



FLORIDA DEPARTMENT of

management
SERVICES

We serve those who serve Florida

4050 Esplanade Way
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Rick Scott, Governor

Chad Poppell, Secretary

ATTACHMENT B - CONTRACT
FOR
INDUSTRIAL WATER TREATMENT
ITB NO.: DMS-14/15-008
BETWEEN
THE STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
AND
<<PARTY NAME>>

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Contract

This Contract is between the STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES (Department), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and [INSERT VENDOR NAME] (Contractor).

The Contractor responded to the Department's Invitation to Bid No.: DMS-14/15-008 "Industrial Water Treatment." The Parties enter into this Contract in accordance with the terms and conditions of the solicitation.

The Parties therefore agree as follows.

SECTION 1. DEFINITIONS

The following definitions apply in addition to the definitions in PUR 1000.

- 1.1.1 Confidential Information - Any portion of a Contractor's documents, data or records disclosed relating to its response that the Contractor claims is confidential and not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution, or any other authority and is clearly marked "Confidential."
- 1.1.2 Contract Manager – The representative designated by the Department who will oversee all aspects of the Contract, ensure that performance expectations are met, and who will serve as the primary point of contact for the Contractor.
- 1.1.3 Facilities – Those facilities for which the Contract shall apply as identified in ATTACHMENT C – FACILITY LIST.
- 1.1.4 Facility Manager - The local Department representative designated for each facility who will serve in a contract management capacity as delegated by the Contract Manager.

SECTION 2. TERM

2.1 Initial Term

The initial term of the Contract will be for three years. The initial Contract term shall begin on June 5, 2015, or on the last date it is signed by all Parties, whichever is later.

2.2 Renewal Term

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part, for renewal terms up to three years. Any renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. The Contractor shall not charge any costs for renewing the Contract beyond the renewal price incorporated in Section 3.1.

SECTION 3. PAYMENTS

3.1 Pricing

The Contractor shall adhere to the prices as stated in ATTACHMENT E – PRICE SHEETS, which is incorporated by reference into the Contract.

3.2 Price Adjustments

Any price adjustments will be pursuant to an amendment to the Contract resulting from an addition or deletion of a facility or facilities from the Contract. If renewal of the

Contract is anticipated after the initial term, the Department will renegotiate with the Contractor in attempt to achieve cost savings for the State.

3.3 Detail of Bills

The Contractor shall submit bills for fees or other compensation for services or expenses in detail sufficient enough for a proper pre-audit and post-audit. The Department reserves the right to request additional documentation.

3.4 Bills for Travel

Bills for travel expenses, if permitted, must be submitted in accordance with section 112.061, Florida Statutes. Bills for travel are not permitted under this Contract.

3.5 Payments

Payment shall be made pursuant to Chapter 215, Florida Statutes. Although the Contract price was bid as a yearly Contract amount, it is the express intent of the Parties that the Contractor be paid monthly and that the total annual value of the monthly payments equal the yearly Contract amount. The monthly payments are directly related to the work performed and submitted in the Contractor's invoice, with supporting documentation including required reports. The Contract Manager shall review, approve (i.e., the services identified in the invoice are verified by the Contract Manager as being satisfactorily performed by the Contractor) and submit said invoice for payment. The Contract Manager shall work with the Contractor to clarify any discrepancies that may exist prior to payment. Under no circumstances will the annual total of the quarterly or monthly payments exceed the yearly Contract amount. Failure on the part of the Contractor to perform services listed in Section 2 of ATTACHMENT A – STATEMENT OF WORK may result in a reduction in the invoice amounts based on the performance penalties as described in ATTACHMENT F - PERFORMANCE STANDARDS AND GUARANTEES

3.6 Final Invoice

Unless renewed or extended, the criteria in Section 2 of ATTACHMENT A – STATEMENT OF WORK must be completed by June 4, 2018.

