



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
Solicitation Acknowledgement Form
Invitation to Negotiate
CONTRACTUAL SERVICES

Page 1 of Page 100	SUBMIT BID TO: Florida Department of Environmental Protection Procurement Section, Carr Building, Room 215 3800 Commonwealth Blvd, MS93 Tallahassee, Florida 32399-3000 Telephone Number: 850-245-2361
AGENCY RELEASE DATE: June 25, 2018	

SOLICITATION TITLE: Harmful Algal Bloom Management Services	SOLICITATION NO.: 2018032
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SEALED RESPONSE DUE: @ 4:00 pm ET on August 6, 2018
SEALED RESPONSES WILL BE OPENED: @ 10:00 am ET on August 7, 2018
 and may not be withdrawn within **180** days after such date and time.

VENDOR NAME:	_____ *AUTHORIZED SIGNATURE (MANUAL)
VENDOR MAILING ADDRESS:	
CITY-STATE-ZIP:	
PHONE NUMBER:	
TOLL FREE NUMBER:	
FAX NUMBER:	_____ *AUTHORIZED SIGNATURE (TYPED), TITLE
EMAIL ADDRESS:	*This individual must have the authority to bind the respondent.
FEID NO.:	

TYPE OF BUSINESS ENTITY (Corporation, LLC, partnership, etc.):
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I certify that the material terms and the proposed prices contained in this Reply to this Invitation to Negotiate (this Solicitation) have been kept confidential by the Respondent (and all people and entities affiliated with this Respondent who have or may have had knowledge of the same) and that, to the best of my knowledge, they have not been disclosed to any third party including, but not limited to, any other respondent to this Solicitation. Further, I certify that the prices proposed herein were arrived at and submitted without prior understanding, agreement, or in cooperation with any other entity submitting a Reply to this Solicitation, or to induce an entity to forbear from filing a Reply, and that this Reply is in all respects made without collusion or in an effort to perpetrate a fraud on the agency.

I certify that I am authorized to sign this Reply to this Solicitation for the Respondent and that the Respondent is in compliance with all requirements of this Solicitation; including, but not limited to, the certification requirements contained in this Solicitation as well as those contained above. In submitting this Reply, the Respondent offers and agrees that if the Reply is accepted, the Respondent will convey, sell, assign or transfer to the State of Florida all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the State of Florida. At the State's discretion, such assignment shall be made and become effective at the time the purchasing agency tenders final payment to the Respondent.

Respondent agrees to abide by all conditions of this Reply and, if selected, to perform in accordance with all terms of the Solicitation and any contract arising there from.

RESPONDENT CONTACTS: Please provide the name, title, address, telephone number, and e-mail address of the official contact and an alternate, if available. These individuals shall be available to be contacted by telephone or attend meetings, as may be appropriate regarding the Solicitation schedule.

PRIMARY CONTACT:		SECONDARY CONTACT:	
NAME, TITLE:		NAME, TITLE:	
ADDRESS:		ADDRESS:	
PHONE NUMBER:		PHONE NUMBER:	
FAX NUMBER:		FAX NUMBER:	

CAUTION: If Respondent considers any portion of the documents, data or records submitted in Reply to this Solicitation to be confidential, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes (F.S.), the Florida Constitution or other authority (“Florida Public Records Law”), note the following:

Respondent shall not mark the entire Reply as confidential, trade secret or otherwise not subject to Florida Public Records Law. Any Reply with more than fifty percent (50%) of the documents, data or records so marked will be deemed non-responsive and will not be considered.

If you assert that any portion of your Reply is exempt from disclosure under the Florida Public Records law, you must submit a redacted version of the Reply along with the un-redacted version, per Section 1.07, Submittal of Reply of this Solicitation. The redacted copy shall be clearly titled “Redacted Copy.”

IF YOU CLAIM CONFIDENTIALITY AS TO ANY PORTION OF YOUR REPLY AND DO NOT PROVIDE AN ACCOMPANYING “REDACTED COPY,” SUCH REPLY MAY BE CONSIDERED NON-RESPONSIVE AND REJECTED PRIOR TO ITS CONSIDERATION.

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SCHEDULE OF EVENTS

DATES	EVENTS	METHOD
June 25, 2018	Solicitation Advertised	Vendor Bid System http://www.myflorida.com/apps/vbs/vbs_www.main_menu
July 9, 2018 @ 1:30 p.m. ET	Mandatory Pre-Solicitation Conference	<p><u>Mandatory</u> Pre-Solicitation Conference will be held in Room 170, Carr Building via GoToMeeting:</p> <p>Florida Department of Environmental Protection Carr Building 3800 Commonwealth Boulevard Tallahassee, Florida 32399-3000</p> <hr/> <p>Harmful Algal Bloom Management Services ITN Pre-Solicitation Conference: <u>You must register to attend.</u> Join us for the webinar on July 9, 2018 at 1:30 PM EST (we encourage you to log in between 1:00 PM and 1:30 PM to allow time to resolve any last minute technical issues).</p> <p>Register Now! https://register.gotowebinar.com/register/1331696989386158595</p> <p>After registering, you will receive a confirmation email containing information about joining the webinar.</p> <p><u>View System Requirements:</u> https://link.gotowebinar.com/help-system-requirements-attendees</p> <hr/> <p>You may also dial in using your phone by calling: 1 (571) 317-3122, Access Code 818-529-509</p> <p>If you require technical assistance, please contact DEP Service Desk at: 850-245-7555.</p>
July 16, 2018	Post Pre-Proposal Conference Addendum	Vendor Bid System http://www.myflorida.com/apps/vbs/vbs_www.main_menu
July 23, 2018	Questions Submitted in Writing	Procurement Contact identified in Section 1.02, Procurement Officer

On or about, July 30, 2018	Answers to Questions Posted	Vendor Bid System http://www.myflorida.com/apps/vbs/vbs_www.main_menu
MUST BE RECEIVED NO LATER THAN: August 6, 2018 @ 4:00 pm	SEALED RESPONSES DUE	Submit to: Florida Department of Environmental Protection Lori L. Anderson, Procurement Officer Procurement Section, Room 215 3800 Commonwealth Blvd, MS93 Tallahassee, Florida 32399-3000 SOLICITATION NUMBER MUST BE ON ENVELOPE
August 7, 2018 @ 10:00 a.m. ET	Public Response Opening	Sealed Responses Opened at: Florida Department of Environmental Protection DEP Procurement Section, Room 153 3800 Commonwealth Blvd, MS93 Tallahassee, Florida 32399-3000
August 13, 2018 – August 17, 2018	References Contacted	By Phone by Department
August 13, 2018 – August 17, 2018	Evaluations	
On or about, August 27, 2018	Notice of Intent to Negotiate	The Department anticipates posting the evaluation scores and the Notice of Intent to Negotiate (Section 1.15) on the Vendor Bid System: http://www.myflorida.com/apps/vbs/vbs_www.main_menu
On or about, September 10, 2018	Negotiations	ITN Contract Negotiations Begin
On or about, TBD	Public Meeting	Negotiation Team Recommendation Meeting
On or about, TBD	Anticipated Posting of Recommended Award	Vendor Bid System http://www.myflorida.com/apps/vbs/vbs_www.main_menu

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SECTION 1.00 – INTRODUCTION

1.01. Purpose and Scope. The Department of Environmental Protection (hereinafter referred to as the "Department" and/or "DEP") is requesting Responses from qualified vendors to provide harmful algal bloom (HAB) management services on an as needed basis. These services may include, but are not limited to, the containment, removal, cleanup, elimination, transportation, and disposal of HABs and by-products associated with the services provided. Respondents will also bear responsibility for any analytical services, as more fully defined herein, required to ensure the services provided are meeting the expectations of the Department.

Responses that require a chemical or biological treatment directly to the waterbody will be considered outside the purpose and scope. However, side-stream treatment and subsequent return to the waterbody will be considered. Additionally, the Department decided Replies that focus on nutrient management, while an important key to a long-term solution, are outside of the Departments purpose and scope.

The Department anticipates the issuance of multiple awards within each District throughout Florida. The Department, at its sole discretion, shall make this determination as deemed to be in the best interest of the State. The Department or other eligible users may request any or all of the services outlined in the Scope of Services from the selected vendor(s) on an as needed basis.

A. Questions Being Explored: Respondents are not to respond directly to these questions. The Department is seeking a solution (Solution) to the questions being explored in this section. The Department will use the information obtained through this ITN process to assist in developing its Solution by exploring the following questions:

1. What is a safe and effective methodology for an HAB clean up?

B. Goals of the ITN: Contract with vendor(s) who will complete the following:

1. Deploy within 48 hours of Notice to Proceed
2. Remove cyanobacteria mat that is visible and odorous from the waterway.
3. Reduce toxins to non-detect levels.

1.02. Procurement Officer.

Lori L. Anderson, Procurement Officer
Procurement Section, Carr Building, Room 215I
Florida Department of Environmental Protection
3800 Commonwealth Boulevard, MS#93
Tallahassee, Florida 32399-3000
Telephone Number: (850) 245-2355
lori.l.anderson@dep.state.fl.us

Refer ALL inquiries in writing to the Procurement Officer by email. Responses to timely questions posed to the Procurement Officer will be posted on the VBS, at http://myflorida.com/apps/vbs/vbs_www.main_menu in accordance with Section 1.05.

The Department will not talk to any Respondents or their agents regarding a pending solicitation. Please note that questions will NOT be answered via telephone.

ALL EMAILS TO THE PROCUREMENT OFFICER SHALL CONTAIN THE SOLICITATION NUMBER IN THE SUBJECT LINE OF THE EMAIL

1.03. Mandatory Pre-Solicitation Conference. A MANDATORY Pre-Solicitation Conference is scheduled as specified in the Schedule of Events. There will be a GoToMeeting video conference available for those unable to attend in person (see Schedule of Events for registration instructions). The purpose of this meeting is to provide an open forum for the Department to review the Scope of Services and make clarifications regarding the Scope of Services, Solicitation requirements, contractual requirements, and other conditions or requirements that may, in any manner, affect the work to be performed. Any changes and/or resulting addenda to the Solicitation will be the sole prerogative of the Department.

Attendance at this Pre-Solicitation Conference is MANDATORY. Failure by a Respondent to attend or be represented at this Pre-Solicitation Conference either in person or by video conference will constitute a non-responsive determination of their proposal package. Replies found to be non-responsive will not be considered.

Accessibility for Disabled Persons: Any person requiring special accommodations at any Pre-Solicitation Conference, public opening, or event because of a disability or physical impairment should call the listed contact person no later than five (5) days prior to the event. If you are hearing or speech impaired, please contact the Department using the Florida Relay Service at 1(800) 955-8771 (TDD).

1.04. Invitation to Negotiate Process. The Invitation to Negotiate (ITN) process consists of four (4) sequential phases: 1) the Reply Preparation Phase; 2) Administrative Review Phase; 3) the Evaluation Phase; and 4) the Negotiation Phase.

- I. Reply Preparation Phase.** The Respondents will prepare and submit a Reply to the Procurement Officer based on the requirements identified in this Solicitation and any addenda to the Solicitation.
- II. Administrative Review Phase.** The Procurement Officer will complete a review to ensure that Replies are complete and meet the minimum requirements of this Solicitation.
- III. Evaluation Phase.** The evaluation team will evaluate and score the Replies according to the evaluation criteria contained in the Solicitation and establish a competitive range of Replies reasonably susceptible to award. The Department will enter into negotiations with those Respondents who provide the top ten solutions per District by score. The Department will then post the Department's Notice of Negotiations, as set out in the Schedule of Events.
- IV. Negotiation Phase,** Negotiations will be conducted according to the negotiation methodology published in Section 1.16, Negotiation Phase. Negotiators are not bound by the ranking of Replies resultant from the evaluation phase.

1.05. Questions. Information will not be provided by telephone. The Procurement Officer 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 DEP Procurement Section.

Any questions from prospective Respondents concerning this Solicitation shall be submitted in writing, identifying the submitter and Solicitation number, to the Procurement Officer no later than the time and date specified in the Schedule of Events. No interpretation shall be considered binding unless provided in writing by the Department in response to a request in full compliance with this provision. E-mail inquiries are preferred; however, a hard copy or facsimile is acceptable. All questions and answers will be posted on the Vendor Bid System (VBS). It is the prospective Respondent's responsibility to periodically check the VBS. The Department bears no responsibility for any delays, or resulting impacts, associated with a prospective Respondent's failure to obtain the information made available through the VBS.

Questions will not constitute a formal protest of the specifications or of the Solicitation.

Responses to all written inquiries, and clarifications or addenda if made to the Solicitation, will be made through the VBS.

Each submission shall have the solicitation number in the subject line of the email. Questions must be submitted in the following format to be considered:

Question #	Solicitation Section	Solicitation Page #	Question

NOTE: This section supersedes General Instructions to Respondents (PUR-1001), Paragraph 5 - Questions.

1.06. Addenda. If the Department finds it necessary to supplement, modify, or interpret any portion of the Solicitation documents, a written "Addendum" will be posted on the VBS. It is the responsibility of the prospective Respondents to be aware of any Addenda that might have a bearing on their Reply.

1.07. General Instructions for Preparation of the Reply. The instructions for this Solicitation have been designed to help insure that all Replies are reviewed and evaluated in a consistent manner, as well as to minimize costs and response time. **ANY AND ALL INFORMATION SUBMITTED IN VARIANCE WITH THESE INSTRUCTIONS WILL NOT BE REVIEWED OR EVALUATED.**

- **Part I, Technical Reply: The Technical Reply shall consist of the following parts:**
 - A. Solicitation Acknowledgement Form (Tab A): The Solicitation Acknowledgement Form (original copy provided in Technical Reply package) shall be completed as instructed. The original signed copy shall be submitted in one (1) copy of the Reply package marked "Original". One (1) duplicate electronic copies of the complete Technical Reply, in .pdf format, shall be provided on a CD, DVD, or USB memory stick. If a Respondent fails to submit a completed Solicitation Acknowledgement Form with their Reply, the Department reserves the right to contact the Respondent by telephone for submission of this document via fax with follow up via mail. This right shall be exercised when the Technical and Price Replies have met all other requirements of the Solicitation.

In the event that Respondents submit a Reply as a joint venture, each member of the joint venture must complete and sign a separate Solicitation Acknowledgement Form.

- B. Technical Reply (Tab B): The Technical Reply Package shall be prepared by each Respondent using 8.5" x 11" paper (one-inch margins, Arial 12pt font) and should use double-sided printing.

Using the description of work outlined in the Statement of Work, Respondents shall prepare their Technical Reply Package in the order outlined below for ease of the identification and review by the evaluators. If a portion of any section is omitted, the Respondent will receive a score of zero for that section. Respondent shall not use the tab pages to present additional information.

1. Introduction: Respondents should use this section to provide a general description of how they will accomplish the cleanup of the hypothetical HABs described in the two scenarios in Section 6.00. Indicate in this section which Districts this technical response applies to.
2. Company Background and Experience: Respondents should provide information on the historical background of the Respondent and on the Respondent's organizational structure. This should include years in operation and years involved in work related to HAB cleanup.

3. Organizational Plan: Respondents should present the organizational structure of the proposed team, project managers, field supervision and outline the responsibilities of each team member, as applicable. Only personnel who are current employees of the Respondent shall be identified.
4. Project Approach: Respondents should describe the amount of time needed to begin cleanup activities, the method of cleanup that the Respondent is proposing, the total time required for cleanup and the method of disposal. Please include a detailed description of any technologies, mechanical action and/or other means of removal.
5. Qualifications and Experience: This section shall present the qualifications of the Respondent and Respondent's team. The following topics must be addressed:
 - a) Explain past experience using the proposed cleanup methodology for algal bloom cleanup;
 - b) Respondent's staff past experience managing algal bloom cleanup technology;
 - c) Respondent's knowledge of and experience with identifying and evaluating different methods to eliminate or control HABs in ways that are safe for the environment;
 - d) Respondent's experience of developing methods of controlling HABs that comply with guidelines developed through the National Environmental Policy Act (NEPA).

