of any discussions with any Agency employee. Only those communications that are in writing from the Agency's contact person identified in this ITB shall be considered a duly authorized expression on behalf of the Agency. Only communications from the vendor's representative, which are in writing and signed, will be recognized by the Agency as duly authorized expressions on behalf of the vendor.

4.9 Workmanship

All commodities/services delivered in response to this bid must be clean and free of defects, including those affecting appearance. Only first quality service/merchandise with all manufacturers' descriptive brand labels intact will be acceptable. Delivered commodities and/or services that fail to meet these requirements will be rejected.

4.10 Deletions

A) Paragraph 3 of PUR 1001 is hereby deleted. Bidders shall submit their bid in a sealed envelope, which shall indicate Tacachale address, the bid number, and date and time of the bid opening. Bids not submitted in accordance with these solicitation documents shall be rejected. Each bidder is responsible for ensuring that its bid is delivered at the proper time and to the proper place. Tacachale shall not consider late bids. **SEALED BIDS MUST BE RECEIVED AT 1621 NE WALDO ROAD, ADMINISTRATION BUILDING, GAINESVILLE, FL 32609, AT OR BEFORE TIME AND DATE SHOWN ON PAGE 1 OF THIS DOCUMENT.**

B) Paragraph 5 of PUR 1001 is hereby deleted. Bidders shall submit their questions to the contact person indicated on page 1 of this ITB.

SECTION 5 – BID RATING AND BID TABULATION SHEET

5.1 Description of Bid Rating Methodology

Tacachale will award this contract to the qualified, responsive bidder with the lowest price as specified on the Bid Sheet for this ITB. In the event the lowest bidder is found not responsive or qualified, Tacachale shall proceed to the next lowest qualified, responsive bidder and continue the award process.

5.2 Identical Tie Responses

Whenever two or more responses are determined to be identical, Rule 60-A-1.011, F.A.C. shall apply. Preference shall be given to businesses with drug-free workplace programs. A Certification of Drug-Free Workplace Program statement is contained in Appendix IV. Established procedures for processing tie bids will be followed if none of the tied vendors has a drug free workplace program.

5.3 ITB Tabulation Methodology

If a bid has been determined to be both responsive and acceptable, then the procurement manager will review the Vendor's Price Sheet and record the cost on the bid tabulation sheet, Appendix VI. The lowest priced bid for the original term of the contract will be eligible for consideration for contract award.

SECTION 6 - FINANCIAL SPECIFICATIONS

6.1 Funding Source

The funding source for the resulting contract will be subject to the availability of funds.

SECTION 7 - CONTRACT PROVISIONS

7.1 General Contract Conditions, PUR 1000

This document contains standard contract terms and conditions that will apply to the contract that results from the ITB. The State of Florida PUR 1000, General Contract Condition is included in this bid document, Appendix I.

APPENDIX I

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, the 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 repurchase costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, 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.

APPENDIX II

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" mean 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 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 the 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, Florida Administrative Code require that a notice of protest of the solicitation documents shall be made within seventy-two hours after the posting of the solicitation.

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

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

**APPENDIX III
CONTACT FOR CONTRACT ADMINISTRATION
ITB APD/TAC 2010-6MT-Rebid**

Designate one person authorized to conduct Contract administration.

NAME: _____

COMPANY NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

E-MAIL ADDRESS: _____

ORDERING INFORMATION

ALL PURCHASE ORDERS SHOULD BE DIRECTED TO:

VENDOR: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

E-MAIL ADDRESS: _____

DELIVERY WILL BE MADE WITHIN _____ DAYS AFTER RECEIPT OF ORDER.
(This date may be earlier than date required in Section 3.2, but not later.)

FAXED ORDERS WILL _____ WILL NOT _____ BE ACCEPTED.

(RETURN THIS PAGE)

4. Impose a sanction on any employee who is so convicted or require the satisfactory participation in a drug abuse assistance or rehabilitation program as such is available in the employee's community.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of applicable laws, rules and regulations.