3.7 Appropriations

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

SECTION 4. CONTRACT DOCUMENT

4.1 Contract Documents & Hierarchy

This Contract sets for the entire understanding of the Parties and consists of the documents listed below. In the event of any these documents conflict, the conflict will be resolved in the following order of priority (highest to lowest):

4.1.1 This Contract

4.1.2 ATTACHMENT A – STATEMENT OF WORK

4.1.3 The General Contract Conditions - PUR 1000, which are incorporated by reference, and available at

<http://www.dms.myflorida.com/content/download/2933/11777/version/6/file/1000.pdf>

- 4.1.4 ATTACHMENT E – PRICE SHEETS
- 4.1.5 ATTACHMENT F – PERFORMANCE STANDARDS AND GUARANTEES

SECTION 5. CONTRACT ADMINISTRATION

5.1 Department Contract Administrator

The Department will name a Contract Administrator during the term of this Contract whose responsibilities will be to maintain this Contract. As of the effective date of the Contract, the Contract Administrator is as follows:

Lori L. Anderson, FCCN, FCCM
Purchasing Analyst
Departmental Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 335.2Z
Tallahassee, Florida 32399
Telephone: 850-488-0510
Email: departmental.purchasing@dms.myflorida.com

In the event that the Department changes the Contract Administrator, the Department will notify the Contractor in writing. Such changes do not require a formal written amendment to the Contract.

5.2 Contract Manager

Jeremy Tharpe
Department of Management Services
Real Estate Development and Management
400 East Gaines Street
Telephone: 850-488-9260
Email: Jeremy.tharpe@dms.myflorida.com

5.3 Diversity Reporting

The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority-, women-, and veteran business enterprises in the economic life of the State. The State of Florida Mentor Protégé Program connects minority-, women- and veteran business enterprises with private corporations for business development mentoring. We strongly encourage firms doing business with the State of Florida to consider this initiative. For more information on the Mentor Protégé Program, please contact the Office of Supplier Diversity at (850) 487-0915 or osdhelp@dms.myflorida.com.

Upon request, the Contractor shall report to the Department, spend with certified and other minority business enterprises. These reports will include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this Contract.

SECTION 6. COMPLIANCE WITH LAWS

6.1 Compliance

The Contractor shall comply with all laws, rules, codes, ordinances and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority. For example, Chapter 287, of the Florida Statutes and Rule 60A of the Florida Administrative Code govern the Contract. The Contractor shall comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status or veteran's status. Violation of any laws, rules, codes, ordinances or licensing requirements shall be grounds for Contract termination or nonrenewal of the Contract.

6.2 Notice of Legal Actions

The Contractor shall notify the Department of any legal actions filed against it for a violation of any laws, rules, codes ordinances or licensing requirements within 30 days of the action being filed. The Contractor shall notify the Department of any legal actions filed against it for a breach of a contract of similar size and scope to this Contract within 30 days of the action being filed. Failure to notify the Department of a legal action within 30 days of the action shall be grounds for termination or nonrenewal of the Contract.

6.3 Public Entity Crime and Discriminatory Vendors

Pursuant to sections 287.133 and 287.134, Florida Statutes, the following restrictions are placed on the ability of persons placed on the convicted vendor list or the discriminatory vendor list.

6.3.1 Public Entity Crime

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 contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

6.3.2 Discriminatory Vendors

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 services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontracto, or consultant under a contract with any public entity; and may not transact business with any public entity.

The Contractor shall notify the Department if it or any of its suppliers, subcontractors or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Contract.

SECTION 7. LIABILITY AND WORKER'S COMPENSATION INSURANCE

This paragraph modifies section 35, of the PUR 1000. 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, which, at a minimum, shall be as follows: workers' compensation and employer's liability insurance per Florida statutory limits (currently \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate) covering all employees engaged in any Contract work; commercial general liability coverage on an occurrence basis in the minimum amount of \$500,000 (defense cost shall be in excess of the limit of liability), naming the State as an additional insured; and automobile liability insurance covering all vehicles, owned or otherwise, used in the Contract work, with minimum combined limits of \$500,000, including hired and non-owned liability, and \$5,000 medical payment. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. The Contract shall not limit the types of insurance the Contractor may desire to obtain or be required to obtain by law. 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 to write policies in Florida.

SECTION 8. PUBLIC RECORDS

8.1 Access to Public Records

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from section 24(a) of Art. I of the State Constitution and section 119.07(1), Florida Statutes.

8.2 Redacted Copies of Confidential Information

If the Contractor considers any portion of any documents, data, or records submitted to the Department to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, the Contractor must simultaneously provide the Department with a separate redacted copy of the information it claims as Confidential and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the Contract name and number, and shall be clearly titled "Confidential." The Redacted Copy should only redact those portions of material that the Contractor claims is confidential, proprietary, trade secret or otherwise not subject to disclosure.

8.3 Request for Redacted Information

In the event of a public records or other disclosure request pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, to which documents that are marked as "Confidential" are responsive, the Department will provide the Contractor-redacted copies to the requestor. If a requestor asserts a right to the Confidential Information, the Department will notify the Contractor such an assertion has been made.