NOTE: *Qualifications of personnel can only be presented as part of the Respondent's proposal for individuals who are currently employed by the Respondent, not individuals the Respondent proposes to hire if they are awarded a contract. In an appendix to this section, the respondent shall supply results of previous contracts or field tests as it relates to algal bloom cleanup showing the qualifications of the **individual(s) who will perform the work**, including experience in similar services outlined in this Solicitation. The individuals evaluated in this section will be considered "Key Personnel."*

6. Project Management: This section should present how the cleanup project will be managed. The following topics must be addressed:
 - (a) Expected timeframe needed to submit a written cost proposal with a cost estimate;
 - (b) Mobilization and demobilization timeframes and the expected timeframe for your organization to have an authorized designee execute a task assignment;
 - (c) List the deliverables that will be provided prior to invoicing;
 - (d) Description of how change orders are executed within your organization and the timeframes necessary to execute these change orders.
7. Project Communications: Respondents should provide information on how the progress of the cleanup project will be communicated to the department. Explain any technology that will be used and how this information will be provided to the department. Provide examples of how your company has used this cleanup technology to treat algal blooms previously.
8. Quality Assurance Methods: This section should present how the Respondent will provide quality assurance. The following topics must be addressed:
 - (a) Description of how the Respondent will assure cleanup equipment is sufficient, ready, available and reliable;
 - (b) If chemical treatment is performed, description of how the chemical dosing will be monitored and adjusted for optimal efficiency and safety;
 - (c) Description of how equipment failures will be addressed;

(d) Provide information on how the disposal of any removed material will be documented.

9. Health and Safety: Respondents should provide details of any negative human health and safety impacts from the cleanup project, including worker protection and potential impacts to the public. Specify how air emissions (if any) or odors will be controlled. Provide a description of what employee safety methods and public safety methods will be used.

C. Respondent / Subcontractor Summary Form (Tab D): On the Respondent/Subcontractor Summary Form (Section 11.00) provided, the Respondent shall list the name of the Respondent(s)/Subcontractor(s) and indicate the **one** business category of the Respondent/Subcontractor.

D. Principal Place of Business (Tab E): The Respondent shall complete and submit Section 8.00, the Principal Place of Business and Foreign State Preferences in Contracting Form, indicating whether its principal place of business is within the State. For the purpose of this Solicitation, “principal place of business” means the state in which the Respondent’s high-level officers direct, control, and coordinate the Respondent’s activities. Section 287.084(2), F.S., states:

A vendor whose principal place of business is outside this state must accompany any written bid, proposal, or bid documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal place of business are in that foreign state in the letting of any or all public contracts.

Consistent with section 287.084 (2), F.S., if a Respondent indicates on its form that its principal place of business is outside of this State, it shall have an attorney provide the opinion on the Principal Place of Business and Foreign State Preferences in Contracting Form.

E. State Project Plan (Tab F): The Respondent shall submit a written plan addressing the State’s five (5) objectives listed in Section 1.29, State Project Plan, to the extent applicable to the items/services covered by this Solicitation. The Department expects Respondents to address each objective. Objectives not addressed in the selected contractor’s Reply must be addressed prior to contract execution.

F. Additional Documents (Tab G): This section of the Reply shall contain the following:

- Certification of Drug-Free Workplace, Section 9.00 (if applicable);
- Insurance Requirements (if applicable); and
- Disclosure of any current or pending Litigation involving Respondent or any of its associated business entities (if applicable).

G. PAST PERFORMANCE / CLIENT REFERENCES (Must use pages provided) (Tab C): The Respondent must provide the required information on the Client Reference Form (Section 10.00) for three (3) verifiable clients which the Respondent has completed projects similar in nature to this Solicitation over the past two (2) years.

- Confidential clients shall not be included.
- The same client may not be listed for more than one (1) reference (*for example, if the Respondent has completed a project for the Florida Department of Transportation – District One and one project for the Florida Department of Transportation – District Two, only one of the projects may be listed*).
- If the Respondent has performed work similar in nature to this Solicitation for the Department, the Respondent shall list the Department as a client reference.

- Clients that are listed as subcontractors in the Respondent's Reply will not be accepted as Past Performance references under this Solicitation.
- A client that is currently a parent or a subsidiary company to the Respondent will not be accepted as a Past Performance references under this Solicitation.
- For Respondents that submit a Reply as a joint venture, at least one (1) past performance client must be listed for each member of the joint venture.

The Department will conduct a Past Performance Evaluation of the Client References the Respondent provided as part of the Technical Reply. Each Reference will be asked the questions posed in Section 13.00, Evaluation of Past Performance Form. Upon completion of the Reference checks, the Department will use the formula listed below to determine the points value for Past Performance:

$$\text{Maximum Total of the 3 Reference Scores} / \text{Divided by 3} = \text{Total Points Value for Past Performance}$$

A Department representative will contact the Respondent's references via telephone to complete the Evaluation of Past Performance form (Section 13.00).

- References should be available to be contacted during normal working hours.
 - The Department will attempt to contact each selected reference by phone up to two (2) times during the duration of one (1) week.
 - If the contact person cannot be reached following the specified number of attempts, the Respondent shall receive a score of zero (0) for that reference evaluation.
- **Part II, Price Reply:** Price replies not submitted on the Response Form (Section 6.00) or Price Schedule (Section 7.00) shall be rejected. The Respondent's Response Form and Price Schedule must be submitted on the forms provided in the Solicitation. Submit the price reply in a separately sealed package marked Price Reply.

The Respondent shall provide an estimate for each scenario on the Response Form provided in Section 6.00 and submit one price schedule on the form provided in Section 7.00 for each District in which they are submitting a Reply. The prices must include the cost of all things necessary to provide the services described in this Solicitation and the Respondent's reply, including, but not limited to, personnel and labor costs, travel and incidental expenses, miscellaneous expenses (i.e. cost of disposal). Footnotes, notations, and exceptions made to this form will not be considered.

The Respondent shall complete and submit a Response Form (Section 6.00) and Price Schedule (Section 7.00) for the District(s) the Respondent wants to be considered for award.

The Department has divided the state into six (6) Districts as follows:

Northwest District	Northeast District	Southwest District	Central District
Escambia	Madison	Citrus	Marion
Santa Rosa	Taylor	Hernando	Sumter
Okaloosa	Hamilton	Pasco	Lake
Walton	Suwannee	Pinellas	Volusia
Holmes	Lafayette	Hillsborough	Seminole
Washington	Dixie	Polk	Orange
Bay	Columbia	Manatee	Osceola
Jackson	Gilchrist	Hardee	Brevard
Calhoun	Levy		
Gulf	Baker		

Franklin	Union
Liberty	Bradford
Gadsden	Alachua
Leon	Putnam
Wakulla	Clay
Jefferson	Duval
	Nassau
	St. Johns
	Flagler

South District

Sarasota
DeSoto
Highlands
Charlotte
Glades
Lee
Hendry
Collier
Monroe

Southeast District

Indian River
Okeechobee
St. Lucie
Martin
Palm Beach
Broward
Dade

The Respondent may submit a separate technical reply with the price reply for each District for which they are proposing to provide services, if necessary. However, if the technical replies are identical for each District in which the Respondent is submitting a Reply, it may submit only one. The Department intends to make multiple awards within each District, as determined to be in the best interest of the State.

1.08. Submittal of Reply. Both Technical and Price Replies (Reply) must be received in accordance with VBS and Schedule of Events. Sealed Replies must be executed and submitted in two (2) parts and be marked as follows:

- Part I – Technical Reply (One Separately Sealed package for Technical Reply); and
- Part II – Price Reply (One Separately Sealed package for Price Reply)

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

The face of the envelope shall contain the Solicitation number and opening date. All Solicitations are subject to the conditions specified herein. Those that do not comply with these conditions are subject to rejection.

The Respondent must submit two (2) copies (one (1) Original hard copy and one (1) duplicate copies) and one (1) duplicate electronic copy of the Technical and Price Reply to the Department. The original hard copy of the Reply shall bear original signatures and be marked as the “Original.” The electronic copies of the Reply may be submitted on CD, DVD, or USB-compatible memory stick and must be in .pdf format. The Department will reject Replies submitted in alternate file formats or which contain information different from that in the hard copy of the Reply.

If you assert that any portion of your Reply is exempt from disclosure under the Florida Public Records law, you must submit a redacted version of the Reply along with the un-redacted version. The redacted copy shall be clearly titled “Redacted Copy.”

All proposed materials must be packaged so that each box of materials shipped to the Department does not exceed 25 pounds.

Respondents submitting Replies are advised to ensure the files are not corrupt prior to mailing as any material which is not readable will not be considered.

CAUTION: Replies received at the office designated after the exact time specified for receipt will not be considered.

NOTE: This section supersedes Section 2.00, General Instructions to Respondents (PUR-1001) Paragraph 3, Electronic Submission of Replies.

1.09. Alternate Replies. A Respondent may not submit more than one (1) Reply, per District. The Department seeks each Respondent's single-best Reply.

1.10. Elaborate Replies. It is not necessary to prepare your Reply using elaborate brochures and artwork, expensive paper and bindings, or other expensive visual presentation aids. Reply shall be prepared in accordance with the instructions herein.

1.11. General Evaluation Information. The Department reserves the right to accept or reject any or all Replies received; waive any minor irregularity, technicality, or omission if the Department determines that doing so will serve the State's best interest; and reserves the right to make an award without further discussion of the Reply submitted. No allowances will be made to the Respondent because of a lack of knowledge of conditions or requirements and will not relieve any liabilities and obligations.

A non-responsive submittal shall include, but not be limited to, those that: a) are irregular or are not in conformance with the requirements and instructions contained herein; b) fail to utilize or complete prescribed forms; or c) have improper or undated signatures. **A NON-RESPONSIVE SUBMITTAL WILL NOT BE CONSIDERED.**

In determining Respondent responsibility, the Department may consider any information or evidence which comes to its attention and which reflects upon a Respondent's capability to fully perform the contract requirements and/or the Respondent's demonstration of the level of integrity and reliability which the Department determines to be required to assure performance of the contract.

The Department 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 Reply. In submitting its Reply, a Respondent agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect.

Note: Any requirement of this Solicitation which indicates the consequence of any noncompliance shall be strictly enforced.

1.12. Administrative Review. All Replies will be reviewed by the Procurement Officer to ensure that complete Replies have been submitted and to ensure that the Replies meet the minimum requirements of this Solicitation. Complete Replies that meet the minimum requirements of this Solicitation will be sent to the Evaluation Team for their qualitative review. In order to foster maximum competition, the Department will seek to minimize Respondent disqualifications resulting from non-responsiveness during the administrative review process. Therefore, the Department may, in its sole discretion, notify Respondents whose qualifying information or documentation does not meet the requirements of the Solicitation and will allow the correction of errors and omissions prior to making a final determination of responsiveness. Timely cures will be accepted by the Department.

1.13. Administrative Cure Process. In the interest of maximizing competition, the administrative cure process seeks to minimize, if not eliminate, Respondent disqualifications resulting from nonmaterial, curable deficiencies in the Reply. During the Administrative Review portion of the evaluation, if the Department determines that a

nonmaterial, curable deficiency in the Reply will result in the disqualification of a Respondent, the Department may notify the Respondent of the deficiency and a timeframe within which to provide the information. This process is at the sole discretion of the Department; therefore, the Respondent is advised to ensure that its Reply is compliant with the Solicitation at the time of submittal.

1.14. Evaluation Criteria Scoring. With the exception of the cost and past performance reviews, each Reply will be reviewed by at least five (5) evaluators. Each member of the Evaluation Committee will be provided a copy of each Technical Reply. Replies will be evaluated independently on the criteria established in Section 12.00 (Evaluation Criteria) in order to ensure that Replies are uniformly rated. The Evaluation Committee will assign points, utilizing the technical evaluation criteria identified herein and the Procurement Office will complete a technical summary.

The Department reserves the right to request oral presentations and/or system demonstrations on any Reply submitted that meets the minimum requirements of this Solicitation. Information requested and received will be evaluated by the Evaluation Committee based on the criteria established in Section 12.00, Evaluation Criteria. During this stage Respondents will be asked to provide any clarifications needed by the Evaluation Committee to assist in evaluating their Reply. Information received in this stage will be added to the Respondent’s Reply and evaluated as a part of the appropriate section.

A Department representative will contact references via telephone to obtain the past performance reviews. The DEP Procurement Section will evaluate the cost section of the Reply. The scores for the past performance reviews and the deliverables-based project cost evaluation shall be provided to the evaluators for inclusion on their scores sheets for calculation of the total numerical rating.

The DEP Procurement Section will use the total point scores to convert to rank by each evaluator and then calculate an average rank for each Reply for all evaluators. Using the evaluation criteria specified below, in accordance with Section 287.057, F.S., the Department shall evaluate and rank responsive Replies and, at the Department’s sole discretion, proceed to negotiation.

For example:

<u>Firm</u>	<u>Raw Points Received</u>	<u>Rank</u>
Company A	200	2
Company B	210	1
Company C	180	3.5*
Company D	175	5
Company E	180	3.5*

In the event that multiple firms have the same raw point score, the rank positions for these firms are averaged and each firm receives that rank. In this case the third and fourth ranks are tied so $3 + 4 = 7$; 7 divided by $2 = 3.5$. Each firm receives a rank of 3.5. All Replies must comply with the terms of this Solicitation.

1.15. Posting of Score and Notice of Intent to Negotiate. Scores, and ranks of all Replies will be posted with the Notice of Intent to Negotiate. The Notice of Intent to Negotiate will be electronically posted by the date and time indicated in the Schedule of Events for seventy-two (72) hours (Saturdays, Sundays and State holidays excluded) on the MyFlorida.com website at the following link: http://vbs.dms.state.fl.us/vbs/search.criteria_form.

1.16. Negotiation Phase. The Department will proceed to negotiate with one (1) or more selected Respondents, based on the highest scores calculated during the evaluation phase described in the Evaluation Criteria Scoresheet, as described in Section 12.00, Evaluation Criteria. The negotiations will not be open to the public, but will be recorded.

- A. Notice of Intent to Negotiate. The Department will electronically post a Notice of Intent to Negotiate by the date and time indicated in the Schedule of Events on the Vendor Bid System (VBS).
- B. Negotiation Meetings. Negotiation meetings will be conducted in Tallahassee, Florida. The Department reserves the right to schedule Negotiation meetings (including oral presentations) at a different location in the State. The Department will distribute instructions and/or agendas in advance of each negotiation session. Representatives for each Respondent should plan to be available, (including a **representative** authorized to agree to Contract terms on behalf of the Respondent and key proposed Project Team members relevant to the topic being discussed) without interruptions, for the entirety of the Respondent’s scheduled Negotiation meeting. The Department reserves the right to require attendance at negotiation sessions by particular representatives of the Respondent.
- C. Negotiation Methodology. The Department will establish a negotiation team to conduct the negotiations with the Respondents listed in the “Notice of Negotiations” and make an award recommendation after determining which Respondent presents the best value.

Selected Respondent(s) will be invited to provide a demonstration, more detailed clarifications of their Replies, to provide interactive presentations of the Replies, and to enter into negotiations with the Department.

At the conclusion of negotiations, the Department will request best and final offers from the remaining respondents and notify them of the selection criteria on which the award will be based. Based on the best and final offers, the Department will either award the contract to the Respondent who provides the best value for the Department and the State or reject all Replies.

This ITN will not result in an exclusive license to provide the Services or products described in this ITN or the resulting contract. The Department may, in compliance with applicable law, contract with other Respondents or vendors to provide the same or similar Services.

Negotiations may include discussions of the terms, conditions, costs, Statement of Work, and related Services to be provided by the Respondent. The negotiation team will not engage in scoring, but will arrive at its recommendation by discussion during a public meeting.

Respondents may be provided an opportunity to recommend enhanced value alternatives and provide information and options during negotiations. The Department reserves the right to negotiate different terms and related price adjustments if the Department determines that such changes would provide the best value to the State. The negotiation team may address each proposed alternative during negotiations but is under no obligation to accept a proposed alternative. If the negotiation team determines that a proposed alternative is not acceptable and the Respondent fails to offer another alternative that is acceptable to the negotiation team, the Respondent may be eliminated from further consideration or the negotiation team may stop negotiation with that Respondent.

- D. Negotiation Team Recommendation Meeting. After receipt of the best and final offers, the Department may conduct a Public Meeting for the negotiation team to discuss the results of negotiations and formulate their recommendations to the Department as to whether and how to award a Contract pursuant to this solicitation.

