

FLORIDA PREPAID COLLEGE BOARD



**INVITATION TO NEGOTIATE FOR THE BENEFIT OF
FLORIDA ABLE, INC.**

**CUSTOMER SERVICE
AND
RECORDS ADMINISTRATION SERVICES**

ITN #17-02

COMMODITY CODES (UNSPSC)

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Section 1 INTRODUCTION

Florida ABLE, Inc., a direct-support organization of the Florida Prepaid College Board (“Board”) and the administrator of Florida’s qualified ABLE Program (“ABLE United”), has the mission to encourage and assist the saving of private funds to help persons with disabilities cover costs that support their health, independence and quality of life. Florida ABLE, Inc. has a contract with Intuition College Savings Solutions, LLC, for Customer Service and Records Administration Services for the ABLE United Program. This contract is an amendment to the Board’s contract that is set to expire on June 30, 2019. The Board has determined that it is in the best interest of ABLE United to have a separate contract.

All Respondents should review the laws governing the Florida ABLE, Inc. and the ABLE United Program (Section 1009.985 - 1009.988, Florida Statutes), Florida ABLE, Inc.’s administrative rules (Title 19B, Florida Administrative Code), and Florida ABLE, Inc.’s websites (ableunited.com) to ascertain an understanding of Florida ABLE, Inc. and the ABLE United Program. Copies of the most recent Annual Report for ABLE United is available on Florida ABLE, Inc.’s website (ableunited.com). All Respondents should also review the laws governing the Florida Prepaid College Board, which Florida ABLE, Inc. has a contract with, that discusses certain oversight and regulatory control.

1.1 BACKGROUND

Florida ABLE, Inc.

The Stephen Beck, Jr. Achieving a Better Life Experience (“ABLE”) Act, which became federal law on December 19, 2014, authorizes each state to establish a Qualified ABLE Program to offer savings and investment options to individuals with a disability and their families for disability-related expenditures. Earnings in these accounts are tax-free under Section 529A of the Internal Revenue Code (“IRC”) provided the funds are used to pay for qualified disability expenditures that include education, health, financial management services, housing, and transportation of a Beneficiary, as defined by the IRC. Assets in an ABLE account and distributions for qualified disability expenses are either disregarded or given special treatment when determining eligibility for most federal means-tested benefits.

The Florida legislature passed the Florida Achieving a Better Life Experience Act, which was signed into law by the Governor on May 21, 2015. The state law established Florida ABLE, Inc.

and the ABLE United Program launched July 1, 2016. Florida ABLE, Inc. which administers the ABLE United Program, is a direct-service organization of the Florida Prepaid College Board, which administers Florida's Qualified Tuition Programs under Section 529 of the IRC. Florida ABLE Inc. operates under the direction of a five member board, which includes the Chair of the Florida Prepaid College Board, an appointee of the Florida Prepaid College Board, and one member appointed by each of the following state officials: the Governor, the Speaker of the House, and the President of the Senate. Florida ABLE, Inc. operates under a written contract with the Florida Prepaid College Board, which pursuant to statute provides that the Florida Prepaid College Board shall solicit these services for and on behalf of Florida ABLE, Inc.

To establish an ABLE account, the Beneficiary must be an Eligible Individual. An individual is an Eligible Individual if during the taxable year, the individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act and such blindness or disability occurred before the date on which the individual attained age 26. An individual may also qualify as an Eligible Individual if the individual files a disability certification under rules currently being developed by the IRS. An Eligible Individual may have only one ABLE account.

The maximum annual contribution limit to an ABLE account is based on the federal gift tax limit, currently \$14,000. The maximum aggregate contribution limit is based on the state limit for Qualified Tuition Programs, currently \$418,000 in Florida.

1.2 PURPOSE

This Invitation to Negotiate ("ITN") is being issued by the Board for the benefit of Florida ABLE, Inc. to obtain Responses from experienced and qualified Respondents to provide Customer Services and Records Administration Services for ABLE United.

This ITN and all other activities resulting in a contract are conducted pursuant to Sections 1009.971(5)(a) and 1009.986(3)(b)(4), Florida Statutes. The Board considers it to be in the best interest of the State of Florida to procure the services described herein through this process.

Any contract between the Board and the selected Respondent will include this ITN and its specifications, written questions and answers by the Board, and the Response to this ITN

provided by the Respondent selected, including the Supplemental Response(s), if any. Accordingly, the Respondent selected will be contractually bound by its Responses.

To be considered for award, Respondents **must meet** the following standards and requirements:

1. Respondent's identity and signature on Section 5.1, Tab 1 – ITN Acknowledgment
2. Affirmation of the criteria and signature on Section 5.1, Tab 2 – Qualifications Questionnaire
3. Submission of a Cost Response, Section 5.1, Tab 9 – Cost Response

Any response that does not meet the mandatory requirements will not be evaluated.