It is the Contractor's responsibility to assert that the information in question is exempt from disclosure under Chapter 119 or other applicable law. If the Department becomes subject to a demand for discovery or disclosure of the Confidential information of the Contractor under legal process, the Department shall give the Contractor prompt notice of the demand prior to releasing the information labeled "Confidential" (unless otherwise prohibited by applicable law). The Contractor shall be responsible for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret or otherwise not subject to disclosure.

8.4 Indemnification

The Contractor shall protect, defend and indemnify the Department for any and all claims arising from or relating to the Contractor's determination that the redacted portions of its response are confidential, proprietary, trade secret or otherwise not subject to disclosure. If the Contractor fails to submit a Redacted Copy of information it claims is Confidential, the Department is authorized to produce the entire documents, data or records submitted to the Department in answer to a public records request or other lawful request for these records.

8.5 Contractor as Agent

If, under this Contract, the Contractor is providing services and is acting on behalf of the Department as provided under subsection 119.011(2), Florida Statutes, the Contractor, subject to the terms of paragraph 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:

- 8.5.1** Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the service.
- 8.5.2** Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- 8.5.3** Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- 8.5.4** Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

SECTION 9. INTELLECTUAL PROPERTY

The Parties do not anticipate that any Intellectual Property will be developed as a result of this Contract. However, any Intellectual Property developed as a result of this Contract will belong to and be the sole property of the State. This provision will survive the termination or expiration of this Contract.

SECTION 10. E-VERIFY

Pursuant to State of Florida Executive Order Number 11-116, the Contractor is required to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system to verify the

employment of all new employees hired by the Contractor during the Contract term. Also, the Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the Contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the Contract term.

In order to implement this provision, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five days of Contract execution.

If the Contractor is not enrolled in DHS E-Verify System, it will do so within five days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five days of Contract execution. The link to E-Verify is provided below.

<http://www.uscis.gov/e-verify>

Upon each Contractor or subcontractor new hire, the Contractor shall provide a statement within five days to the Contract Manager identifying the new hire with its E-Verify case number.

SECTION 11. SCRUTINIZED COMPANY LIST

In executing this Contract, the Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes. Pursuant to subsection 287.135(5), Florida Statutes, the Contractor agrees the Department may immediately terminate this Contract for cause if the Contractor is found to have submitted a false certification or if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Contract.

SECTION 12. GEOGRAPHIC LOCATION OF DATA AND SERVICES

The State of Florida requires that all data generated, used or stored by the Contractor pursuant to the Contract will reside and remain in the U.S. and will not be transferred outside of the U.S. The State of Florida also requires that all services provided under the Contract, including call center or other help services, will be performed by persons located in the U.S.

SECTION 13. RECORDS RETENTION

The Contractor shall retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers and documents that were made in relation to this Contract. The Contractor shall retain all documents related to this Contract in compliance with the rules of the Florida Department of State.

SECTION 14. GIFTS

The Contractor agrees that it will not offer to give or give any gift to any State of Florida employee. The Contractor will ensure that its subcontractors, if any, will apply with this provision.

SECTION 15. VENDOR OMBUDSMAN

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, Florida Statutes, which include disseminating information relative to prompt payment and assisting vendors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at 850-413-5516.

SECTION 16. MONITORING BY THE DEPARTMENT

The Contractor shall permit all persons who are duly authorized by the Department to inspect and copy any records, papers, documents, facilities, goods and services of the Contractor that are relevant to this Contract, and to interview clients, employees and subcontractor employees of the Contractor to assure the Department of satisfactory performance of the terms and conditions of this Contract. Following such review, the Department will deliver to the Contractor a written report of its finding, and may direct the development, by the Contractor, of a corrective action plan. This provision will not limit the Department's termination rights.

SECTION 17. AUDITS

The Department may conduct or have conducted performance and/or compliance audits of any and all areas of the Contractor and/or Subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's (and subcontractors') data and records that directly relate to the Contract services. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners or agents of the Contractor, pertaining to this Contract, may be inspected by the Department upon 15 days' notice, during normal working hours, and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The State's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

SECTION 18. BACKGROUND SCREENINGS AND WARRANTY OF SECURITY

18.1 Employee and Subcontractor Security Requirements

All Contractor employees, Subcontractors and agents performing work under the Contract must comply with all security and administrative requirements of the Department.