The Department is not bound to enter into a contract with any Respondent unless the Respondent is determined to provide best value to the State and the Department is able to negotiate the conditions and cost that it considers fair, competitive, and reasonable

1.17. Department Negotiation Rights. The Department reserves the right at any time during negotiations, at its sole discretion, to do any of the following:

1. Eliminate a Respondent from further consideration or stop negotiations with a Respondent.

2. Conclude negotiations at any time and proceed to contract award.
3. Consider any information obtained during evaluation without being bound by evaluation scoring.
4. Reassess any of the evaluation determinations and may consider any additional information that comes to its attention during the negotiations.
Conduct reference checks and due diligence investigation of any Respondent.
5. Schedule or cancel negotiation sessions with any or all responsive Respondents.
6. Re-open negotiations with any Respondent.
7. Include subject matter experts or other interested persons in negotiations with vendors, vendor presentations, and meetings at which negotiation strategies are discussed.
8. Use any or all ideas or adaptations of the ideas presented in any Reply.
9. Require any or all responsive Respondents to address commodities, contractual services, prices, or terms and conditions offered by any other Respondent.
10. Require any or all responsive Respondents to provide additional, revised, or final Replies addressing specified topics.
11. Require any or all responsive Respondents to provide a written Best and Final Offer (BAFO).
12. Review and rely on relevant information contained in those Replies or BAFOs.
13. Negotiate different terms, conditions, and related price adjustments if the Department determines that such changes would provide the best value to the State.
14. Arrive at an agreement in principle with any responsive Respondent, finalize principal contract terms with such Respondent, and terminate negotiations with any or all other Respondents, regardless of the status of or scheduled negotiations with such other Respondents.
15. Take any additional administrative steps the Department deems necessary in determining the final award, including additional fact-finding, or negotiation.

1.18. Posting of Agency Decision. Upon completion of the public meeting, and decision of the Secretary, in accordance with the Timeline of Events, the Department will post to the VBS either 1) a Notice of Intent to Award naming one (1) or more Respondents(s) with whom the Department intends to Contract with or 2) a Notice of Rejection of All Replies.

NOTE: *This section supersedes Section 2.00, General Instructions to Respondents (PUR-1001), Paragraph 13, Electronic Posting of Notice of Intended Award.*

1.19. Department's Reserved Rights.

The Department reserves the right to:

- A. Reject all replies at any time, including after an award is made when doing so would be in the best interest of the State of Florida.
- B. Withdraw the RFP at any time, including after an award is made, when doing so would be in the best interest of the State of Florida.
- C. Withdraw or amend its Notice of Award at any time prior to execution of a contract, including, but not limited to situations in which the selected vendor fails to execute the contract.
- D. Withdraw or amend its Notice of Award if the Contractor defaults in performance.
- E. Re-procure services in accordance with Rule 60A-1.006(3), F.A.C.

By exercising the above listed rights, the Department assumes no liability to any vendor.

1.20. Use of Contract by Other State of Florida Governmental Entities. Other State of Florida Governmental entities (Entity) may purchase from the contract(s) resulting from this solicitation, provided such use of the contract(s) has been determined to be cost effective by the Entity and in the best interest of the State. The selected Contractor(s) has the option of selling the commodities or services described in this solicitation to other State of Florida governmental entities at the selected Contractor's discretion.

1.21. Number of Awards. The Department anticipates the issuance of multiple contracts per District for services under this Solicitation.

1.22. Basis of Award and Final Selection. As may be in the best interest of the State, the right is reserved to award based on **all or none, groups of services, or any combination** thereof, to responsive, responsible Respondents. The Department intends to award Contracts to the responsible and responsive Respondents whose Best and Final Offers (BAFO) are assessed as providing the best value to the State by using the selection process. Selection criteria will include the following at a minimum:

- Respondent's articulation, innovation, and demonstrated ability of the proposed approach to meet the Department's Solution goals and the requirements of this ITN;
- Experience and skills of Respondent's proposed Staff relative to the proposed approach; and
- Respondent's pricing and overall costs to the Department.

The Negotiation team may modify or add to this selection criteria provided that such changes are disclosed to Respondent(s) engaged in such negotiations.

Upon consideration of the recommendation, the Secretary of the Department, or a duly authorized designee, shall make the award decision.

The Department's intended award decision will be posted on the VBS at:

http://www.myflorida.com/apps/vbs/vbs_main_menu.

1.23. Type of Contract Contemplated. A task assignment contract is proposed with cost reimbursement for each task being determined by quote prior to the issuance of the task assignment. The reimbursement for each task shall be based on the prices provided by the selected Respondent Price Schedule, Section 7.00. The Department reserves the right to award another type contract, if such will be most advantageous to the Department and the State of Florida, price and other factors considered. Travel costs shall be included in the fixed cost amounts of this Contract and shall not be billed separately. The selected contractor shall be paid for the services rendered under the contract resulting from this Solicitation upon satisfactory completion of these services.

A copy of the proposed contract containing all requirements is included as Section 14.00. The requirements contained in the proposed contract should be closely reviewed since modifications proposed by the Respondent will not be considered.

NOTE: This section supersedes General Contract Conditions (PUR-1000) Paragraph #2, Purchase Orders.

1.24. Contract Term. The term of the contract will begin upon execution by both parties and remain in effect for a period of three (3) years, unless cancelled earlier in accordance with the terms of the contract.

1.25. Contract Renewal. The Department reserves the right to renew any contract resulting from this Solicitation. Renewal(s) shall be in writing and subject to the same terms and conditions of the original Contract and any

amendments thereto, for a period no greater than three (3) years. All renewals are contingent upon satisfactory performance by the Contractor(s) and the availability of funds.

1.26. Florida Department of State Registration Requirements. All entities defined under Chapters 865, 607,608, 620, or 621, F.S., seeking to do business with the Department shall, prior, to the execution of the contract, be appropriately registered with the Florida Department of State. Information about the registration process is available at <http://www.sunbiz.org/index.html>.

1.27. Convicted Vendor List. A company placed on the Convicted Vendor List may not submit a Reply or be awarded a contract to provide any goods or services pursuant to Rule 60A-1.006 F.A.C. The “Convicted Vendor List” is published at:

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists/convicted_vendor_list.

1.28. MyFloridaMarketPlace Vendor Registration. Prior to execution of the contract by the Department, the selected vendor must be registered with the Florida Department of Management Services (DMS) MyFloridaMarketPlace Vendor Registration System. Information about the registration process is available and

registration may be completed at the MyFloridaMarketPlace website:

http://www.dms.myflorida.com/business_operations/state_purchasing/myfloridamarketplace/mfmp_vendors/requirements_for_vendor_registration (link also available under Business at www.myflorida.com).

Prospective vendors who do not have Internet access may request assistance from MyFloridaMarketPlace Customer Service at (866) 352-3776.

The following United Nations Standard Products and Services Code (UNSPSC) are provided to assist you in your registration efforts:

- 70171602, Water testing services;
- 60104200, Water testing and conservation and ecology;
- 76121502, Liquid waste collection or processing or disposal;
- 76101605, Carbon based filtration and decontamination service;
- 76121700, Liquid waste treatment;
- 77101805, Environmental quality control services;
- 77111600, Environmental rehabilitation;
- 77121704, Surface water treatment services;
- 77141500, Water or aqueous testing;
- 77141501, Microbiological testing;
- 77141600, Non-drinking water or aqueous testing; and
- 77141601, Non-drinking water microbiological testing.

1.29. State Project Plan. The Respondent shall submit a written plan addressing the State’s five (5) objectives listed below, to the extent applicable to the items/services covered by this Solicitation. The Department expects Respondents to address each objective. Objectives not addressed in the selected proposal must be addressed prior to issuance of a contract(s). **The State reserves the right to negotiate mutually acceptable changes with the Respondent(s) selected for award, prior to execution of the contract(s).**

SUBMIT THE RESPONDENT / SUBCONTRACTOR SUMMARY FORM (SECTION 11.00) IDENTIFYING THE TEAM THAT WILL BE UTILIZED IN CONNECTION WITH THIS CONTRACT. LIST THE NAMES AND INDICATE THE OFFICE OF SUPPLIER DIVERSITY BUSINESS CATEGORY OF EACH ONE LISTED.

A. Minority-, Woman-, and Veteran-Owned Business Enterprises. The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority-, woman- and veteran-owned business enterprises in the economic life of the state. The State of Florida Mentor Protégé Program connects minority-, woman-, and veteran-owned 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.

The State is dedicated to fostering the continued development and economic growth of small-, minority-, woman-, and veteran-owned business enterprises. Participation by a diverse group of Vendors doing business with the State is central to this effort. It is vital that small-, minority-, woman-, and veteran-owned business enterprises participate in the State's procurement process as both contractors and sub-contractors in this Solicitation. Small-, minority-, woman-, and veteran-owned business enterprises are strongly encouraged to contribute to this Solicitation.

The contractor shall submit documentation addressing diversity and describing the efforts being made to encourage the participation of small-, minority-, woman-, and veteran-owned business enterprises.

Information on certified Women / Minority Business Enterprises (W/MBE) and certified Veteran Business Enterprises (CSDVBE) is available from the Office of Supplier Diversity at:

http://dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/.

Quarterly Reports of revenue paid to certified W/MBE and certified SDVBE contractors (agents or subcontractors) as a result of any award shall be provided to the Department's Procurement Office by the Prime Contractor on an Agency by Agency (or other eligible user) level.

B. Environmental Considerations: The Respondent shall provide a plan for reducing and/or handling of any hazardous waste generated by the Respondent company. It is a requirement of the Department that a generator of hazardous waste materials that exceeds a certain threshold must have a valid and current EPA Identification Number. This identification number shall be submitted as part of the Respondent's explanation of its company's hazardous waste plan and shall explain in detail its handling and disposal of waste. Reference Rule 62-730, Florida Administrative Code (F.A.C.) and federal hazardous waste regulations for generators at 40 C.F.R. part 262.

C. Certification of Drug-Free Workplace Program: The State supports and encourages initiatives to keep the workplace of Florida's suppliers and contractors drug free. Section 287.087, F.S., provides that where identical tie proposals are received, preference shall be given to a proposal received from a Respondent that certifies it has implemented a drug-free workforce program. If applicable, the Respondent shall sign and submit the "Certification of Drug-Free Workplace Program" Form (Section 9.00) to certify that the Respondent has a drug-free workplace program.

D. Products Available from the Blind or Other Handicapped (RESPECT): The State supports and encourages the gainful employment of citizens with disabilities. 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, F.S., in the same manner and under the same procedures set forth in section 413.036(1) and (2), F.S.; and for purposes of this contract the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for 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

<https://sercure.imarcsgroup.com/respect/Default.asp>.

The Respondent shall describe how it will support the use of RESPECT in offering the services/items being procured under this Solicitation. Respondents proposing the use of RESPECT as a subcontractor shall be

required to provide written proof of a subcontractor agreement for this Solicitation with RESPECT with their Reply. The written documentation shall be a one (1) page letter supplied by the subcontractor on its letterhead stationery, clearly identifying the Solicitation Number, the project title, and the prime contractor with whom the firm intends to subcontract.

E. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE): The State supports and encourages the use of Florida Correctional work programs. It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this contract shall be purchased from the corporation identified under Chapter 946, F.S., in the same manner and under the same procedures set forth in section 946.515(2) and (4), F.S.; and for purpose of this contract the person, form or other business entity carrying out the provisions of this contract shall be deemed to be substituted for this Department insofar as dealings with such corporation are concerned. Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org>.

The Respondent shall describe how it will support the use of PRIDE in offering the services/items being procured under this Solicitation.

1.30. Respondent Responsibility. In determining Respondent responsibility, the Department may consider any information or evidence which comes to its attention and which reflects upon a Respondent's capability to fully perform the Solicitation requirements and/or the Respondent's demonstration of the level of integrity and reliability which the Department determines to be required to assure performance of the Solicitation.

1.31. Protest Rights. Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post a 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.

Only documents delivered by the U.S. Postal Service, a private delivery service, or in person, during Business hours (Monday-Friday, 8:00 a.m. - 5:00 p.m., Eastern Standard Time) will be accepted. Documents received after hours will be filed the following business day.

No filings may be made by email or any other electronic means. All filings must be made with the Agency Clerk ONLY and are only considered "filed" when stamped by the official stamp of the Agency Clerk. It is the responsibility of the filing party to meet all filing deadlines.

The Agency Clerk's mailing and physical address is:

Agency Clerk, Office of General Counsel
Department of Environmental Protection
3900 Commonwealth Boulevard,
Douglas Building, MS#35
Tallahassee, Florida 32399-3000

Do not send Replies to the Agency Clerk's Office. Send all Replies to the Procurement Officer identified in Section 1.02 of the solicitation.

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SECTION 2.00 – GENERAL INSTRUCTIONS TO RESPONDENTS (PUR 1001)

The General Instructions to Respondents (PUR 1001) contains instructions explaining the solicitation process and the actions necessary to respond. In the event of any conflict between Form PUR 1001 and other instructions provided in this document, the additional instructions in this document shall take precedence over the Form PUR 1001 unless the conflicting term is required by any section of the Florida Statutes (F.S.), in which case the statutory requirements shall take precedence.

Contents

1. Definitions.
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3. Electronic Submission of Responses.
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9. Respondent's Representation and Authorization.
10. Manufacturer's Name and Approved Equivalents.
11. Performance Qualifications.
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13. Electronic Posting of Notice of Intended Award.
14. Firm Response.
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18. Contract Overlap.
19. Public Records.
20. Protests.
21. Limitation on Vendor Contact with Agency During Solicitation Period

1. **Definitions.** The definitions found in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:
 - (a) "Buyer" means the entity that has released the solicitation. The "Buyer" may also be the "Customer" as defined in the PUR 1000 if that entity meets the definition of both terms.
 - (b) "Procurement Officer" means the Buyer's contracting personnel, as identified in the Introductory Materials.
 - (c) "Respondent" means the entity that submits materials to the Buyer in accordance with these Instructions.
 - (d) "Response" means the material submitted by the respondent in answering the solicitation.
 - (e) "Timeline" means the list of critical dates and actions included in the Introductory Materials.

2. **General Instructions.** Potential respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly.
3. **Electronic Submission of Responses.** Respondents are required to submit responses electronically. For this purpose, all references herein to signatures, signing requirements, or other required acknowledgments hereby include electronic signature by means of clicking the "Submit Response" button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within MyFloridaMarketPlace. The respondent agrees that the action of electronically submitting its response constitutes:
 - an electronic signature on the response, generally,
 - an electronic signature on any form or section specifically calling for a signature, and
 - an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.
4. **Terms and Conditions.** All responses are subject to the terms of the following sections of this solicitation, which, in case of conflict, shall have the order of precedence listed:
 - Statement of Work,
 - Special Conditions and Instructions,
 - Instructions to Respondents (PUR 1001),
 - General Conditions (PUR 1000), and
 - Introductory Materials.

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

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

- 6. Conflict of Interest.** This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.
- 7. Convicted Vendors.** A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list:
- submitting a bid on a contract to provide any goods or services to a public entity;
 - submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;
 - submitting bids on leases of real property to a public entity;
 - being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and
 - transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.
- 8. Discriminatory Vendors.** An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:
- submit a bid on a contract to provide any goods or services to a public entity;
 - submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
 - submit bids on leases of real property to a public entity;
 - be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or
 - transact business with any public entity.
- 9. Respondent's Representation and Authorization.** In submitting a response, each respondent understands, represents, and acknowledges the following (if the respondent cannot so certify to any of following, the respondent shall submit with its response a written explanation of why it cannot do so).
- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
 - To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

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

- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

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

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

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

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

13. Electronic Posting of Notice of Intended Award. Based on the evaluation, on the date indicated on the Timeline the Buyer shall electronically post a notice of intended award at http://www.myflorida.com/apps/vbs/vbs_main_menu. If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected by the decision shall file with the Buyer

a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone.

- 14. Firm Response.** The Buyer may make an award within sixty (60) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, the response shall remain firm until either the Buyer awards the Contract or the Buyer receives from the respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected.
- 15. Clarifications/Revisions.** Before award, the Buyer reserves the right to seek clarifications or request any information deemed necessary for proper evaluation of submissions from all respondents deemed eligible for Contract award. Failure to provide requested information may result in rejection of the response.
- 16. Minor Irregularities/Right to Reject.** The Buyer reserves the right to accept or reject any and all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Buyer determines that doing so will serve the State's best interests. The Buyer may reject any response not submitted in the manner specified by the solicitation documents.
- 17. Contract Formation.** The Buyer shall issue a notice of award, if any, to successful respondent(s), however, no contract shall be formed between respondent and the Buyer until the Buyer signs the Contract. The Buyer shall not be liable for any costs incurred by a respondent in preparing or producing its response or for any work performed before the Contract is effective.
- 18. Contract Overlap.** Respondents shall identify any products covered by this solicitation that they are currently authorized to furnish under any state term contract. By entering into the Contract, a Contractor authorizes the Buyer to eliminate duplication between agreements in the manner the Buyer deems to be in its best interest.
- 19. Public Records.** Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any respondent claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption.
- 20. Protests.** Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and 287.042(2) of the Florida Statutes and chapter 28-110 of the Florida Administrative Code. Questions to the Procurement Officer shall not constitute formal notice of a protest. It is the Buyer's intent to ensure that specifications are written to obtain the best value for the State and that specifications are written to ensure competitiveness, fairness, necessity and reasonableness in the solicitation process.

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

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

Section 28-110.005, Fla. Admin. Code requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post

the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.”