1.3 SCOPE OF SERVICES

The Board recognizes that the records administration and customer service industry for ABLE is new and that a number of service models are being offered by a variety of parties, including other states. Accordingly, the initial discussion of Scope of Services requested in this ITN are provided in broad terms to support and encourage all potential providers of records administration and customer services to submit a Response.

In considering the appropriate scope of service to propose, Respondents are encouraged to review the current ABLE United Business Rules (Appendix A) and Program Description and Participation Agreement (Appendix B) and to highlight required and optional additions and deletions.

Respondents are encouraged (but not required or limited) to discuss the following topics:

- **Program Governance Documentation** – The agreed-upon documentation to be used for providing customer service and records administration services for the Program.
- **System Solutions** – The system(s) used to support the provision of customer service and records administration services for the Program.
- **Customer Contact** – How customer service (e.g., phone calls, emails, and correspondence) will be handled for the Program.

- **Online Access of Relevant Information and Images by Users** – How Program customers and the Board will be able to access Account information.
- **Reporting** – The reporting capabilities offered to the Board.
- **Plans, Audits and Reports** – Preparation of an Implementation Plan, Security Plan, Business Continuity Plan, System Audit, Security Audit, SSAE 16 Audit, Internal Audit, Performance Reports, Disaster Recovery Report, and Reconciliation Reports.
- **Facility and Personnel** – The operational site, training plan and key personnel for the Contract.
- **Debit/Prepaid Card** – Whether the Respondent can provide a debit or prepaid card.
- **Investment Options** – Whether the Respondent can provide investment options, including an FDIC option.

1.4 PARTICIPATION IS ENCOURAGED

Small Businesses, Certified Minority and Florida Certified Veteran Business Enterprises are encouraged to participate in this solicitation. All Respondents shall be accorded fair and equal treatment.

Section 2 SCHEDULE

The following time schedule is set forth for informational and planning purposes. The Board reserves the right to change any of the dates or times in its sole discretion.

ACTION	DATE & TIME	ADDRESS
ITN Issued	May 19, 2017	
*Solicitation Conference	June 5, 2017 2:00 PM ET	1801 Hermitage Boulevard Tallahassee, FL 32308
Written requests for clarification about the ITN are due to the Board	June 12, 2017 5:00 PM ET	ITNinfo.Prepaid@ MyFloridaPrepaid.com
Board responds to written requests for clarification about the ITN on the Vendor Bid System (VBS)	June 19, 2017	
Deadline for written Responses to the ITN	July 19, 2017 2:00 PM ET	1801 Hermitage Boulevard Tallahassee, FL 32308
*All Responses publicly opened at Board office	July 19, 2017 3:00 PM ET	1801 Hermitage Boulevard Tallahassee, FL 32308
*Meeting for Validation of Evaluator Scoring at Board office	July 31, 2017 2:00 PM ET	1801 Hermitage Boulevard Tallahassee, FL 32308
Negotiation Period	August – September, 2017	
*Recommendation for Award meeting	September, 2017	1801 Hermitage Boulevard Tallahassee, FL 32308
Notice of intent to award	September, 2017	
Anticipated contract start date	October, 2017	

Table 1: ITN Schedule

**All Respondents are hereby notified that the events noted with an asterisk above (*) are public meetings open to the public.*

Section 3 ITN PROCESS

The ITN process is divided into two (2) phases, the Evaluation Phase and the Negotiation Phase. The Evaluation Phase involves the initial evaluation of replies. During the Evaluation Phase, all responsive replies will be evaluated against the evaluation criteria set forth in this document. The Board intends to select the three highest-ranked Respondents (“shortlist”), but may adjust the quantity to accommodate a competitive range, for negotiation.

The Board intends to initially negotiate concurrently with the Respondents on the shortlist. However, the Board reserves the right, after posting notice thereof and in its sole discretion, to expand the shortlist to include additional responsive Respondents for negotiation or change the method of negotiation (e.g., order of ranking versus concurrent), if it determines that to do either would be in the best interest of the Board. A Respondent will be deemed responsive unless determined to be nonresponsive pursuant to the terms of this document.

The Negotiation Phase will involve at least one (1) telephone conference with each selected shortlist Respondent. During the Negotiation Phase, the Board may request supplemental information and/or best and final offers based on the negotiations or supplemental information. Following negotiations, the Board will post a Notice of Intent to Award, identifying the Respondent(s) that provides the best value to the Board. Be advised, Respondents will not be eliminated from the ITN process until posting of the Notice of Intent to Award.

All Respondents shall be accorded fair and equal treatment.

3.1 OFFICIAL NOTICES AND ITN REVISIONS

The following will be electronically posted on the Department of Management Services (DMS) Vendor Bid System (VBS):

1. This ITN.
2. Written requests for clarification and corresponding Responses to this ITN.
3. All notices, decisions, intended decisions, addenda and other matters relating to this ITN.
4. Amendments to this ITN (If it becomes necessary to revise any part of this ITN).