(RETURN PAGES 33 AND 34)

**APPENDIX V
BID PRICE SHEET**

Bid No: APD/TAC2010-6MT-Rebid
Project Name: Stage Rigging, Drapery & Lighting

BID AS SPECIFIED

1. LABOR, MATERIAL, EQUIPMENT AND SUPPLIES

LABOR COST	_____
STAGE RIGGING EQUIPMENT COST	_____
COST OF THE DRAPERIES & NSTALLATION	_____
LABOR & LIGHTING COST	_____
TOTAL COST	_____

NAME OF BIDDER

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

(RETURN THIS PAGE)

**APPENDIX VI
BID TABULATION SHEET
ITB # APD/TAC 2010-6MT-Rebid**

Opening Date: _____ Time: _____ Page _____ of _____

	VENDOR NAME	Bid meets all Mandatory Requirements Yes or No	BID PRICE	Tie Response criteria submitted
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Opened by: _____ Tabulated by: _____

Verified by: _____

APPENDIX VII
ITB # APD/TAC2010-6MT-Rebid

VENDORS STATEMENT AND CERTIFICATIONS

A. Acceptance of Contract Terms and Conditions

I, _____, as an authorized
representative of _____,
hereby agree that if awarded any contract requirements, terms, and conditions stated in
the Invitation to Bid, it will comply with the Agency for Persons with Disabilities Standard
Contract and attachments thereto. In recognition thereof, the vendor's representative
has read, understood, and agrees to comply with those requirements, terms and
conditions and any intent by the vendor to deviate from the terms and conditions set
forth therein may result, at the Agency's exclusive determination, in rejection of the bid.

Type Name of Authorized Official	Title
----------------------------------	-------

Signature of Authorized Official	Date
----------------------------------	------

B. Statement of No Involvement

I, _____, as an authorized
representative of _____,
certify that no member of this firm, nor any person having interest in this firm has been:

- a. Awarded a contract by the Agency for Persons with Disabilities on
a noncompetitive basis to perform a feasibility study concerning
the scope of work contained in this Solicitation, or
- b. Participated in drafting this Solicitation, or
- c. Developed a program for future implementation with specific
subject matter contained in this Solicitation.

Type Name of Authorized Official	Date
----------------------------------	------

Signature of Authorized Official	Date
----------------------------------	------

(RETURN THIS PAGE)

APPENDIX VIII
ITB #APD/TAC2010-6MT-Rebid

A. Proof of Signature Authority

This Bid shall include proof of signature authority if someone signs the Bid other than the President or Chairperson of the Board of Directors. This proof shall be one of the following:

- 1.
- 2.
- 3.
4. A written statement by the President or Chairperson of the Board delegated authority to a particular person; or

A copy of the entity's by-laws reflecting the signature authority to a particular position; or

A copy of the Board of Directors' meeting minutes that show action to delegate signature authority to a particular person or position.

A written statement by a University president delegating authority to the director of the division of sponsored research as provided in section 1004.22, Florida Statutes. In the case of a university outside Florida, a written statement by a university president setting out his authority to delegate and the name and title of person delegated authority.

If delegating signature authority, please complete the information below and include the above requested document.

(Typed)	Name of President or Chairperson of the Board of Directors
----------------	---

(Typed)	Name of Person to Whom Signature Authority is Delegated	Title
----------------	--	--------------

(RETURN THIS PAGE)

B. Conflict of Interest Statement (Non-Collusion)

I hereby certify, that all persons, companies, or parties interested in the Invitation to Bid as principals are named therein, that the Bid is made without collusion with any other person, persons, company, or parties submitting a proposal; that it is in all respect made in good faith; and as the signer of the Bid. I have full authority to legally bind the vendor to the provisions of this Bid.

(Typed) Name of Authorized Representative	Title
--	--------------

Signature of Authorized Official	Date
---	-------------

(RETURN THIS PAGE)