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

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SECTION 3.00 – SPECIAL INSTRUCTIONS TO RESPONDENTS

3.01. Definitions. Listed below are definitions specific to this Solicitation:

- A. “Associated Business Entity” shall mean a Business Entity, that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Respondent; including but not limited to, the following: i) a business entity twenty percent (20%) or more of whose outstanding voting securities, membership interests or partnership interests are directly or indirectly owned, controlled, or held with power to vote, by the Respondent, ii) a business entity which directly or indirectly owns controls, or holds, with power to vote, twenty percent (20%) or more whose outstanding voting securities, membership interests or partnership interests are directly or indirectly owned, controlled, or held with power to vote, by the Respondent.
- B. “Business Entity” includes firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, companies, fiduciaries, corporations, and all other groups or combinations.
- C. “Control” means the ability, directly, or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise, including through common officers, directors, executive, partners, shareholders, employees, members, or agents who are active in the management of an entity.

3.02. Assertion of Confidentiality Regarding Submitted Materials.

- A. Replies should contain only information that is responsive to the Solicitation. Any relevant and responsive information submitted which is asserted by Respondent to be proprietary, trade secret, intellectual property, or otherwise confidential (“Confidential Information”) and which Respondent claim as privileged from disclosure despite any applicable Florida Public Records Law, must be clearly marked as such in the un-redacted version of the Proposal, and either removed from or obliterated in the Redacted Copy.
- B. If Respondent fails to submit a Redacted Copy, the Department is authorized to produce the entire un-redacted document submitted to the Department in response to a public records request encompassing the Proposal.
- C. The Redacted Copy should redact all, but only, those portions of material that Respondent asserts are Confidential Information. Respondent must identify the statutory citation supporting its claim of confidentiality for each and every redaction.
- D. Failure to identify asserted Confidential Information in Proposals, and/or to redact such information in the Redacted Copy, shall constitute a waiver of any claim of confidentiality or exemption to such information, document or Proposal.

3.03. Conflict of Interest. The Respondent covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services required to be performed under the contract.

3.04. Disclosure. Information will be disclosed to Respondents in accordance with State statutes and rules applicable to this Solicitation after evaluations are complete.

3.05. Firm Reply. The Department may make an award within one hundred eighty (180) days after the date of the Reply opening, during which period the Reply submitted shall remain firm and shall not be withdrawn. If an award is not made within one hundred eighty (180) days after the Reply opening date, the Reply shall remain firm until either the Department posts an Agency Decision or the Department receives a written notice from the

Respondent that the Reply is withdrawn, whichever occurs first. Any Reply that expresses a shorter duration shall be rejected.

NOTE: *This section supersedes Section 2.00, General Instruction to Respondents (PUR1001), Paragraph #4, Firm Response.*

3.06. Misrepresentations. All information submitted and representations made by the Respondent are material and important and will be relied upon by the Department in awarding the contract. Any misstatement or omission (a “Misrepresentation”) shall be treated as a fraudulent concealment of the true facts relating to submission of the Solicitation. A misrepresentation shall be a basis for the Department to disqualify the Respondent from participating in this Solicitation, and any re-solicitation pertaining to this subject matter (regardless of whether the re-solicitation resulted from Respondent’s misrepresentation) and shall be punishable under law, including, but not limited to, Chapter 817, F.S.

3.07. Public Requests for Replies.

- A. If a public records request is made for the Reply, the Department will provide the requestor access to the Redacted Copy, bearing Respondent’s assertion of exemption from disclosure. If a public records request is made for the un-redacted Reply challenging the assertion of exemption, the Department will notify Respondent that the requested records contain asserted Confidential Information. Respondent shall be solely responsible for taking whatever action it deems appropriate to legally defend its claim of exemption from disclosure under the Public Records Law.
- B. Respondent shall obtain either an agreement with the requestor withdrawing its request, or commence an action in a court of competent jurisdiction requesting an injunction prohibiting its disclosure within seventy-two (72) hours (excluding weekends and state and federal holidays) of Respondent’s receipt of notice of the public records request.
- C. By submitting its Reply, Respondent agrees that no right or remedy for damages against the Department will arise from disclosure by the Department of the alleged Confidential Information following Respondent’s failure to promptly protect its claim of exemption.
- D. By submitting a Reply to this Solicitation, the Respondent agrees to protect, defend, and indemnify the Department for any and all claims arising from or relating to the Respondent’s assertion that the redacted portions of its Reply are Confidential Information not subject to disclosure.

3.08. Qualifications. The Respondent must prove to the satisfaction of the Department that they have available under their direct supervision, the necessary organization, experience, equipment and staff to properly fulfill all the conditions, requirements, and specifications required under this Solicitation.

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SECTION 4.00 – STATEMENT OF WORK

4.01 Purpose. The intent of this Solicitation is to enter into a contract(s) to provide harmful algal bloom (HAB) management services on an as needed basis. These services may include, but are not limited to, the containment, removal, cleanup, elimination, transportation, and disposal of HAB and by-products associated with the services provided. Responses that require a chemical or biological treatment directly to the waterbody will be considered outside the purpose and scope. However, side-stream treatment and subsequent return to the waterbody will be considered. Respondents will also bear responsibility for any analytical services required to ensure the services provided are meeting the expectations of the Department.

The selected Contractor(s) must have a physical presence in the State of Florida, be authorized to transact business in the State of Florida and, as applicable, provide proof that any product with pesticidal claims (algaecides) are approved by the Florida Department of Agriculture and Consumer Services for aquatic use.

No minimum amount of work is guaranteed under the contract(s) resulting from this Solicitation.

4.02 Scope of Services. This section contains the Scope of Service that will be required in any contract that may be executed as a result of this Solicitation. By submitting a Reply, each Respondent specifically acknowledges and agrees that in addition to all requirements noted elsewhere in this Solicitation, all requirements referencing “Contractor” contained within the Scope of Service below are applicable to the Respondent should he/she be deemed the successful Respondent.

All services are to be performed by the successful Respondent, under any resultant contract, and shall meet or exceed the minimum requirement outlined in this Solicitation. Under no circumstances shall services meeting less than the minimum services requirements be permitted without the prior written approval of the Department; otherwise, it shall be considered that services proposed will be performed in strict compliance with requirement and rules, regulations and governance contained in this Solicitation and the successful Respondent(s) shall be held responsible therefore.

All services shall be performed in accordance with the requirements set forth in this section. The timeframes outlined in the Scope may be modified at the sole discretion of the Department if required for a particular Task Order. Any changes to the timeframes outlined in the scope will be agreed to in writing in the Task Order. The Department, may request any or all the services outlined in the Scope of Services from the selected Contractor(s) on an as needed basis.

Once a contract is awarded, Contractor selection for each specific incident will be determined based on the information provided in the technical submittals, cost estimates, and specific characteristics of the incident in the sole discretion of the Department.

- A. **Notification of HAB.** Contractors will be notified via email of a HAB. Contractors will have four (4) business hours to respond if they are interested in the task. The Department will provide details about the HAB to interested Contractors and the Contractors will have one (1) business day to respond with a quote for the cleanup. The Department will notify the selected Contractor within one (1) business day.
- B. **Response Locations.** Due to the unpredictable nature of HAB development, the selected Contractor(s) will be required to arrive and initiate cleanup at locations throughout the State of Florida within 48 hours of assignment by the Department. The Contractor will be responsible for securing access with the landowners. The Department is not responsible for denied access.
- C. **Time to Complete.** The selected Contractor(s) would be required to complete services within seven (7) calendar days of arrival to locations of HAB development. If cleanup cannot be completed within seven (7)

calendar days the respondent must provide an estimate of proposed cleanup time to DEP by day five (5) of cleanup efforts.

- D. **Infrastructure Needs.** The selected Contractor(s) is responsible for meeting any infrastructure needs to complete the services. This includes insuring the availability of road/boat ramp/waterbody access, access to electricity or water, appropriate sized and situated area for performing services, and any other infrastructure required (i.e. permits) by the selected Contractor(s).
- E. **Disposal.** The selected Contractor(s) is responsible for the proper disposal of all materials associated with the services provided including, but not limited to, containment devices, algal mats and other material removed by the services, by-products of the services provided, as well as any materials associated with the services provided.
- F. **Analytical Services.** The selected Contractor(s) is responsible for any water quality analysis required to monitor the dosing of any additives or effectiveness of treatments, while the cleanup is ongoing, as well as any water quality analyses that the Department requires due to the nature of the services provided. Final chemical evaluation of the waterbody for cyanotoxins and other parameters of DEP's choosing, once the Contractor has indicated their treatment is complete, will be performed by DEP, at DEP's expense.

4.03 Contractor Responsibilities.

- A. The Contractor shall perform services to provide the following deliverables in accordance with the chart below:

Deliverable(s)	Task(s)	Performance Standards	Supporting Documentation	Financial Consequence(s)
1. Removal of HAB	a. Mobilize within 48 hours after receipt of Notice to Proceed	a. Arrive within prescribed time with correct personnel.	a. Daily Log	a. Reduction of invoice by 10% for every day late.
	b. Cleanup cyanobacteria mat using approved methods	b. DEP Lab results confirm cyanotoxin level at one (1) microgram per liter within 7 days or as otherwise specified in the Task Order.	b. Photos and daily log	b. Reduction of invoice by 10% for every day late.
	c. Email Daily Log of the previous day's site activities, list of equipment operating on-site, personnel on-site, estimated percentage complete, a description of daily weather conditions, daily photographs of algae impacted area, and planned activities for the following day.	c. Delivered on time and accurate.	c. Daily log	c. Reduction of invoice by 10% for every day late.

2. Photos of the cleanup site location at completion	Provide photos of cleanup site	Photos show no visible cyanobacteria mat.	Photos	No payment until receipt of the photos
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- B. The Contractor shall contact the Department’s Project Manager via email and telephone stating the cleanup is complete.
- C. Once the Department’s sampling confirms that cleanup is complete, the Contractor will submit an invoice to the Department’s Administrative Contract Manager within 30 business days upon receipt of the Letter of Cleanup Certification from the Department’s Project Manager. The Contractor shall also include a copy of the Letter of Cleanup Certification, timesheets, disposal cost (tip fee) receipts, and equipment rental receipts with the invoice.

4.04 Department Responsibilities.

- A. The Department (DEP Site Representative) will access the location of the potential HAB;
- B. The Department (Project Manager) will confirm the HAB;
- C. The Department (Project Manager) will issue a Notice to Proceed to the Contractor;
 - 1. After the Contractor notifies the Department that the cleanup is complete, the Department’s Project Manager will contact the DEP Site Representative. The DEP Site Representative will arrive to the cleanup location within two (2) business days of the Contractor’s notice of completion;
 - 2. The Department (DEP Site Representative) will sample the water where the HAB occurred:
 - (a) On the sample(s) confirm the cleanup is complete, the Department’s Project Manager will provide a Letter of Cleanup Certification to the Contractor within five (5) business days.

4.05 Eligible Users’ Scope of Services.

Eligible users may purchase services from the Contract at the rates provided by the Contractors, however, they shall develop their own scopes and outline their own standards and approval processes for their individual task orders. The Department shall not be involved in any oversight, testing, or approvals, or have any other contractual obligations in the contracts between the eligible users and the Contractors awarded under this solicitation.

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SECTION 5.00 – GENERAL CONTRACT CONDITIONS (PUR 1000)

In the event of any conflict between the PUR 1000 form and any other Special Conditions, including terms of the attached Contract, the Special Conditions shall take precedence over the PUR 1000 form unless the conflicting term in the PUR form is required by any section of the F.S., in which case the statutory requirements shall take precedence.

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1. **Definitions.** The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:
 - (a) “Contract” means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.
 - (b) “Customer” means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The “Customer” may also be the “Buyer” as defined in the PUR 1001 if it meets the definition of both terms.
 - (c) “Product” means any deliverable under the Contract, which may include commodities, services, technology or software.
 - (d) “Purchase order” means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).
2. **Purchase Orders.** In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor’s order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(15) and (16) of the Florida Statutes.
3. **Product Version.** Purchase orders shall be deemed to reference a manufacturer’s most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.
4. **Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.
 - (a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.
 - (b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.

- (c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.
- (d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.
- (e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

5. **Additional Quantities**. For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.
6. **Packaging**. Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.
7. **Inspection at Contractor's Site**. The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
8. **Safety Standards**. All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.
9. **Americans with Disabilities Act**. Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

- 10. Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
- 11. Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.
- 12. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.
- 13. Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.
- 14. Transaction Fee.** The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

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

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor.

Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering reprocurement 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://dos.myflorida.com/library-archives/records-management/general-records-schedules/>). 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.

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SECTION 6.00 – RESPONSE FORM

Please respond to the following scenarios with your best price. The prices provided in this response should correspond with the rates in Section 7.00, Price Schedule.

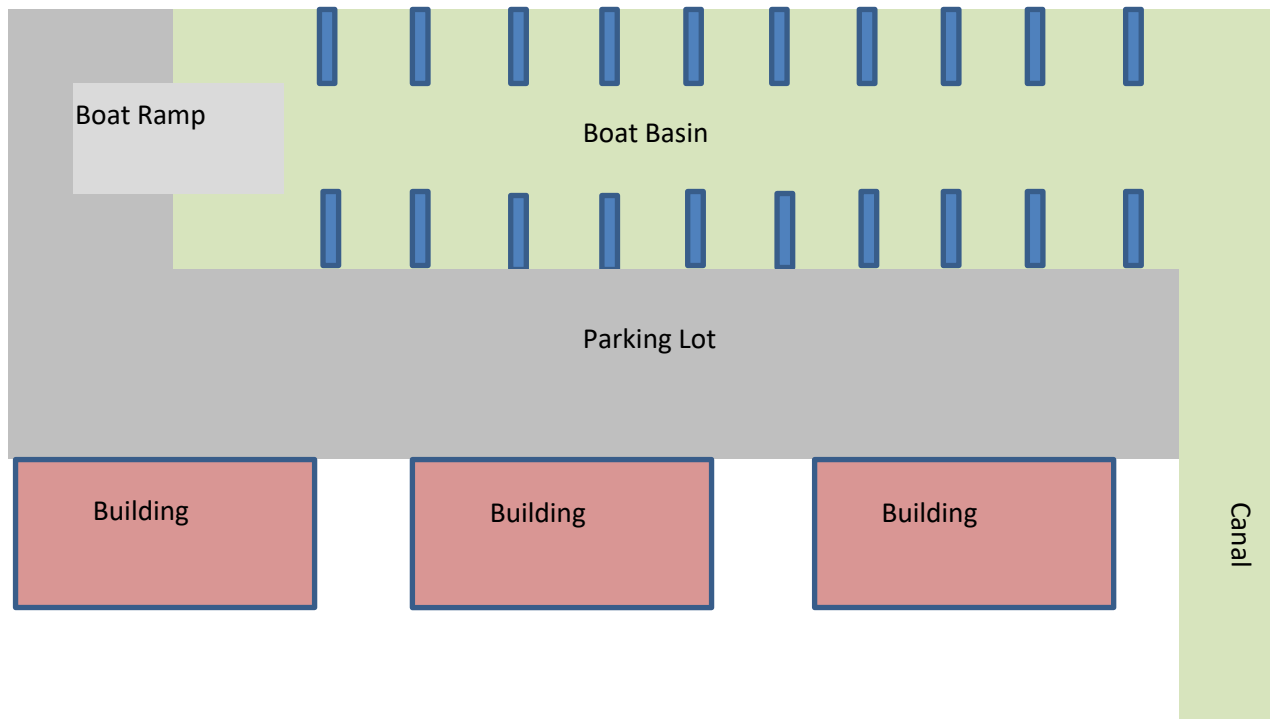
Algal Bloom Response Scenarios for Cost Estimation:

Provide a clean-up cost estimate and approach for the following two scenarios. Assume a simultaneous response to both scenarios, requiring cleanup resources to be available at both places during the same week. Include all your clean-up related costs including, but not limited to: mobilization/demobilization, equipment rentals, disposal costs, staffing costs, implementation of the remedy and operating costs, reports of project progress or delays via email or telephone, insurance, safety equipment, etc. Pricing needs to include any anticipated cost increases during the life of the contract. Information associated with the costs must include an estimated time to mobilize, a description of the clean-up technology, method of disposal (off-site or on-site) and estimated completion time.

Scenario #1:

A boat marina (40,000 square feet, an average depth of 10 feet, and 20 boat slips, 25 miles from your current location) received a large volume of cyanobacteria due to strong winds driving the bloom into the marina entrance through its only waterway. The cyanobacteria bloom in the marina formed a floating scum layer 3-inches (0.25 feet) thick across the entire boat basin and has begun to rot. The marina has electrical service (provided at no charge) and a large parking lot on one side of the boat basin that can be used to set up equipment if needed.