The VBS website is myflorida.com/apps/vbs/vbs_www.main_menu. Please utilize the following search criteria to view the official notices and ITN revisions:

Advertisement Type: Competitive Solicitation

Agency: State Board of Administration

Title: ITN 17-02

It is the responsibility of prospective Respondents to check the VBS for addenda, notices of decisions, and other information or clarifications to this ITN.

3.2 SOLICITATION CONFERENCE

The purpose of the Solicitation Conference is to review the ITN with interested parties so that areas of misunderstanding or ambiguity are clarified. The Board encourages all prospective ITN proposers to participate in the solicitation conference, but attendance is not required. The Solicitation Conference for this ITN will be held at the date and time specified in the ITN Schedule (Section 2). **The Board will post a call-in number on VBS at least 24 hours prior to the Solicitation Conference.** The Board shall not be bound by oral information or written information that is not contained within the solicitation documents or formally posted as an addendum or a response to questions.

3.3 EVALUATION

Each Response meeting the mandatory experience requirement will be independently evaluated by each member of an Evaluation Committee ("Evaluation Committee") on the basis of the written response to this ITN and additional written information as requested. Responses will be evaluated by the Evaluation Committee as described below.

The Board reserves the right to determine which Responses meet the mandatory requirements of this ITN, and whether any deviation from the specifications, terms, or conditions contained herein is merely minor or technical in nature; **the right to accept Responses which deviate in a minor or technical fashion is also reserved by the Board and the Board reserves the right to accept or reject any and all Responses and to award the contract in the best interests of the Board**

Step 1: Assessment of Mandatory Requirements

The process will begin with an assessment of the mandatory requirements:

4. Respondent's identity and signature on Section 5.1, Tab 1 – ITN Acknowledgment
5. Affirmation of the criteria and signature on Section 5.1, Tab 2 – Qualifications Questionnaire

6. Submission of a Cost Response, Section 5.1, Tab 9 – Cost Response

Any response that does not meet the mandatory requirements will not be evaluated. The determination in this step is pass/fail; no points will be awarded in this evaluation step.

Step 2: Evaluation of Responses

Responses may be awarded up to the maximum points assigned in **Table 2**.

Evaluation Criteria –Response Scoring	Points
Section 5.1, Tab 6 – Organization Overview	100
Section 5.1, Tab 7 – Scope of Services	500
Section 5.1, Tab 8 – Contract	100
Section 5.1, Tab 9 – Cost Response	300
Response Score	1000

Table 2: Response Points Per Category

The Response score is independently determined by each member of an Evaluation Committee and declared at the Meeting for Validation of Evaluator Scoring. The ITN Administrator averages the total Response score from each evaluator to calculate the final Response score for each Respondent.

The final Response score for each Respondent is used to rank the Respondents. The Evaluation Committee will then select up to three of the highest-ranked Respondents (“shortlist”) for negotiation.

Step 3: Notification of the Shortlist

The ITN Administrator will post notice of the shortlist pursuant to Section 3.1 and may provide individual notice to each Respondent on the shortlist.

The Board reserves the right, after posting notice thereof, to expand the shortlist to include additional responsive Respondents, if it determines that to do so would be in the best interest of the Board.

3.4 NEGOTIATION

During the Negotiation Phase, the Board intends to initially negotiate concurrently with the Respondents on the shortlist. However, the Board reserves the right to change the method of negotiation (e.g., concurrent versus by order of ranking), if it determines that to do so would be in the best interests of the Board. Further, the Board reserves the right to arrive at an agreement with any 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 Respondent(s).

Site Visit and Presentation

The Negotiation Committee may ask each Respondent on the shortlist to make a formal presentation at the Respondent's office and/or at the Board's office. Further information, including the scope and agenda for the site visit and presentation, will be provided to the Respondent.

Negotiation Meetings Not Open to Public

Negotiations between the Negotiations Committee and the Respondent are exempt from being conducted as public meetings pursuant Section 286.0113(2)(a) of the Florida Statutes. Furthermore, negotiation strategy meetings of the Negotiation Committee are exempted by Section 286.0113(2)(a) of the Florida Statutes.

Supplemental Response

The Negotiation Committee may ask each Respondent on the shortlist to provide one or more Supplemental Responses. "Supplemental Responses" include:

1. Additional or revised Responses to this ITN, including addressing services, prices or conditions offered by any other Respondent.
2. Detailed written Responses addressing specified topics.
3. Revised Cost Responses, including a written best and final offer.

References

The Negotiation Committee may contact the references and any clients identified in Tab 5 of the response, or any current client of the Respondents, to inquire about the Respondent's ability to deliver on the services offered in response to this ITN.

3.5 NOTICE OF INTENT TO AWARD

When negotiations have been completed, the Board will award the contract to the responsive and responsible Respondent that the Board determines will provide the best value to the Board. The Board will post its Notice of Intent to Award or its Notice to Reject All Response.