18.1.1 Background Screening

The Department may require the Contractor to have an FDLE (Florida Department of Law Enforcement) background check performed on each individual that will be working in the facility. The Contractor may access the FDLE site themselves to perform this check online. The Contractor is responsible for payment. The web address for the site is: <http://www.fdle.state.fl.us/CriminalHistory>. The Contractor is responsible for fees associated with background checks. If the individual has not been a resident in Florida for 12 months, then a check should be done from the individual's previous residence. Also required is a copy of a Photo ID along with a copy of a Social Security card showing the last four numbers of the card holder. These

documents and a copy of the background check must be provided to the Contract Manager for review. The Department reserves the right to reject any proposed personnel based on background check information.

In addition to any background screening required by the Contractor as a condition of employment, the Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for, each of its employees, subcontractor personnel, independent contractors, leased employees, volunteers, licensees or other person, hereinafter referred to as "Person" or "Persons," operating under their direction with access to State of Florida data; the look-back period for such background screenings shall be for a minimum of six years where six years of historical information is available.

"Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

"Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions, whether said information is confidential information or personal health information. Data may be in any form, including but not limited to, in storage media, stored in the memory of the computer, in transit or presented on a display device, or a hard copy.

The Contractor shall ensure that the background screening is conducted on all Persons directly performing services under the Contract whether or not the Person has access to State of Florida, as well as those persons who are not performing services under the Contract but have access, including indirect access, to State of Florida Data.

The minimum background screening process shall include a check of the following databases through a law enforcement agency or a Professional Background Screener accredited by the National Association of Professional Background Screeners or a comparable standard:

- Social Security Number Trace; and
- Criminal Records (Federal, State and County criminal felony and misdemeanor, national criminal database for all states which make such data available);

The Contractor agrees that each Person will be screened as a prior condition for performing services or having access to State of Florida Data. The Contractor is responsible for any and all costs and expenses in obtaining and maintaining the criminal background screening information for each Person described above. The Contractor shall maintain documentation of the screening in the Person's employment file. The Contractor shall abide by all applicable laws, rules and regulations including, but not limited to the Fair Credit Reporting Act and/or any equal opportunity laws, rules, regulations or ordinances.

18.1.1.1 Disqualifying Offenses

If at any time it is determined that a Person has a criminal misdemeanor or felony record regardless of adjudication (adjudication

withheld, a plea of guilty or nolo contendere, or a guilty verdict) within the last six years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that Person from any position with access to State of Florida Data or directly performing services under the Contract. The disqualifying offenses are crimes where the nature of the criminal activity is such that a reasonable person would agree that their employment would create a risk of injury, loss, or damage to people and/or property of any State of Florida premises. Examples of these types of crimes include, but may not be limited to, the following:

- Murder/manslaughter
- Petit Theft
- Felony theft
- Burglary/Robbery
- Aggravated assault
- Sexual Battery
- Kidnapping/False imprisonment
- Computer related or information technology crimes
- Fraudulent practices, false pretenses and frauds, and credit card crimes
- Forgery and counterfeiting
- Violations involving checks and drafts
- Misuse of medical or personnel records

If the Contractor finds a Disqualifying Offense for a Person within the last six years, where six years of historical information is available, from the date of the court's disposition, it may obtain information regarding the incident and determine whether that Person should continue providing services under the Contract or have access to State of Florida premises. The Contractor shall consider the following factors only in making the determination: i.) nature and gravity of the offense, ii.) the amount of time that lapsed since the offense, iii.) the rehabilitation efforts of the person, and iv.) relevancy of the offense to the job duties of the Person. During the process of collecting the information and making a decision, the Contractor shall not allow the Person to perform services or have access to State of Florida premises. If the Contractor determines that the Person should be allowed access to State of Florida premises, then the Contractor shall maintain all criminal background screening information and the rationale for such access in the Person's employment file.

18.1.1.2 Refresh Screening

The Contractor will ensure that all background screening will be refreshed every five years from the time initially performed for each Person during the Term of the Contract.

18.1.2 Indemnification

The Contractor further agrees to defend, indemnify and hold harmless the Department, the State of Florida, its officers, directors and employees for any claims, suits or proceedings alleging a breach of this background check process.

SECTION 19. PERFORMANCE BOND

The Department will not require the Contractor to furnish a performance bond or other form of security for the faithful performance of work under this Contract.

SECTION 20. SPECIFIC APPROPRIATION

Conference Report on House Bill 5001; Line 2726 – Special Categories – Contracted Services.

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