The marina needs to be treated to include all areas surrounding the boat ramp and boat slips until no algal scum is visible and cyanotoxin analyses indicate that no toxins are detectable. The Department will collect and analyze a minimum of three sets of depth-integrated samples taken at different locations in the canal at no cost to the Contractor.



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Scenario 1

Project Approach: Respondents should describe the amount of time needed to begin cleanup activities, the method of cleanup that the Respondent is proposing, the total time required for cleanup and the method of disposal. Please include detailed description of any technologies, mechanical action and/or other means of removal.

Organizational Plan: Describe how your company will be organized during the cleanup project. Identify project managers, field supervision, owned equipment, rented equipment, etc.

Qualifications: Describe the qualifications and experience of any project staff (from management to field workers) and/or subcontracted staff involved in this cleanup project. Address the availability of these staff to respond to this project.

Project Management: Describe how the cleanup project will be managed. Include the expected timeframe needed to submit a written cost proposal with a cost estimate, mobilization and demobilization timeframes, and the expected timeframe for your organization to have an authorized designee execute a task assignment. List the deliverables that will be provided prior to invoicing. Describe how change orders are executed within your organization and the timeframes necessary to execute these change orders.

Project Communications: Provide information on how the progress of the cleanup project will be communicated to the department. Explain any technology that will be used and how this information will be provided to the department. Provide examples of how your company has used this cleanup technology to treat algal blooms previously.

Quality Assurance Methods: Describe any approaches that will be made to assure cleanup equipment is sufficient, ready, available and reliable. If any chemical treatment is performed, provide a description of how the chemical dosing will be monitored and adjusted for optimal efficacy and safety. Provide information on how equipment failures will be addressed. Provide information on how the disposal of any removed material will be documented.

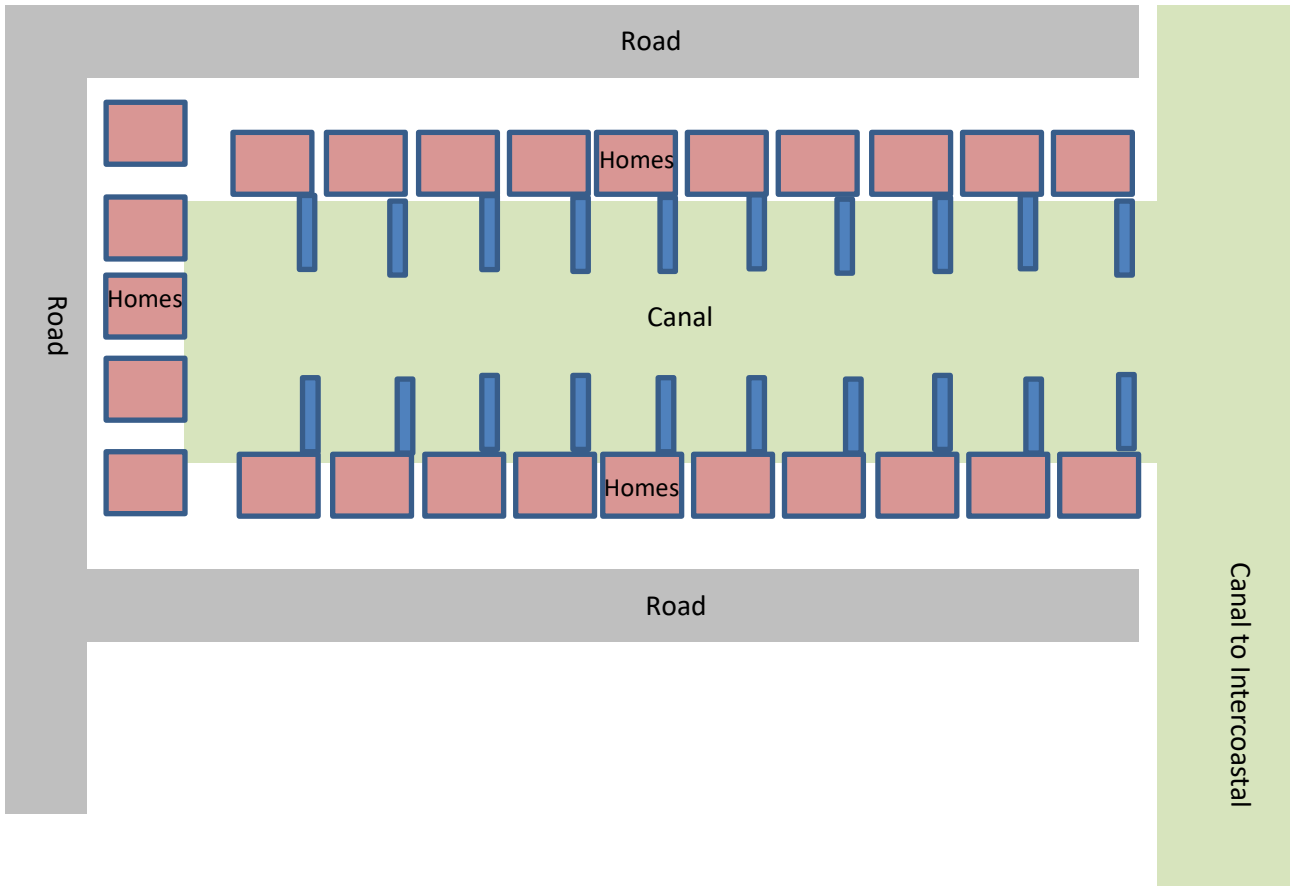
Health and Safety: Provide details of any negative human health and safety impacts from the cleanup project, including both worker protection and potential impacts to the public. Specify how air emissions (if any) or odors will be controlled. Describe what employee safety methods and public safety methods will be used.

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Scenario #2:

A 1,000-foot long residential canal (80 feet wide with an average depth of 10 feet, 25 miles from your current location) is experiencing a significant cyanobacteria bloom. The bloom is throughout the water column along the entire length of the canal and it is also starting to form a scum layer along the windward bank of the canal. There is no public access to the canal by land, only by boat. There is parking space available along the street in front of the residences along the canal that could be used for equipment. Access by land may be granted by one of the home owners, but that would need to be arranged by the Contractor. No electrical hookups are available.

The canal needs to be treated until no algal scum is visible, the average chlorophyll a level is below 11 micrograms per liter, and no cyanotoxins are detectable. The Department will collect and analyze a minimum of three (3) sets of depth – integrated samples taken at different locations in the canal at no cost to the Contractor.



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Scenario 2

Project Approach: Respondents should describe the amount of time needed to begin cleanup activities, the method of cleanup that the Respondent is proposing, the total time required for cleanup and the method of disposal. Please include detailed description of any technologies, mechanical action and/or other means of removal.

Organizational Plan: Describe how your company will be organized during the cleanup project. Identify project managers, field supervision, owned equipment, rented equipment, etc.

Qualifications: Describe the qualifications and experience of any project staff (from management to field workers) and/or subcontracted staff involved in this cleanup project. Address the availability of these staff to respond to this project.

Project Management: Describe how the cleanup project will be managed. Include the expected timeframe needed to submit a written cost proposal with a cost estimate, mobilization and demobilization timeframes, and the expected timeframe for your organization to have an authorized designee execute a task assignment. List the deliverables that will be provided prior to invoicing. Describe how change orders are executed within your organization and the timeframes necessary to execute these change orders.

Project Communications: Provide information on how the progress of the cleanup project will be communicated to the department. Explain any technology that will be used and how this information will be provided to the department. Provide examples of how your company has used this cleanup technology to treat algal blooms previously.

Quality Assurance Methods: Describe any approaches that will be made to assure cleanup equipment is sufficient, ready, available and reliable. If any chemical treatment is performed, provide a description of how the chemical dosing will be monitored and adjusted for optimal efficacy and safety. Provide information on how equipment failures will be addressed. Provide information on how the disposal of any removed material will be documented.

Health and Safety: Provide details of any negative human health and safety impacts from the cleanup project, including both worker protection and potential impacts to the public. Specify how air emissions (if any) or odors will be controlled. Describe what employee safety methods and public safety methods will be used.

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Award(s) will be made to the highest ranked responsible, responsive Respondent(s) meeting all specifications and conditions set forth in this Solicitation per scenario for each District. The Department intends to make multiple awards within each District, as determined to be in the best interest of the State. Complete the following form for each District(s) that the Respondent would like to be considered for award.

INITIAL CONTRACT TERM (3 YEARS)

District	Scenario 1 (all costs)	Scenario 2 (all costs)	*Total of both Scenarios
<hr/> District	\$	\$	\$

* This figure will be used for awarding cost points for the District.

Signature: _____

Name of Respondent /Company: _____

Printed/Typed Name of
Authorized Signatory and Title: _____

Footnotes, notation, and exceptions made on this form shall not be considered.

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Award(s) will be made to the highest ranked responsible, responsive Respondent(s) meeting all specifications and conditions set forth in this Solicitation per scenario for each District. The Department intends to make multiple awards within each District, as determined to be in the best interest of the State. Complete the form for each District(s) that the Respondent would like to be considered for award.

RENEWAL CONTRACT TERM (YEARS 1-3)

District	Scenario 1 (all costs) Renewal Years	Scenario 2 (all costs) Renewal Years	*Total of both Scenarios Renewal Years
_____ District	\$ _____	\$ _____	\$ _____

*This figure will be used for awarding cost points for the District.

Signature: _____

Name of Respondent /Company: _____

Printed/Typed Name of
Authorized Signatory and Title: _____

Footnotes, notation, and exceptions made on this form shall not be considered.

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SECTION 8.00 – PRINCIPAL PLACE OF BUSINESS & FOREIGN STATE PREFERENCES IN CONTRACTING FORM

All Respondents must complete section I. If the Respondent’s principal place of business is outside the state of Florida, the Respondent must also complete section II. If the Department discovers that any information on this form is false after the award to the Respondent is made, the Department reserves the right to terminate the contract and the Respondent will be liable for costs associated with re-procuring the services.

Section I. Respondent’s Principal Place of Business

(Please select one)

- The Respondent’s principal place of business is in the State of Florida.
- The Respondent’s principal place of business is outside of the State of Florida.

Section II. Legal Opinion about Foreign State Preferences in Contracting

A Respondent whose principal place of business is outside the state of Florida must complete the remainder of the form, to be completed by an attorney who is licensed to practice law in that foreign state.

(Please select one)

- The Respondent’s principal place of business is in the State of _____ and it is my legal opinion that the laws of that state **do not grant a preference** in the letting of any or all public contracts to business entities whose principal places of business are in that state.
- The Respondent’s principal place of business is in the State of _____ and it is my legal opinion that the laws of that state **grant the following preference(s)** in the letting of any or all public contracts to business entities whose principal places of business are in that state: [Please describe applicable preference(s) and identify applicable state law(s)]

(Please select if applicable)

- The Respondent’s principal place of business is in the **political subdivision** of _____ and it is my legal opinion that the laws of that political subdivision **grant a preference** in the letting of any or all public contracts to business entities whose principal places of business are in that political subdivision.

RESPONDENT’S ATTORNEY	
Signature:	Phone #: () -
Name:	Address:
State of Licensure:	
Bar Number:	Date of Admission:

SECTION 9.00 – CERTIFICATION OF DRUG-FREE WORKPLACE

Preference shall be given to businesses with drugfree workplace programs. Whenever two or more bids, which are equal with respect to price, quality, and service, are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drugfree workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drugfree workplace program. In order to have a drugfree workplace program, a business shall:

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

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

(Signature)

(Type Name)

(Company Name)

(Address)

(City, State, Zip)

SECTION 10.00 – CLIENT REFERENCES FORM

The Respondent must provide a three (3) separate and verifiable Clients, for which work similar to that specified in this Solicitation has been performed. Information on each Client must be provided on the following pages; however, additional pages may be used as necessary.

If a Respondent has had a name change since the time work was performed for a listed reference, the name under which the Respondent operated at the time that the work was performed must be given, at the end of the project description for that reference.

NOTE: Period of Service dates must verify that the services have been ongoing for at least one (1) year.

Client #1:		
Name:		
Address:		
Contract Person:	Email Address:	
Phone Number:	Fax Number:	
Period of Services: <i>(dates must demonstrate at least one (1) continuous year of service)</i>	From:	To:
Approximate Contract Value:		
Brief description of services provided:		

Client #2:		
Name:		
Address:		
Contract Person:	Email Address:	
Phone Number:	Fax Number:	
Period of Services: <i>(dates must demonstrate at least one (1) continuous year of service)</i>	From:	To:
Approximate Contract Value:		
Brief description of services provided:		

Client #3:		
Name:		
Address:		
Contract Person:	Email Address:	
Phone Number:	Fax Number:	
Period of Services: <i>(dates must demonstrate at least one (1) continuous year of service)</i>	From:	To:
Approximate Contract Value:		
Brief description of services provided:		

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SECTION 11.00 – RESPONDENT / SUBCONTRACTOR OR (TEAM, IF NOT SUBCONTRACTOR) SUMMARY FORM

Section A	RESPONDENT IDENTIFICATION (to be completed by the Respondent.)
------------------	---

As Respondent to this Solicitation, I / we intend to utilize the following Team in connection with this project: In the spaces provided below, list the name of the Respondent/Subcontractor and indicate the Office of Supplier Diversity business category of each one listed.

	INDICATE THE ONE OFFICE OF SUPPLIER DIVERSITY CATEGORY THAT BEST DESCRIBES EACH ORGANIZATION LISTED																						
	STATE NON-MINORITY BUSINESS CLASSIFICATION					CERTIFIED MBE				NON-CERTIFIED MBE				NON-PROFIT ORG.									
	NON-MINORITY (A)	SMALL BUSINESS (STATE) (B)	SMALL BUSINESS (FEDERAL) (C)	GOVERNMENTAL AGENCY (D)	NON-PROFIT ORGANIZATION (F)	P.R.I.D.E. (G)	VETERAN BUSINESS ENTERPRISE (L)	AFRICAN AMERICAN (H)	HISPANIC (I)	ASIAN/HAWAIIAN (J)	NATIVE AMERICAN (K)	AMERICAN WOMAN (M)	VETERAN BUSINESS ENTERPRISE (W)	AFRICAN AMERICAN (N)	HISPANIC (O)	ASIAN/HAWAIIAN (P)	NATIVE AMERICAN (Q)	AMERICAN WOMAN * (R)	VETERAN BUSINESS ENTERPRISE (V)	BOARD IS 51% OR MORE MINORITY (S)	51% OR MORE MINORITY OFFICERS (T)	51% OR MORE MINORITY COMMUNITY SERVED (U)	OTHER NON-PROFIT (X)
LIST NAMES OF RESPONDENT(S)																							

Section B

ACKNOWLEDGEMENT (to be completed by the Respondent(s).)

I / WE HEREBY CERTIFY that, as Respondent to this Solicitation, that the information provided herein is true and correct.

Name of Respondent #1

Name of Respondent #2

Signature

Date

Signature

Date

Print Name/Title

Print Name/Title

*****IMPORTANT*****

BOTH SECTIONS OF THIS FORM MUST BE COMPLETED AND SECTION B MUST BE DATED AND BEAR THE RESPONDENT'S SIGNATURE FOR THIS FORM TO BE DEEMED RESPONSIVE.

Please review to ensure all sections are complete and the form is acknowledged correctly.