Section 4 SUBMISSION OF REQUESTS FOR CLARIFICATION

The Respondent may submit requests for clarification regarding this ITN pursuant to the schedule in Section 2. Submission of requests for clarification is optional.

No interpretations other than those responded to as described in this section will be considered binding. The Board does not guarantee the validity or reliability of information obtained from other sources.

4.1 RESPONSE FORMAT AND CONTENT

If the Respondent decides to submit requests for clarification, then the Respondent shall complete the Request for Clarification form on the following page. Written questions and comments must be clear, to the point, and cross-referenced.

**State of Florida
State Board of Administration
Florida Prepaid College Board
1801 Hermitage Blvd., Suite 210
Tallahassee, Florida 32308**

REQUESTS FOR CLARIFICATION

Solicitation: **ITN 17-02**

Title: **Customer Service and Records Administration Services**

Respondent's Name: _____

#	ITN Section	ITN Page	Question/Comment
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

[Add rows as necessary]

4.2 FILE FORMAT

The Request for Clarification form must be submitted as a Microsoft Word document.

The Board reserves the right to include or exclude all other comments or questions received in any other file format.

4.3 DELIVERY

The Request for Clarification form must be submitted via email to the ITN Administrator at ITNinfo.Prepaid@MyFloridaPrepaid.com. The subject line should reference "ITN 17-02".

The Board reserves the right to include or exclude all other comments or questions delivered in a different manner.

4.4 PUBLIC POSTING

The Board will electronically post responses to all questions received publicly pursuant to the schedule in Section 2.

Section 5 SUBMISSION OF RESPONSE

Each Respondent shall prepare its response simply and economically to provide a straightforward, concise delineation of the Respondent's capabilities to satisfy the requirements of this ITN. Fancy bindings and promotional material are not desired.

5.1 RESPONSE FORMAT AND CONTENT

Each Respondent shall provide the information that follows using the tab numbers and order indicated. Failure to comply with these directions for organizing a response and failure to comply with the provisions of this ITN shall be sufficient cause to reject the response without further evaluation or consideration.

The Respondent shall use the tab structure in **Table 3** to organize its Response.

Tab #	Description
1	Invitation to Negotiate Acknowledgment
2	Qualifications Questionnaire
3	Tie Breaking Certification
4	Response Checklist
5	Administrative Questionnaire
6	Organization Overview
7	Scope of Services
8	Contract
9	Cost Response

Table 3: Response Organization

Tab 1 – Invitation to Negotiate Acknowledgment

The Respondent shall complete and sign the Invitation to Negotiate Acknowledgment on the following page and include it under Tab 1 – Invitation to Negotiate Acknowledgment.

**State of Florida
State Board of Administration
Florida Prepaid College Board
1801 Hermitage Blvd., Suite 210
Tallahassee, Florida 32308**

TAB 1 - INVITATION TO NEGOTIATE ACKNOWLEDGEMENT

Solicitation: **ITN 17-02**

Title: **Customer Service and Records Administration Services**

All Respondents must complete this form in its entirety – there is only one page. Respondents that do not complete and sign this form will be rejected.

Respondent's Name: _____

Contact Person: _____

Address: _____

City, State, Zip: _____

Telephone: _____

E-Mail Address: _____

By completing this acknowledgment, I agree to abide by all conditions of this negotiation and certify that I am authorized to sign this response and that the offer is in compliance with all requirements of the Invitation to Negotiate.

Authorized Signature: _____ **Date:** _____

Printed Name & Title: _____

THIS SHEET AND THE ACCOMPANYING NEGOTIATION DOCUMENTS CONSTITUTE AN OFFER FROM THE RESPONDENT. IF ANY OR ALL PARTS OF THE NEGOTIATION ARE ACCEPTED BY THE BOARD'S REPRESENTATIVE, THE BOARD'S REPRESENTATIVE SHALL EXECUTE HERETO, AND THIS SHALL THEN CONSTITUTE THE WRITTEN AGREEMENT BETWEEN THE PARTIES THAT INCORPORATES HEREIN THE ITN SPECIFICATIONS, APPENDICES, SERVICE AGREEMENT, RESPONDENT SUBMISSIONS, WRITTEN QUESTIONS AND BOARD ANSWERS, ALL TOGETHER FORMING THE AGREEMENT BETWEEN THE PARTIES.

BOARD REPRESENTATIVE: _____ DATE: _____

CONTRACT NUMBER: _____ EFFECTIVE: _____

Tab 2 – Qualifications Questionnaire

The Respondent shall complete and sign the Qualification Questionnaire on the following page and include it under Tab 2 – Qualifications Questionnaire.