SECTION 12.00 – EVALUATION CRITERIA

(FOR DEP USE ONLY)

Respondent's Name: _____

	Maximum Raw Score Possible	Raw Score		Weight Factor		Maximum Points Possible
PART I – TECHNICAL REPLY						
Tab A. Solicitation Acknowledgement Form	0		X	0	=	0
Tab B. Technical Response						
1. Introduction ¹	4		X	1	=	4
2. Company Background ¹	4		X	1	=	4
3. Organizational Plan ¹	4		X	1	=	4
4. Project Approach ¹	4		X	1	=	4
5. Qualifications and Experience of Proposed Personnel ¹						
a) Past experience using the proposed cleanup methodology	4		X	4	=	16
b) Staff's past experience managing algal bloom cleanup technology	4		X	4	=	16
c) Knowledge and experience identifying and evaluating different methods to eliminate or control algal blooms in ways that are safe for the environment	4		X	4	=	16
d) Experience developing methods of controlling harmful algal blooms that comply with guidelines developed through the National Environmental Policy Act (NEPA)	4		X	4	=	16
6. Project Management ¹						
a) Expected timeframe needed to submit a written cost proposal with a cost estimate	4		X	4	=	16
b) Mobilization and demobilization timeframes and the expected timeframe for your organization to have an authorized designee execute a task assignment	4		X	4	=	16
c) List the deliverables that will be provided prior to invoicing	4		X	1	=	16
d) Description of how change orders are executed within your organization and the timeframes necessary to execute these change orders.	4		X	1	=	4
7. Project Communications ¹	4		X	5	=	20
8. Quality Assurance Methods ¹						
a) Description of how the Respondent will assure cleanup equipment is sufficient, ready, available and reliable	4		X	4	=	16
b) If chemical treatment is performed, description of how the chemical dosing will be monitored and adjusted for optimal efficiency and safety	4		X	1	=	4
c) Description of how equipment failures will be addressed	4		X	1	=	4
d) Provide information on how the disposal of any removed material will be documented	4		X	1	=	4
9. Health and Safety ¹	4		X	4	=	16
Tab C. Respondent/Subcontractor Summary Form (Section 11.00)	0		X	0	=	0
Tab D. Principal Place of Business	0		X	0	=	0
Tab E. State Project Plan	0		X	0	=	0

Tab F. Additional Documents						
Certification of Drug-Free Workplace, Section 9.00	0		X	0	=	0
Maximum Total Numerical Rating for Technical Reply:						196
PART II – PAST PERFORMANCE						
Tab G. Past Performance ³						
Client #1 (DEP, if applicable)	28		X	1	=	28
Client #2	28		X	1	=	28
Client #3	28		X	1	=	28
Maximum Total Numerical Rating for Past Performance:						84
Maximum Total Divided by 3 = Total Points Value for Past Performance						28
PART III – PRICE REPLY (PRICE POINTS WILL BE AWARDED SEPARATELY, BASED ON THE PRICE SUBMITTED PER DISTRICT IDENTIFIED ON THE RESPONSE FORM FOR BOTH SCENARIOS).						
Northwest District - (1) – Price Response – Original Contract Term²	40		X	1	=	40
Northwest District - (2) – Price Response – Renewal Contract Term²	20		X	1	=	20
Maximum Total Numerical Rating for Northwest District:						60
Northeast District - (1) – Price Response – Original Contract Term²	40		X	1	=	40
Northeast District - (2) – Price Response – Renewal Contract Term²	20		X	1	=	20
Maximum Total Numerical Rating for Northeast District						60
Southwest District - (1) – Price Response – Original Contract Term²	40		X	1	=	40
Southwest District - (2) – Price Response – Renewal Contract Term²	20		X	1	=	20
Maximum Total Numerical Rating for Southwest District						60
Central District - (1) – Price Response – Original Contract Term²	40		X	1	=	40
Central District - (2) – Price Response – Renewal Contract Term²	20		X	1	=	20
Maximum Total Numerical Rating for Central District						60
South District - (1) – Price Response – Original Contract Term²	40		X	1	=	40
South District - (2) – Price Response – Renewal Contract Term²	20		X	1	=	20
Maximum Total Numerical Rating for South District						60
Southeast District - (1) – Price Response – Original Contract Term²	40		X	1	=	40
Southeast District - (2) – Price Response – Renewal Contract Term²	20		X	1	=	20
Maximum Total Numerical Rating for Southeast District						60

Notes:

1. Evaluation points awarded for these components will be based on the following point structure:

Raw Score

0	=	This element of the evaluation criteria was not addressed .
1	=	This element of the evaluation criteria is unsatisfactory .
2	=	This element of the evaluation criteria is average .
3	=	This element of the evaluation criteria is above average .
4	=	This element of the evaluation criteria is superior .

2. The Respondent submitting the lowest total budget (LTB) will receive the maximum points for the cost element per District for the applicable Contract Term of the evaluation. The other Respondents' scores (PB) will be based on a relative percentage of the dollar amount higher than the lowest cost or price submitted by the lowest priced Respondent for each District. The formula used to determine the points awarded is:

(1) – Original Contract Term: Cost Points Awarded = (LTB) / Proposal Budget being Considered (PB) X 40

(2) – Renewal Contract Term: Cost Points Awarded = (LTB) / Proposal Budget being Considered (PB) X 20

3. References: Past performance will be scored based on answers to a standard group of questions (see Section 13.00) received from the Respondent's clients. In the event that the contact person for the reference cannot be reached following the specified number of attempts, the Respondent shall receive a score of zero (0) for this element of the evaluation.
4. Failure of the Respondent to provide any of the information required in the Technical Reply portion of the reply shall result in a score of zero (0) for that element of the evaluation.

Please notify the DEP Procurement Officer (see Section 1.02) at least ten (10) days prior to the due date for Responses if an accommodation because of a disability is required in order to participate in this procurement opportunity.

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SECTION 13.00 – EVALUATION OF PAST PERFORMANCE

(FOR DEP USE ONLY)

The following questions will be posed to the Client references the Respondent identified in the Reply. Answers will be scored according to the points specified for each of the below questions.

Name of the Reference: _____

Respondent's Name: _____

Date of Interview: _____

Person Conducting Interview: _____

Describe the work the Respondent performed for Respondent's company:

- 1. How well did the Contractor adhere to the agreed upon schedule?
Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points. _____
- 2. How would you rate the Respondent's quality of work?
Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points. _____
- 3. How would you rate the Respondent's use of adequate personnel in quantity, experience, and profession?
Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points. _____
- 4. How would you rate the Respondent's use of appropriate equipment and methods?
Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points. _____
- 5. How would you rate the Respondent's professionalism?
Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points. _____
- 6. How well did the Respondent communicate with the Project Manager?
Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points. _____
- 7. How well did the Respondent and staff interact with the public while completing the project?
Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points. _____

Total: _____

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SECTION 14.00 – PROPOSED CONTRACT

The proposed contract language contained below should be reviewed by all prospective Contractors. In responding to DEP Solicitation No.: 2018032, a prospective Contractor has agreed to accept the terms and conditions of the contract contained in this Section. The Department reserves the right to make modifications to this contract if it is deemed to be in the best interest of the Department or the State of Florida.

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CONTRACT NO. *Contract #*
BETWEEN
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
Contractor Name

THIS CONTRACT is entered into between the Department of Environmental Protection (Department), an agency of the State of Florida, and *Contractor Name Fill in the address of Contractor* (Contractor), a political subdivision, to provide Harmful Algal Bloom Management.

NOW, THEREFORE, the parties agree as follows:

SERVICES AND PERFORMANCE

1. SERVICES. Department does hereby retain, and Contractor agrees to provide Harmful Algal Bloom Management (services), in accordance with **Attachment A**, Scope of Work (Scope) and all exhibits and Attachments named and incorporated herein by reference. Contractor has been determined to be a vendor to the Department under this Contract.

2. WORK.

A. Contractor shall provide the services specified in the Scope (“Work”). Department shall authorize all work assignments by Task Assignment Notification Form (“TA”) or Task Assignment Change Order Form (“TACO”) (copies attached hereto and made a part hereof as Attachment C and D respectively).

B. Contractor, or its subcontractors if authorized under this Contract, shall not commence Work until the Contract, and any necessary Amendments or Change Orders, have been fully executed by both Department and Contractor. Contractor, or its subcontractors if authorized under this Contract, shall not commence Work until either 1) a TA/TACO has been fully executed, by both Department and Contractor, or 2) a PO or PO Change Order (“CO”) has been issued.

C. In the event services are required that are within the general description of services, but are not specifically set out in the Scope, Department and Contractor reserve the right to negotiate the Task Assignments covering performance of those required services.

D. There is no minimum amount of Work guaranteed as a result of this Contract. Any and all Work assigned will be at the sole discretion of the Department.

E. Department reserves the right to not authorize any Work, and may suspend or terminate for cause any Work assigned to Contractor under this or any other contract, if and in the event that the Department and Contractor (or any of its affiliates or authorized subcontractors) are adverse in any litigation, administrative proceeding or alternative dispute resolution, until such adverse relationship is resolved either by agreement or by final non-appealable order of a court.

3. STANDARD OF CARE FOR PERFORMANCE.

A. Contractor shall perform as an independent Contractor and not as an agent, representative, or employee of the Department.

B. Contractor shall perform the services in a proper and satisfactory manner as determined by the Department. Any and all such equipment, products or materials necessary to perform these services, or requirements as further stated herein, shall be supplied by the Contractor.

C. Contractor shall provide competent, suitably qualified personnel. Contractor must notify the Department’s Contract Manager of any changes in the personnel identified in this Contract. Notification shall

include a detailed explanation of the need to change personnel and the Contractor's documentation that proposed replacement personnel have equal or greater qualifications and experience.

D. Contractor shall perform the services in a manner consistent with that level of care and skill ordinarily exercised by other contractors performing the same or similar services under similar circumstances at the time performed.

4. TERM OF CONTRACT.

A. Initial Term. This Contract shall begin upon execution by both parties and shall remain in effect for a period of three (3) years, inclusive.

B. Renewal Term. An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

This Contract may be renewed, in writing, on the same terms and conditions as the original Contract and any amendments thereto, for a period no greater than the term above, or three (3) years, whichever is longer. All renewals are contingent upon satisfactory performance by Contractor. Renewals may be for the entire period or in increments.

This Contract may not be renewed.

COMPENSATION

5. COMPENSATION.

A. As consideration for the services rendered by Contractor under the terms of this Contract, the Department shall pay the Contractor on a fixed price/cost reimbursement basis up to a maximum of \$ *insert amount* for the completion of Work as specified in the Scope.

B. Contractor shall not be compensated for services performed prior to execution of this Contract, nor for services that exceed the funding amount specified herein or in any amendment to this Contract.

6. ANNUAL APPROPRIATION. Department's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Florida Legislature. Authorization for continuation and completion of Work and payment associated therewith may be rescinded with proper notice at the discretion of the Department if state or federal appropriations are reduced or eliminated.

7. PAYMENT METHOD.

A. Contractor shall submit invoices as specified in the Scope.

B. All invoices submitted must be sufficient detail for a proper pre-audit and post-audit review.

C. Department must approve the final deliverable(s) before the Contractor may submit final invoice and any forms.

D. Each invoice, including appropriate supporting documentation as required herein, shall be submitted via email to the following:

Florida Department of Environmental Protection

Insert Program Area name

Attn: *insert*

Email address: *insert*

E. Contractor shall submit invoices to the Department within thirty (30) days after the date of the Department's written approval of each interim deliverable or the final deliverable specified in the Scope. Contractor's failure to submit invoices within this timeframe may result in **forfeiture** of retainage, if applicable,

suspension or termination of remaining work, or the Contractor's **forfeiture** of any unpaid balance for such deliverables.

8. INVOICING REQUIREMENTS FOR COST REIMBURSEMENT CONTRACTS. The following provisions apply to any cost reimbursement payments. The State of Florida Department of Financial Services (DFS) requires detailed supporting documentation of all costs under a cost reimbursement contract. Contractor shall comply with the minimum **Contract Payment Requirements** (attached hereto and made a part hereof as **Attachment F**). Invoices shall be accompanied by supporting documentation and other requirements as follows:

A. Equipment – (Capital outlay \$1,000 or more in value) – Reimbursement for the purchase of non-expendable equipment costing \$1,000 or more is not authorized.

B. Rental/Lease of Equipment – Include copies of invoices or receipts to document charges.

C. Handling Fee – No markups or handling fees (fixed or percentage) will be allowed on subcontracted work or purchased equipment.

D. Other Expenses – For example, materials, supplies, non-excluded phone expenses, reproduction, mailing, and other expenses must be documented by itemizing and including copies of receipts or invoices. Additionally, the Department shall not reimburse any of the following types of charges: cell phone usage, attorney's fees, civil or administrative penalties, or handling fees, such as set percent overages associated with purchasing supplies or equipment.

9. TRAVEL. An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

Travel is not authorized under this Contract.

Travel costs are included in the fixed cost amounts of this Contract.

Travel costs shall be paid on a cost-reimbursement basis in accordance with the paragraph contained herein of this Contract.

10. PROMPT PAYMENT.

A. Department's Contract Manager shall have five (5) business days, unless a greater period is specified herein, to inspect and approve an invoice. Department shall submit a request for payment to DFS within twenty (20) business days; and DFS shall issue a warrant within ten (10) business days thereafter. Days are calculated from the latter of the date the invoice is received or services received, inspected, and approved. Invoice payment requirements do not start until a proper and correct invoice has been received. Invoices which have to be returned to the Contractor for correction(s) will result in an uncompensated delay in payment. A Vendor Ombudsman has been established within DFS who may be contacted if a Contractor is experiencing problems in obtaining timely payment(s) from a State agency. The Vendor Ombudsman may be contacted at (850) 413-5516, per Section 215.422, F.S.

B. If a warrant in payment of an invoice is not issued within forty (40) business days after receipt of a correct invoice and receipt, inspection, and approval of the goods and services, the Department shall pay the Contractor interest at a rate as established by Section 55.03(1), F.S., on the unpaid balance of the invoice. Interest payments of less than \$1 will not be issued unless Contractor requests such payment. The interest rate for each calendar year for which the term of this Contract is in effect can be obtained from DFS' Vendor Ombudsman at the telephone numbers provided above, or the Department's Procurements Section at (850) 245-2361, per Section 215.422, F.S.

11. RELEASE OF CLAIMS. Upon payment for satisfactory completion of any portion of the Work, the Contractor shall execute and deliver to the Department a release of all claims against the Department arising under, or by virtue of, the Work, except claims which are specifically exempted by the Contractor to be set forth therein (**Contractor Release**, using **Attachment G**, - Contractor Affidavit/Release of Claims). Receipt by the

Department of the Contractor's Release is a condition of final payment under this Contract. Unless otherwise provided in this Contract, by State law or otherwise expressly agreed to by the parties to this Contract, final payment or settlement upon termination of this Contract shall not constitute a release or waiver of the Department's claims against the Contractor, or the Contractor's sureties, subcontractors, successors or assigns under this Contract or as against applicable performance and payment bonds.

12. PHYSICAL ACCESS AND INSPECTION. As applicable, the Department personnel shall be given access to and may observe and inspect Work being performed under this Contract, including by any of the following methods:

A. Contractor shall provide access to any location or facility on which the Contractor is performing Work, or storing or staging equipment, materials or documents;

B. Contractor shall permit inspection of any facility, equipment, practices, or operations required in performance of any Work; and,

C. Contractor shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any Work or legal requirements.

PARTY REPRESENTATIVES

13. NOTICE. All notices and written communication between the parties shall be sent by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient.

14. IDENTIFICATION OF CONTRACT MANAGERS. All matters shall be directed to the Contract Managers for appropriate action or disposition. Any changes to the Contract Manager information identified below must be noticed, in writing, to the other party within ten (10) calendar days of the change. Either party may provide notice to the other party by email identifying a change of a designated Contract Manager and providing the new contact information for the newly designated Contract Manager. Such notice is sufficient to effectuate this change without requiring a written amendment to the Contract. Department and the Contractor Contract Managers and contact information are provided below:

<u>Contractor</u>	<u>Department</u>
<i>Contractor Name</i>	Department of Environmental Protection
«Contractor_Address»	XXXX Program
«City», «State» «Zip»	XXXX, MS# XXXX
Attn: «Contractor_Contract_Mgr»	Tallahassee, Florida 32399-XXXX
Phone Number: «Contractor_Phone_Number»	Attn: XXXX
Email: «Contractor_Email»	Phone Number: (850) 245-XXXX
	Email: XXXX

15. CHANGE ORDERS AND AMENDMENTS. Department may at any time, by written order designated to be a Change Order, make any change in the Work within the general scope of this Contract (e.g., specifications, method or manner of performance, requirements, etc.). All Change Orders are subject to the mutual agreement of both parties as evidenced in writing. Any change which causes an increase or decrease in Contractor's cost or time shall require an appropriate adjustment and modification by Amendment to this Contract. Following execution of this Contract, any future Amendments or Change Orders may be executed by the Department representative with appropriate delegated authority.

CONSEQUENCES FOR FAILURE TO PERFORM

16. DISPUTE RESOLUTION. Any dispute concerning performance of the Contract shall be decided as follows:

A. All claims or disputes (Claims) must be presented to the Department in writing within thirty (30) days of the date such Claim arises (Notice of Dispute). The Notice of Dispute shall set out in detail all aspects of the disputed matters to be resolved, including the specific relief sought by the Contractor. Claims not presented by Notice of Dispute to Contract Manager shall be deemed waived by the Contractor.

B. The parties shall make a good faith attempt to resolve Claims which may arise from time to time by informal conference within ten (10) days of the Notice of Dispute.

C. Within ten (10) days of the informal conference, the Department shall provide Contractor a detailed written response to the Claim. A formal conference of the parties shall be convened no later than thirty (30) days following the Department's response to the Notice of Dispute, unless the parties mutually agree in writing to a longer period of time within which to schedule a formal conference.

1) All persons necessary to resolution of the claim or disputed matter shall attend the formal conference.

2) Minutes of the formal conference shall be taken, recorded, transcribed, and signed by the Department and the Contractor. Any terms of settlement and/or resolution reached shall be signed by all persons authorized to resolve the Claim.

D. Either party may request mediation of unresolved Claims, with the party seeking mediation to bear the expense of mediation.

E. Any Claim not resolved at formal conference or mediation, may be the subject of a complaint filed in a court of competent jurisdiction in Leon County, Florida.

17. FINANCIAL CONSEQUENCES FOR UNSATISFACTORY PERFORMANCE.

A. No payment will be made for deliverables deemed unsatisfactory by the Department. In the event that a deliverable is deemed unsatisfactory by the Department, the Contractor shall re-perform the services needed for submittal of a satisfactory deliverable, at no additional cost to Department, upon being notified of the unsatisfactory deliverable.

B. If a satisfactory deliverable is not submitted within the specified time frame, the Department may, in its sole discretion: 1) assess liquidated damages if specified in the Contract or its attachments; 2) request from the Contractor agreement to a reduction in the amount payable; 3) suspend all Work until satisfactory performance is achieved, or 4) terminate the Contract for failure to perform, or assign to another vendor.

18. CORRECTIVE ACTION PLAN. In the event that deliverables are unsatisfactory or are not submitted within the specified timeframe, the Department Contract Manager may, by letter specifying the failure of performance under the Contract, request that a proposed Corrective Action Plan (**CAP**) be submitted by the Contractor to the Department. All CAPs must be able to be implemented and performed in no more than sixty (60) days.

A. A CAP shall be submitted within ten (10) calendar days of the date of the letter request from the Department. The CAP shall be sent to the Department Contract Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Contractor in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Contractor shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of the Contract for cause as authorized in the Contract.

B. Upon the Department's notice of acceptance of a proposed CAP, the Contractor shall have ten (10) calendar days, or longer if specified in the approved CAP, to commence implementation of the accepted plan.

Acceptance of the proposed CAP by the Department does not relieve the Contractor of any of its obligations under the Contract. In the event the CAP fails to correct or eliminate performance deficiencies by the Contractor, the Department shall retain the right to require additional or further remedial steps, or to terminate the Contract for failure to perform. No actions approved by the Department or steps taken by the Contractor shall estop the Department from subsequently asserting any deficiencies in performance. Contractor shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Contract Manager.

C. Failure to respond to a Department request for a CAP shall result in suspension or termination of the Contract.

19. PAYMENT AND PERFORMANCE BONDS. An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- No Payment or Performance bonds are required.
- Contractor shall provide executed Payment and Performance Bonds naming the Department as obligee, issued by a surety acceptable to the Department, in the amount(s) of \$ *insert amount*.
- Contractor may be required to provide executed Payment and/or Performance Bonds naming the Department as obligee, issued by a surety acceptable to the Department, in an amount of up to one hundred and twenty percent (120%) of the total anticipated cost of any Work.

20. Liquidated Damages. An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- No liquidated damages will be assessed.
- In addition to other remedies elsewhere in this Contract, and as provided by law, unless otherwise stipulated in the Scope, the Contractor hereby covenants and agrees to pay liquidated damages to the Department as follows:
 - A. Contractor acknowledges that time is of the essence for all services provided under this Contract, and whereas the actual damages to be suffered by late performance are incapable of accurate calculation, the parties agree to the following as a reasonable estimation thereof as liquidated damages. In addition to any other provisions of this Contract, in the event that the deliverable identified in the Scope, is not completed and submitted by the close of business on the date the deliverable is due, the compensation amount stated for that portion of the Work may be reduced by ten percent (10%) per day for each day the deliverable is late as indicated in the scope of work, with the total amount of the liquidated damages not to exceed the total compensation amount of the Scope deliverable.
 - B. The date of submission shall be the date of receipt by the Department.
 - C. If no Department receipt date appears or the date is illegible, the date of submission shall be deemed to be five (5) days prior to receipt by the Contract Manager.
 - D. If completion is or will be justifiably delayed due to reasons as set out in paragraph contained herein, the Department may grant an extension of time as evidenced by a properly executed Amendment.
 - E. If the deliverable(s) fail to comply with the requirements of this Contract, or if questions arise from review and the Contractor is so notified and requested to respond, the Contractor shall furnish the required additions, deletions, or revisions in accordance with the Scope at no additional cost to the Department.
 - F. If the additions, deletions, and revisions are not submitted to the Department's Contract Manager in accordance with the Scope, the compensation stated for that portion of the Work may be reduced

by ten percent (10%) for each day that the requested deliverable is late, as specified. The total reduction shall not exceed the total amount of the Work.

- G. Contractor's failure to respond to a request to correct the deliverables will result in termination of the Work and **forfeiture** of any unpaid balance for such deliverables. Additionally, the Department, at its discretion, may re-assign future Work.

LIABILITY

21. INSURANCE.

A. Required Coverage. At all times during the Contract the Contractor, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. 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 licensed and authorized to issue policies in Florida, or alternatively, Contractor may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Contract may be required elsewhere in this Contract, however the minimum insurance requirements applicable to this Contract are:

- i. Commercial General Liability Insurance. The Contractor shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Contract. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$200,000 each individual's claim and \$300,000 each occurrence.
- ii. Workers' Compensation and Employer's Liability Coverage. The Contractor shall provide workers' compensation, in accordance with Chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Contract.
- iii. Commercial Automobile Insurance. If the Contractor's duties include the use of a commercial vehicle, the Contractor shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department of Environmental Protection, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:
 - \$300,000 Automobile Liability Combined Single Limit for Company-Owned Vehicles, if applicable
 - \$300,000 Hired and Non-owned Automobile Liability Coverage
- iv. Other Insurance. Additional insurance may be required by federal law, where applicable, if any work proceeds over or adjacent to water, including but not limited to Jones Act, Longshoreman's and Harbor Worker's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits of not less than \$300,000 each. Questions concerning required coverage should be directed to the U.S. Department of Labor (<http://www.dol.gov/owcp/dlhwc/lcontac.htm>) or to the parties' insurance carrier.

B. Insurance Requirements for Sub-Contractors. Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract, regardless of whether the Department has approved such subcontract or subcontractor. Contractor shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under any subcontract. Any subcontracts made under or in performance of this Contract must include the same conditions specified in this Contract, with the exception of insurance requirements (paragraph

contained herein), and shall include a release of any rights, claims or liabilities against the Department. The level of insurance to be carried by subcontractors performing work under this Contract shall be at the discretion of Contractor.

C. Exceptions to Additional Insured Requirements. If the Contractor's insurance is provided through an insurance trust, the Contractor shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Contract requires them to be added as an additional insured. Further, notwithstanding the requirements above, if Contractor is self-insured, then the Department of Environmental Protection, its employees, and officers do not need to be listed as additional insureds.

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

E. Proof of Insurance. Upon execution of this Contract, the Contractor shall provide the Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Contract. Upon receipt of written request from the Department, the Contractor shall furnish the Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.

F. Failure to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, the Contractor shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) calendar days after the cancellation of coverage.

22. INDEMNIFICATION.

A. Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors, if authorized under this Contract, and shall fully indemnify, defend, and hold harmless the State of Florida, the Department, and the State of Florida Board of Trustees of the Internal Improvement Trust Fund, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Contractor, its agents, employees, partners, or subcontractors, if authorized under this Contract, 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 of Florida, the Department, and the State of Florida Board of Trustees of the Internal Improvement Trust Fund.

B. Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Department 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 the Department's misuse or modification of the Contractor's products or the Department's operation or use of the Contractor's products in a manner not contemplated by this Contract. 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 Department 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 Department the right to continue using the product, the Contractor shall remove the product and refund the Department the amounts paid in excess of a reasonable rental for past use. Department shall not be liable for any royalties.

C. The Contractor's obligations under the preceding two (2) paragraphs with respect to any legal action are contingent upon the State or the Department giving Contractor 1) written notice of any action or threatened

action, 2) the opportunity to take over and settle or defend any such action at the Contractor's sole expense, and 3) assistance in defending the action at the Contractor's sole expense.

THIRD PARTIES

23. SUBCONTRACTING. An "X" beside the correct provision in this section signifies that the provision is applicable to the Contract.

- Contractor shall not subcontract any work under this Contract.
- A. Contractor shall not subcontract any work under this Contract without the prior written consent of the Department's Contract Manager. Department reserves the right to reject any proposed subcontractor based upon the Department's prior experience with subcontractor, subcontractor's reputation, or the Department's lack of adequate assurance of performance by subcontractor. Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract.
- B. Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract, regardless of whether the Department has approved such subcontract or subcontractor. Contractor shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under any subcontract. Any subcontracts made under or in performance of this Contract must include the same conditions specified in this Contract, with the exception of insurance requirements (paragraph contained herein), and shall include a release of any rights, claims or liabilities against the Department. The level of insurance to be carried by subcontractors performing work under this Contract shall be at the discretion of Contractor.

24. NONASSIGNABILITY. Contractor shall not sell, assign or transfer any of its rights, duties or obligations under this Contract (its **Rights and Duties**), without the prior written consent of the Department. Contractor shall remain liable for performance of its Rights and Duties, regardless of any assignment to or assumption by any third party, notwithstanding any approval thereof by the Department. However, the Department may expressly release the Contractor from any and all Rights and Duties through a novation accompanying an approved assignment. Department may assign the Department's Rights and Duties, but shall give prior written notice of its intent to do so to the Contractor. The foregoing notwithstanding, the Contractor hereby assigns to the State any and all claims it has with respect to the Contract under the antitrust laws of the United States and the State.

25. THIRD PARTY BENEFICIARIES. This Contract is neither intended nor shall it be construed to grant any rights, privileges or interest in any third party without the mutual written agreement of the parties hereto.

SUSPENSION AND TERMINATION

26. SUSPENSION.

A. Department may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work for failure to perform, or as otherwise specified herein, such period of time as the Department may determine to be appropriate for any of the following reasons:

- 1.) Contractor fails to timely and properly correct deficiencies in or performs unsatisfactory work;
- 2.) Contractor's or subcontractor's, if authorized under this Contract, insurer or surety notifies the Department that any of its required insurance or bonds has lapsed or will lapse, and the Contractor fails to provide replacement insurance or bonds acceptable to the Department before the insurance or bond cancellation or termination date;

3.) Contractor or subcontractor, if authorized under this Contract, materially violates safety laws or other constraints;

4.) Department determines that there is a threat to the public health, safety or welfare that necessitates such suspension; or

5.) For the convenience of the Department.

B. If the performance of all or any part of the Work is suspended, delayed or interrupted for an unreasonable period of time by an act of the Department in administration of the Work, or by the Department's failure to act within a reasonable time to review or approve an invoice, the Department shall provide an equitable extension of the time allowed to complete the Work and modify the Scope accordingly. However, no adjustment shall be made under this clause for any suspension, delay or interruption if and to the extent that:

1.) Performance would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or

2.) Equitable adjustment is provided for (or excluded) under any other provision of this Contract.

C. Contractor shall not be compensated for Work performed subsequent to a notice of suspension by Department.

27. TERMINATION.

A. Department may terminate this Contract at any time for cause, in the event of the failure of the Contractor to fulfill any of its obligations. Prior to termination, the Department shall provide ten (10) calendar days written notice of its intent to terminate for cause, including the reasons for such, and shall provide the Contractor an opportunity to consult with the Department regarding the reason(s) for termination. Contractor may be afforded the possibility of curing any default at the sole discretion of the Department.

B. The Department may terminate this Contract without cause and for its convenience by giving thirty (30) calendar days written notice to the Contractor. Termination for convenience shall not entitle either party to any indirect, special or resulting damages, lost profits, costs or penalties, and the Contractor shall be entitled only to recover those amounts earned by it for authorized deliverables completed up to the date of termination (or as may be agreed to in writing by the Department for completion of all or any portion of the Work in process).

SPECIAL CONDITIONS

28. ADDITIONAL QUANTITIES. For a period not exceeding the term of this contract, the Department reserves the right to acquire additional quantities on an as-needed basis, depending on the availability of funds, at the same unit price(s), terms and conditions.

NOTE: This section supersedes Section 6.00, General Contract Conditions (PUR-1000), Paragraph 5, Additional Quantities.

29. ADDITIONS / DELETIONS. During the term of the contract resulting from this bid, the Department shall have the right to make product changes that result in additions, deletions, or revisions to awarded items / services. Specifications and prices of items added or revised must be agreed upon in writing by both the Department and Contractor. Prices of added or revised items shall be mutually agreed upon by the Department and Contractor.

30. DISCLOSURE OF LITIGATION. The contractor shall promptly notify the Department of any criminal litigation, investigations or proceedings which arise during the term involving the contractor, or, to the extent the contractor is aware, any of the contractor's subcontractors or any of the foregoing entities' then-current officers or directors. In addition, the contractor shall promptly notify the Department of any civil litigation, arbitration or proceeding which arises during the term of the contract and extensions thereto, to which the contractor (or, to the extent the contractor is aware, any Subcontractor hereunder) is a party, and which involves:

A claim or written allegation of fraud against the contractor or, to the extent the contractor is aware, any subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. All notices under this section must be provided to the Department within thirty (30) business days following the date on which the contractor first becomes aware of any such litigation, investigation, arbitration or other proceeding (collectively, a Proceeding). Details of settlements, which are prevented from disclosure by the terms of the settlement, may be annotated as such.

GENERAL CONDITIONS

31. ATTORNEY'S FEES. In the event of any legal action to enforce the terms of this Contract, each party shall bear its own attorney's fees and costs.

32. CONFLICT OF INTEREST. Contractor covenants and warrants that it presently has no interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance of this Contract or the Services required hereunder.

33. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all applicable federal, state and local rules and regulations in providing services to the Department under this Contract including, but not limited to, local health and safety rules and regulations. This provision shall be included in all subcontracts issued as a result of this Contract.

34. DISQUALIFICATION.

A. The employment of unauthorized aliens by the Contractor/vendor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Contract. Contractor shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Contract.

B. Contractor is required to use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees used by the Contractor under this Contract, pursuant to State of Florida Executive Order No.: 11-116. Also, the Contractor shall include in related subcontracts, if authorized under this Contract, a requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify employment eligibility of all employees used by the subcontractor for the performance of the Work.

35. EXECUTION IN COUNTERPARTS. This Contract, and any Change Orders or Amendments thereto, may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

36. FORCE MAJEURE. 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, subcontractors or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, hurricanes, 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 Department in writing of the delay or potential delay and describe the cause of the delay either 1) within five (5) 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 ten (10) 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 by the Contractor against the Department. Contractor shall not be entitled to an increase in the price or payment of any kind from the Department 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 Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to the Department, in which case the Department may 1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to the Department 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.

37. FORUM SELECTION, SEVERABILITY, AND CHOICE OF LAW. This Contract has been delivered in the State of Florida and shall be construed in accordance with substantive and procedural laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action in connection with this Contract shall be brought in a court of competent jurisdiction located in Leon County, Florida.

38. GOVERNMENTAL RESTRICTIONS. If the Contractor believes that any governmental restrictions require alteration of the material, quality, workmanship or performance of the products offered under this Contract, the Contractor shall immediately notify the Department so in writing, identifying the specific restriction and alteration. Department reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Department. Contractor's failure to timely notify the Department of its asserted belief shall constitute a waiver of such claim.

39. HEADINGS. The headings contained herein are for convenience only, do not constitute a part of this Contract and shall not be deemed to limit or affect any of the provisions hereof.

40. INTEGRATION. This Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Department and the Contractor. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Contract, unless otherwise provided herein. No oral agreements or representations shall be valid or binding upon the Department or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Department. Contractor may not unilaterally modify the terms of this 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. Department'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.

41. INTERPRETATION OF CONTRACT.

A. Where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation

referred to; unless otherwise indicated references to Rules are to the adopted rules in the Florida Administrative Code; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; unless otherwise indicated references to sections, appendices or schedules are to this Contract; words such as "herein," "hereof" and "hereunder" shall refer to the entire document in which they are contained and not to any particular provision or section; words not otherwise defined which have well-known technical or construction industry meanings, are used in accordance with such recognized meanings; references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein shall include each other gender where appropriate.

B. Contractor acknowledges and agrees that it has independently reviewed this Contract with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the terms. Accordingly, if an ambiguity in (or dispute regarding the interpretation of) this Contract shall arise, the Contract shall not be interpreted or construed against the Department, and, instead, other rules of interpretation and construction shall be used. Contractor further acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Response, to review the terms and conditions of this Contract and to bring to the attention of the Department any conflicts or ambiguities contained therein.