**State of Florida
State Board of Administration
Florida Prepaid College Board
1801 Hermitage Blvd., Suite 210
Tallahassee, Florida 32308**

TAB 2 - QUALIFICATIONS QUESTIONNAIRE

Solicitation: **ITN 17-02**

Title: **Customer Service and Records Administration Services**

All Respondents must complete this form in its entirety – there is only one page. Respondents that do not satisfy the applicable criteria will be rejected.

Respondent's Name: _____

SIGN TO AFFIRM that the Respondent or Subcontractor(s), or Related Entity of either, has five (5) or more consecutive years of experience providing records administration services.

By signing this questionnaire, the Respondent attests and affirms that the above criteria is satisfied.

Authorized Signature: _____ **Date:** _____

Printed Name & Title: _____

Tab 3 – Tie Breaking Certification

Various provisions of Chapters 287 and 295 of the Florida Statutes provide qualifying Respondents the advantage of "tie breakers" whenever two or more bids, responses, or responses received are equal with respect to price, quality and service. To take advantage of the "tie breakers," a Respondent who meets the statutory qualifications for one or more of these "tie breakers" must certify that it qualifies for the cited preference.

The Respondent shall complete the Tie Breaking Certification on the following page and include it under Tab 3 - Tie Breaking Certification.

**State of Florida
State Board of Administration
Florida Prepaid College Board
1801 Hermitage Blvd., Suite 210
Tallahassee, Florida 32308**

TAB 3 – TIE BREAKING CERTIFICATION

Solicitation: **ITN 17-02**

Title: **Customer Service and Records Administration Services**

Respondent's Name: _____

Please indicate whether the following certifications apply to the Respondent:

Certification of a Certified Minority Business Enterprise ☐ YES ☐ NO

Certification of a Service Disabled Veteran's Business Enterprise ☐ YES ☐ NO

Certification of a Florida Business ☐ YES ☐ NO

Certification of a Certified Minority Business Enterprise

- By checking in the affirmative and signing the same, I hereby certify that my organization is a Certified Minority Business Enterprise in accordance with Section 287.0943 of the Florida Statutes.

Certification of a Service Disabled Veteran's Business Enterprise

- By checking in the affirmative and signing the same, I hereby certify that my organization is a Service Disabled Veterans Business Enterprise in accordance with Section 295.187 of the Florida Statutes.

Certification of a Florida Business

- By checking in the affirmative and signing the same, I hereby certify that my organization's principal place of business is located within Florida in accordance with Section 287.084 of the Florida Statutes.

Authorized Signature: _____

Date: _____

Printed Name & Title: _____

Tab 4 – Response and Cost Response Checklist

The Respondent shall complete and sign the Response and Cost Response Checklist on the following page and include it under Tab 4 – Response and Cost Response Checklist.

State of Florida
State Board of Administration
Florida Prepaid College Board
1801 Hermitage Blvd., Suite 210
Tallahassee, Florida 32308

TAB 4- RESPONSE AND COST RESPONSE CHECKLIST

Solicitation: **ITN 17-02**

Title: **Customer Service and Records Administration Services**

Respondent's Name: _____

CHECK TO AFFIRM THAT THE RESPONDENT INCLUDED A RESPONSE

	Included?	Signed?
Tab 1 – Invitation to Negotiate Acknowledgment	_____	_____
Tab 2 – Qualifications Questionnaire	_____	_____
Tab 3 – Tie Breaking Certification	_____	_____
Tab 4 – Response Checklist	_____	_____
Tab 5 – Administrative Questionnaire	_____	_____
Tab 6 – Organization Overview	_____	_____
Tab 7 – Scope of Services	_____	_____
Tab 8 – Contract	_____	_____
Tab 9 – Cost Response	_____	_____

By signing this checklist, the Respondent acknowledges a full review of the enclosed response has been performed prior to submission and the response is complete and accurate.

Authorized Signature: _____

Date: _____

Printed Name & Title: _____

Tab 5 – Administrative Questionnaire

The Respondent shall complete the Administrative Questionnaire on the following pages and include it under Tab 5 – Administrative Questionnaire.

The Respondent will need to duplicate tables within the Administrative Questionnaire as necessary to provide a complete response.

State of Florida
State Board of Administration
Florida Prepaid College Board
1801 Hermitage Blvd., Suite 210
Tallahassee, Florida 32308

TAB 5 - ADMINISTRATIVE QUESTIONNAIRE

Solicitation: **ITN 17-02**

Title: **Customer Service and Records Administration Services**

Respondent's Name: _____

1. ENTITY AND CONTACT – The entity listed in this section must be the same entity named on the Tab 1 - Invitation to Negotiate Acknowledgement. The contact listed in this section must be authorized to submit this response and must be the authorized contract negotiator on behalf of the Respondent.

Respondent's Name	
Contact – Name and Title	
Office Address	
Telephone	
FAX	
E-Mail Address	
Website Address	
Year Entity Founded	

2. SUBCONTRACTOR(S) – Provide the following information for any Subcontractors that might be used to provide services under the ITN.