42. MODIFICATIONS REQUIRED BY LAW. Department reserves the right to revise this Contract to include additional language required by Federal agency(ies) or other sources awarding funding to the Department in support of this Contract, if applicable, and to include changes required by Florida Administrative Code rule changes.

43. ELIGIBLE USERS.

A. Other State of Florida Governmental entities may purchase from this Contract, provided such use of the Contract has been determined to be cost effective by the Entity and in the best interest of the State.

B. The Contractor has the option of selling the commodities or services described under this Contract to other State of Florida governmental entities at the Contractor's discretion.

C. Eligible users of this Contract include other State of Florida Agencies (including members of the State University System and Community College System), Water Management Districts, Counties, Local County Boards of Public Institution, Municipalities, and other local public agencies or authorities.

D. The general terms and conditions of this Contract shall apply to the services procured by other State of Florida governmental entities referencing this Contract.

E. Funding mechanisms/work assignments must be executed in advance of work performed for another State of Florida governmental entity. The governmental entity shall utilize appropriate funding mechanisms (purchase orders, etc.) to authorize performance by the Contractor.

F. All work performed under a funding mechanism executed by another State of Florida governmental entity shall be the responsibility of the governmental entity for payment. The Department shall not be responsible for payment of any services performed under this section of the Contract.

G. This Contract shall only be used by other governmental entities in accordance with the Eligible Users' Scope of Services Section, in Attachment A Statement of Work.

H. Contract/Project Managers shall be identified for each work assignment executed between the Contractor and another governmental entity. The Department's Contract/Project Manager shall not be responsible for any work performed under this section of the Contract.

44. MYFLORIDAMARKETPLACE TRANSACTION FEE.

A. The State of Florida through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide e-procurement system. Pursuant to Section 287.057(22)(c), F.S. (2015), all

payments shall be assessed a Transaction Fee which the Contractor shall pay the State unless exempt pursuant to Rule 60A-1.032, Florida Administrative Code (F.A.C.).

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

C. Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) is/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, returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of this Contract.

D. Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering re-procurement costs from the Contractor in addition to all outstanding fees. CONTRACTORS THAT ARE DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

45. NONDISCRIMINATION.

A. Contractor certifies that no person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Contract.

B. Contractor certifies that neither it nor any affiliate is or has been placed on the discriminatory vendor list. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, if authorized under this Contract, or consultant under contract with any public entity, and may not transact business with any public entity. The Florida Department of Management Services ("DMS") is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity at (850) 487-0915.

C. Contractor shall comply with the Americans with Disabilities Act.

46. NON-SOLICITATION. Contractor covenants and warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.

47. NON-WAIVER OF RIGHTS. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other party under this Contract, shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.

48. ORDER OF PRECEDENCE. In the event of a conflict in terms between any of the components of this Contract, the order of precedence for resolving such conflict shall be as follows (1 being the highest precedence):

1. Body of this Contract;
2. Scope;
3. All other attachments to this Contract;
4. Documents, agreements and exhibits incorporated herein by reference;

5. Solicitation, including all attachments, addenda, and questions and answers; and
6. Contractor's Response to the Solicitation.

49. OWNERSHIP OF DOCUMENTS. All plans, specifications, maps, computer files, databases and/or reports prepared or obtained under this Contract, as well as data collected together with summaries and charts derived therefrom, shall be considered works made for hire and shall be and become the property of the Department upon completion or termination of this Contract, without restriction or limitation on their use, and shall be made available upon request to the Department at any time during the performance of such services and/or upon completion or termination of this Contract. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, F.S. Contractor shall not copyright any material and products or patent any invention developed under this Contract.

50. P.R.I.D.E. When possible, the Contractor agrees that any articles which are the subject of, or required to carry out, this Contract shall be purchased from P.R.I.D.E. as specified in Chapter 946, F.S., if available, in the same manner and under the same procedures set forth in Section 946.515(2) and (4), F.S.; and for purposes of this Contract the person, firm or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for this agency insofar as dealings with P.R.I.D.E. are concerned.

The "Corporation identified" is PRISON REHABILITATIVE INDUSTRIES AND DIVERSIFIED ENTERPRISES, INC. (P.R.I.D.E.) which may be contacted at:

P.R.I.D.E.
12425 28th Street, North
St. Petersburg, Florida 33716-1826
Toll Free: 1-800-643-8459
Website: <http://www.pride-enterprises.org/>

51. PUBLIC ENTITY CRIMES. A person or affiliate (as defined) who has been placed on the convicted vendor list following a conviction for a public entity crime may not perform work as a contractor, supplier, subcontractor, if authorized under this Contract, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount for Category Two (as defined in Section 287.017, F.S.), for a period of 36 months from the date of being placed on the convicted vendor list, pursuant to Section 287.133, F.S. Contractor certifies that neither it nor any affiliate has been placed on such convicted vendor list, and shall notify the Department within five (5) days of its, or any of its affiliate's, placement thereon.

52. PUBLIC RECORDS. Public Records Requirements (**Attachment H**), as attached to this Contract, are hereby incorporated into the Contract.

53. RECORD KEEPING AND AUDIT.

A. Contractor shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with United States generally accepted accounting principles (**US GAAP**) consistently applied. Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for five (5) years following Contract completion or termination. In the event any work is subcontracted, the Contractor shall similarly require each subcontractor, if authorized under this Contract, to maintain and allow access to such records for audit purposes.

B. The Contractor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Department's Inspector General in any investigation, audit, inspection, review, or hearing. The Contractor will comply with this duty and ensure that its subcontracts, issued under this Contract, if any, impose this requirement, in writing, on its subcontractors, if authorized under this Contract.

54. REMEDIES. All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the Department, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Department shall be entitled to injunctive and other equitable relief, including, but not limited to, specific performance, to prevent a breach, continued breach or threatened breach of this Contract. No remedy or election hereunder shall be deemed exclusive. A failure to exercise or a delay in exercising, on the part of the Department, any right, remedy, power or privilege hereunder shall not operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

55. RESPECT OF FLORIDA. When possible, the Contractor agrees 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, F.S., in the same manner and under the same procedures set forth in Section 413.036(1) and (2), F.S.; and for purposes of this Contract the person, firm, or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for the state agency insofar as dealing with such qualified nonprofit agency is concerned.

The "nonprofit agency" identified is RESPECT of Florida which may be contacted at:

RESPECT of Florida.
2475 Apalachee Parkway, Suite 205
Tallahassee, Florida 32301-4946
(850) 487-1471
Website: www.respectofflorida.org

56. SCRUTINIZED COMPANIES.

A. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Contract at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Contract.

B. If this Contract is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Contract at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Contract.

C. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

57. TAX EXEMPTION. Contractor recognizes that the Department is an agency of the State of Florida, which by virtue of its sovereignty is not required to pay any taxes on the services or goods purchased under the terms of this Contract. Department does not pay Federal excise or sales taxes on direct purchases of tangible personal property. Department will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages.

58. WARRANTY OF ABILITY TO PERFORM. 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. 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. Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of this Contract and any renewals.

59. WARRANTY OF AUTHORITY. Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective party to this Contract.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed, the day and year last written below.

Contractor Name

Florida Department of Environmental Protection

By: _____

By: _____

Date: _____

Date: _____

FEID No. «FEID»

List of attachments/exhibits included as part of this Contract:

Specify Type /

Letter Description

- Attachment A Statement of Work (___ pages)
- Attachment B Rate Schedule (_____ pages)
- Attachment C Task Assignment Notification Form (1 page)
- Attachment D Task Assignment Change Order Form (1 page)
- Attachment E Contract Payment Requirements (1 page)
- Attachment F Contractor Affidavit / Release of Claim Form (1 page)
- Attachment G Public Records Requirement (1 page)
- Attachment H Liquidated Damages Assessment Form (1 page)
- Attachment I General Contract Conditions (PUR 1000)

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ATTACHMENT A
STATEMENT OF WORK

(To be inserted after award.)

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-

ATTACHMENT B

RATE SCHEDULE

(To be inserted after award.)

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ATTACHMENT D – TASK ASSIGNMENT CHANGE ORDER FORM

DEP CONTRACT NO. _____

(IF APPLICABLE)

Task Assignment Number: _____ Date: _____ Change Order No. _____

Contractor Name: _____

Contractor Contract Manager: _____ Phone: _____

DEP Contract Manager: _____ Phone: _____

Description of Change (Use Additional Sheets if necessary):

CHANGE IN TASK AMOUNT

<u>Item</u>	<u>Fee Schedule</u>	<u>Cost Reimbursement</u>	<u>Total</u>
--------------------	----------------------------	----------------------------------	---------------------

Original Task Amount: _____

Task Amount Prior to this Change Order: _____

Net Increase/Decrease in Task Amount: _____

Task Amount with all Change Orders: _____

CHANGE IN TASK TIME

Original Task Completion Date: _____

Completion Date Prior to This Change: _____

Net Increase/Decrease in Task Period: _____

Completion Date with all Change Orders: _____

CONTRACTOR

FLORIDA DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Contract Manager	Date	Contract Manager	Date
------------------	------	------------------	------

APPROVED:

Cost Center Administrator Date

cc: DEP Procurement Section (MS93), Bureau of Finance and Accounting (MS78) – 2 copies

ATTACHMENT E – CONTRACT PAYMENT REQUIREMENTS

Florida Department of Financial Services, Reference Guide for State Expenditures

Cost Reimbursement Contracts (IF APPLICABLE)

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.) Supporting documentation must be provided for each amount for which reimbursement is being claimed indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved contract budget should be reimbursed.

Listed below are examples of types of documentation representing the minimum requirements:

- (1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.
- (2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.
- (3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.
- (4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.
- (5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.
- (6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

The Florida Department of Financial Services, Reference Guide to State Expenditures (January, 2005) can be found at the following web address: <http://www.fldfs.com/aadir/reference%5Fguide/>.

ATTACHMENT F

CONTRACTOR AFFIDAVIT / RELEASE OF CLAIMS FORM (IF APPLICABLE)

This affidavit must be completed and signed by the Contractor when requesting final payment for a Florida Department of Environmental Protection (Department) authorized Task Assignment. The signature of the Contractor shall be notarized as set forth below. Final payment for a Task Assignment will not be released until this form is accepted by the Department.

The undersigned certifies as follows:

1. I, _____ am the _____ of
(name of person appearing) (title of person appearing)
_____ with the authority to
(name of Contractor)

make this statement on behalf;

2. _____ ("the Contractor") entered into an
(name of company or person)
Agreement with the Department to perform certain work under Task Assignment No. _____.

3. Contractor has completed the work in accordance with the aforementioned Work Assignment, including all attachments. Thereto.

4. All subcontractors, if authorized under this Contract, have been paid in full.

5. Upon receipt by Contractor from Department of final payment under the aforementioned Work Assignment, Contractor releases Department from any and all claims of Contractor and any of its subcontractors, if authorized under this Contract and vendors that may arise under, or by virtue of, the Task Assignment, except those claims that may be specifically exempt and set forth under the terms of this Contract. Exemptions claimed must be attached to this affidavit and reference the Task Assignment number. Any exemptions not attached are waived.

(signature of authorized Contractor representative)

----- **Notarization of Signature of Contractor (required)** -----

State of _____ County of _____

Sworn to and subscribed before me by _____ this _____ day of _____, 20____.

Personally known

Produced Identification. Type of ID: _____

(Notary's Signature) My Commission Expires: _____

Notary Public, State of _____ Commission Number (if applicable) _____

ATTACHMENT G

PUBLIC RECORDS REQUIREMENTS

A. Public Records Access Requirements.

- a. If the Contract exceeds \$35,000.00, and if the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or Section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access to Public Records as required by law.

B. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

If the Contractor is a "contractor" as defined in Section 119.0701(1)(a), F.S., the Contractor shall:

- (1) Keep and maintain Public Records required by the Department to perform the service.
- (2) Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (3) A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under Section 119.10, F.S.
- (4) Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.
- (5) Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.

- (6) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT:**

Telephone: (850) 245-2118

Email: public.services@dep.state.fl.us

Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

ATTACHMENT H

LIQUIDATED DAMAGES ASSESSMENT FORM

To: Bureau of Finance and Accounting, Contracts Disbursements Section (MS 78)

Through: Office of General Counsel

From: _____, Contract Manager

Date: _____

Subject: Liquidated Damages

Contractor/Vendor: _____

DEP Contract No: _____ Task Assignment/PO No.: _____

The Contractor/Vendor did not complete the work covered by the referenced Contract/Task Assignment/PO in the time frame provided. Contractor gave the following reasons for the delay:

The Contract/Task Assignment/PO provides that liquidated damages may be assessed for failure of the Contractor/Vendor to meet Contract/Task Assignment/PO terms and conditions, except for reasons beyond the control of the Contractor/Vendor. Therefore:

- I recommend that liquidated damages be assessed.
- I recommend that liquidated damages not be assessed.
- I recommend that only \$ of liquidated damages provided for be assessed, for the following reasons:

Explanation/Calculations: _____

Complete all information above, attach to invoice and relevant contract documents with all processing information completed and forward to the Contracts Disbursements Section (MS 78) for final processing once approved by the Office of General Counsel.

Approval: As recommended \$_____ in Liquidated Damages

Disapproved:

DEP Contracts Attorney

Date

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

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

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

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

- (b) **Best Pricing Offer.** During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
- (c) **Sales Promotions.** In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.
- (d) **Trade-In.** Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.
- (e) **Equitable Adjustment.** The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.
- 5. Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.
- 6. Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.
- 7. Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
- 8. Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.
- 9. Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

- 10. Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
- 11. Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.
- 12. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.
- 13. Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.
- 14. Transaction Fee.** The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

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

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

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT**

IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.

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

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

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

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

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

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

SECTION 15.00 – SOLICITATION PROPOSAL CHECKLIST

To ensure that Respondent response package can be accepted, please be sure the following items are fully completed and enclosed:

Part I, Technical Reply:

A. _____ The Solicitation Acknowledgement Form must be completed and signed. If a Respondent fails to submit a completed Solicitation Acknowledgement Form with their response the Department reserves the right to contact the Respondent by telephone for submission of this document via fax with follow up via mail. This right shall be exercised when the response has met all other requirements of the Solicitation. Did you complete the following:

- 1) Respondent Name;
- 2) Respondent Mailing Address;
- 3) City, State and Zip Code;
- 4) Phone Number and Fax Number with Area Code;
- 5) Email Address;
- 6) F.E.I.D. Number;
- 7) Type of Business Entity (Corporation, LLC, Partnership, etc.);
- 8) Sign Form (by individual authorized to bind company);
- 9) Type Name of Signatory and Title; and,
- 10) Primary and Secondary Contact Information?

In the event that Respondents submit a response as a joint venture, each member of the joint venture must complete and sign a separate Solicitation Acknowledgement Form.

B. _____ The Technical Response Package (see 1.07) must include the following information:

- 1) Introduction;
- 2) Company Background;
- 3) Organizational Plan;
- 4) Project Approach
- 5) Qualification and Experience of Proposed Personnel;
- 6) Project Management
- 7) Project Communication
- 8) Quality Assurance Methods and
- 9) Health and Safety

C. _____ Client References (Section 10.00)

D. _____ Respondent / Subcontractor Summary Forms, Section 11.00. List the name of the respondent(s) and indicate the one business category for the Respondent.

E. _____ Principal Place of Business & Foreign State Preferences in Contracting Form (Section 8.00)

F. _____ State Project Plan - State Project Plan that addresses the following:

- 1) Minority-, Women-, and Veteran Business Enterprises;
- 2) Environmental Considerations;
- 3) Certification of Drug-Free Workplace (complete and sign, if applicable);
- 4) Use of RESPECT; and,
- 5) Use of PRIDE.

G. _____ Certification of Drug-Free Workplace, Section 9.00

Part II, Price Reply:

A. _____ The Response Form (Section 6.00) and Price Schedule (Section 7.00) must be completed and signed. **If a Respondent fails to submit a completed Response Form with their submittal, the submittal will be rejected.**

Did you complete the following?

- 1) Prices;
- 2) Sign Form;
- 3) Respondent/Company Name; and
- 4) Print/Type name of Signatory and Title.

The Respondent must submit one (1) hard copy and one (1) duplicate electronic copy of the entire reply to the Department in accordance with Section 1.07. The hard copy of the reply shall bear original signatures and be marked as the "Original". The electronic copies of the reply may be submitted on CD, DVD, or USB-compatible memory stick and must be in .pdf format. The Department will reject replies submitted in alternate file formats or which contain information different from that in the hard copy of the reply. **If Respondent assert that any portion of the Reply is exempt from disclosure under the Florida Public Records law, Respondent must submit a redacted version of the Reply as well.**

This "Checklist" is provided merely for the convenience of the Respondent and may not be relied upon in lieu of the instructions or requirements of this Solicitation.