Entity Name	
Description of Services	
Contact – Name and Title	
Office Address	
Telephone	
FAX	
E-Mail Address	
Web Site Address	
Year Entity Founded	

3. CURRENT CLIENTS – List all current ABLE Program clients of the Respondent, Subcontractor, or Related Entity of either.

Client's name	
Contact Name and Title	
Description of Service(s)	
Dates of Service(s)	
Office Address	
Telephone	
E-Mail Address	

By signing this questionnaire, the Respondent attests and affirms that all of the answers above are complete, true and accurate.

Authorized Signature: _____

Date: _____

Printed Name & Title: _____

Tab 6 – Organization Overview

The Respondent shall complete the Organization Overview on the following page and include it under Tab 6 – Organization Overview.

**State of Florida
State Board of Administration
Florida Prepaid College Board
1801 Hermitage Blvd., Suite 210
Tallahassee, Florida 32308**

TAB 6 - ORGANIZATION OVERVIEW

Solicitation: **ITN 17-02**

Title: **Customer Service and Records Administration Services**

Respondent's Name: _____

- 1. BACKGROUND** – Provide a brief history of the organization and structure.

Please enter response here.

- 2. RELEVANT EXPERIENCE** – Provide a brief overview of the Respondent's, Subcontractor's and Related Entity of either's experience providing customer service and records administration services similar to those described in this ITN.

Please enter response here.

- 3. RELEVANT LEGAL MATTERS** – Provide a detailed description of any past or pending regulatory restrictions, consent orders, stipulations or litigation to which the Respondent, any Subcontractor, any Related Entity of the Respondent or any Subcontractor, or any of their principals, owners, directors or officers, has ever been a party that would affect its or their ability to provide the required services or which alleges any unfair, illegal or unethical business practice.

Please enter response here.

4. **FELONIES** – Provide a detailed description of each incident where any officers, principals, owners, directors, proposed contract employees of the Respondent, Subcontractor, or any Related Entity of the Respondent or Subcontractor, that will provide any of the required services have been convicted of a felony, had adjudication of guilt withheld as to any felony, or plead nolo contendere to any felony.

Please enter response here.

5. **PENALTIES, FINES AND LIQUIDATED DAMAGES** – Provide a detailed description of each incident, including the amount, of any penalties, fines or liquidated damages that have ever been imposed against the Respondent, any Subcontractor or any Related Entity of the Respondent or any Subcontractor, including without limitation thereto, those associated with any contract for services entered into by the Respondent, any Subcontractor, or any Related Entity of the Respondent or any Subcontractor, within the past five (5) years.

Please enter response here.

6. **CONVICTED VENDOR LIST** – Provide a detailed description and the date of each incident that the Respondent, any Subcontractor, or any Related Entity of the Respondent or any Subcontractor, has ever been placed on the convicted vendor list.

Please enter response here.

7. **COMPLIANCE WITH SECTION 287.133, FLORIDA STATUTES** – Confirm that the Respondent, any Subcontractor, and any Related Entity of the Respondent or any Subcontractor will comply with the provisions of s. 287.133, Florida Statutes.

Please enter confirmation here.

- 8. DISCRIMINATORY VENDOR LIST** – Provide a detailed description and the date of each incident that the Respondent, any Subcontractor, or any Related Entity of the Respondent or any Subcontractor, has ever been placed on the discriminatory vendor list.

Please enter response here.

- 9. COMPLIANCE WITH SECTION 287.134, FLORIDA STATUTES** – Confirm that the Respondent, any Subcontractor, and any Related Entity of the Respondent or any Subcontractor will comply with the provisions of s. 287.134, Florida Statutes.

Please enter confirmation here.

By signing this overview, the Respondent attests and affirms that the responses above are complete, true and accurate.

Authorized Signature: _____ **Date:** _____

Printed Name & Title: _____

Tab 7 – Scope of Services

The Respondent shall provide a detailed description of the customer service and records administration services the Respondent will provide for the Program.

Respondents are encouraged to review the current ABLE United Business Rules (Appendix A) and Program Description and Participation Agreement (Appendix B) and to highlight required and optional additions and deletions.

Respondents are encourage (but not required or limited) to discuss the following topics:

- **Program Governance Documentation** – The agreed-upon documentation to be used for providing customer service and records administration services for the Program.
- **System Solutions** – The system(s) used to support the provision of customer service and records administration services for the Program.
- **Customer Contact** – How customer service (e.g., phone calls, emails, and correspondence) will be handled for the Program.
- **Online Access of Relevant Information and Images by Users** – How Program customers and the Board will be able to access Account information.
- **Reporting** – The reporting capabilities offered to the Board.
- **Plans, Audits and Reports** – Preparation of an Implementation Plan, Security Plan, Business Continuity Plan, System Audit, Security Audit, SSAE 16 Audit, Internal Audit, Performance Reports, Disaster Recovery Plan and Reconciliation Reports.
- **Facility and Personnel** – The operational site, training plan and key personnel for the Contract.
- **Debit/Prepaid Card** – Whether the Respondent can provide a debit or prepaid card.
- **Investment Options** – Whether the Respondent can provide investment options, including an FDIC option.

Tab 8 – Contract

The Respondent shall provide a proposed contract to provide the Scope of Services for a base term of no longer than 5 years plus an optional extension of years, not to exceed the length of the base term (i.e., the maximum term of a contract procured under this ITN is 10 years).

Tab 9 – Cost Response

The Respondent shall submit a Cost Response for providing the proposed Scope of Services under this ITN.

5.1 FILE FORMAT

All content submitted must be included on the flash drives and may not direct the user to any external web-based locations. All electronic files must be in one of the following formats:

- Documents – PDF or any Microsoft Office Suite format
- Images – JPG or PNG
- Video – MP4 or MOV
- Audio – MP3

5.2 NUMBER OF COPIES

Respondents shall deliver:

- one unbound hardcopy
- five bound copies
- one complete electronic copy of all materials submitted on a USB flash drive.

5.3 PACKAGING

All content pertaining to the Response must be placed in a sealed box and clearly marked as “Response”.

Section 6 ITN CONSIDERATIONS

6.1 LIMITATIONS ON CONTACTING BOARD PERSONNEL AND OTHERS

Between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, exclusive of Saturdays, Sundays, and state holidays, Respondents to this solicitation or persons acting on their behalf may not contact any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the ITN Administrator or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

6.2 NEWS RELEASES

The Board is the only entity authorized to issue news releases relating to this ITN, Responses submitted in response to this ITN, and any contract resulting from this ITN.

6.3 TIMELY RESPONSE REQUIRED

All Responses must be delivered to the Board no later than the date and time stated in Section 2 of this ITN. Responses by facsimile, telephone or email are not acceptable. The Respondent is responsible for the timely and proper delivery of its response to the Board. Responses which, for any reason, are not delivered and received in the Board's offices by the deadline established in Section 2 of this ITN will be retained by the Board but will not be considered.

A Response must be complete as to all terms and conditions, including the appendices, on the date it is delivered to the Board. Additional information submitted after the initial response document submission or separate from the response document will not be considered unless specifically requested by the Board and then only to the extent requested. All other responses, supplements or revisions are prohibited.

6.4 RESPONSE TENURE

All Responses are valid for one year from the response due date. The period of time during which Responses are valid will be tolled during the pendency of any proceeding related to any contract awarded pursuant to this ITN. The selected Respondent will be contractually bound by their response and supporting documents.

6.5 COST OF DEVELOPING AND SUBMITTING RESPONSES

Neither the Board nor the State of Florida is liable for any of the costs incurred by the Respondent in preparing and/or submitting a response.

6.6 PUBLIC RECORDS AND TRADE SECRETS

Responses Are Property of the State

These provisions apply in lieu of Section 18 of PUR 1001. All materials submitted in response to this ITN become the property of the State of Florida and will be a public record subject to the provisions of Chapter 119, F.S. The State of Florida shall have the right to use such ideas or adaptations of those ideas contained in any response without cost or charge. Selection or rejection of a response will not affect this right.

Responses Are Subject to Public Inspection

Unless exempted by law, all public records are subject to public inspection and copying under Florida's Public Records Law, Chapter 119, F.S. A time-limited exemption from public inspection is provided for the contents of a response pursuant to Section 119.071(1)(b), F.S. Once that exemption expires, all contents of a response become subject to public inspection unless another exemption applies. Any claim of trade secret exemption for any information contained in a response to this solicitation will be waived upon opening of the response by the Board, unless the claimed trade secret information is submitted in accordance with this Section. This waiver includes any information included in the response outside of the separately bound document described below.

Trade Secret Protection

If the Respondent considers any portion of the documents, data or records submitted in its response to be a trade secret and exempt from public inspection or disclosure pursuant to Florida's Public Records Law, the Respondent must submit all such information in a separately bound document (**or in the case of electronic media, a separate USB flash drive, with the words "Trade Secret" included in the file name**) clearly labeled "Attachment to Response, ITN No. 17-02 – Trade Secret Material".

Appropriate cross-references to the trade secret materials should be included in the response.

The beginning of any separately bound document or electronic files containing trade secrets must include a legal opinion from an attorney licensed in Florida that states:

1. Why the information declared to be a trade secret is a trade secret under Florida law.
2. The extent of information included under the Respondent's trade secret classification is the minimum amount necessary to protect the Respondent's trade secrets.

Respondent's Duty to Respond to Public Records Requests

In response to any notice by the Board that a public records request received by the Board encompasses any portion of the separately bound material, the Respondent shall expeditiously provide the Board with a redacted version of the separately bound material and identify in writing the specific statutes and facts that authorize exemption of the information from the Public Records Law. If different exemptions are claimed to be applicable to different portions of the redacted information, the Respondent shall provide information correlating the nature of the claims to the particular redacted information. The redacted copy must only exclude or obliterate only those exact portions that are claimed confidential or trade secret. If the Respondent fails to promptly submit a redacted copy and justification in response to the notice of a public records request, the Board is authorized to produce the records sought without any redaction.

Board Not Obligated to Defend Respondent Claims

The Board is not obligated to agree with the Respondent's claim of exemption and, by submitting a response, the Respondent agrees to be responsible for defending its claim that each and every portion of the redactions is exempt from inspection and copying under Florida's Public Records Law. Further, the Respondent agrees that it shall protect, defend, and indemnify, including attorney fees and costs, the Board for any and all claims and litigation (including litigation initiated by the Board) arising from or relating to Respondent's claim that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure or the scope of the Respondent's redaction.

6.7 LEGAL REQUIREMENTS

Applicable provisions of all federal, state, county, and local laws, will govern development, submittal, and evaluation of all Responses received for this ITN and will govern any and all

claims and disputes that may arise between persons submitting a Response hereto and the Board. Lack of knowledge by any Respondent will not constitute a cognizable justification, excuse or other defense against the legal effect of any such provision.

6.8 PROTESTS AND DISPUTES

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.

Failure to file a protest within the time prescribed in Section 120.57(3) of the 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 of the Florida Statutes.

6.9 REJECTION OF RESPONSES

Responses will not be eliminated from the ITN process until the posting of either the Notice of Intent to Award or the Notice to Reject All Responses.

6.10 BEST INTERESTS OF THE BOARD AND ABLE UNITED

The Board expressly reserves the right to:

- Accept or reject any and all Responses.
- Award the contract in the best interests of the Board and ABLE United.
- Decline to conduct further negotiations with any Respondent.
- Reopen negotiations with any Respondent.
- Take any additional administrative steps deemed necessary in determining the final award, including additional fact-finding, evaluation, or negotiation where necessary and consistent with the terms of this ITN.
- Review and rely on relevant information contained in the Responses received.
- Review and rely on relevant portions of the evaluations conducted pursuant to this ITN.
- Change the members of the Evaluation Committee or Negotiation Committee in its sole discretion.

The Board has sole discretion in deciding whether and when to take any of the foregoing actions, the scope and manner of such actions, the Respondent(s) affected, and whether to provide concurrent public notice of such decision.

APPENDICES

Appendix A – Business Rules

Appendix B – Program Description and Participation Agreement

Appendix C – Additional Statistics

Appendix D – PUR 1000 and PUR 1001

Appendix A – Business Rules

See separate electronic file entitled “Appendix A – Business Rules – ABLE United”.

Appendix B – Program Description and Participation Agreement

See separate electronic file entitled “Appendix B – Program Description and Participation Agreement”.

Appendix C – Additional Statistics

Appendix C is intended to provide relevant historical program data to support a Respondent in their reply to this solicitation. Data contained within this section is believed to be true and accurate as of the date(s) provided on each report. Historical data may not be complete and, further, may not represent future experience. Data provided does not, and is not meant to, represent all data that exists for a given program or transaction type. The reports provided should be considered by the Respondent as a general example of (1) historical transaction activity and (2) the types of reports that the Board may receive, produce or otherwise rely upon. Data has been categorized and organized as follows:

ABLE United Demographic Data**C-1 Eligibility/Demographic Info Report**

Eligibility/Demographic Report is a detailed report of basis of eligibility, disability type, state of residency, administrator relationship, and age information for all ABLE United accounts, since inception.

ABLE United Program		Total Accounts by Eligibility/Demographic Info State of Residency ALL 1/01/2017 - 5/10/2017	
BASIS OF ELIGIBILITY	COUNT	PERCENT	
SSI - TITLE XVI	364	.41	
SSDI - TITLE II	210	.24	
SEA - Comp Allowance	38	.04	
Declaring a Disability	279	.31	
TOTAL	891		

DISABILITY TYPE	COUNT	PERCENT	
Developmental Disorders	377	.42	
Intellectual Disability	225	.25	
Psychiatric Disorders	57	.06	
Nervous Disorders	63	.07	
Congenital Anomalies	86	.10	
Respiratory Disorders	5	.01	
Other	78	.09	
TOTAL	891		

PERMANENT DISABILITY	COUNT	PERCENT	
No	891	1.00	
TOTAL	891		

STATE OF RESIDENCY	COUNT	PERCENT	
Florida	891	1.00	
NUMBER OF STATES	1		

ADMIN RELATIONSHIP	COUNT	PERCENT	
Power Of Attorney	78	.09	
Legal Guardian	119	.13	
Parent	423	.47	
Self	271	.30	

AGE INFORMATION	AVERAGE	MEDIAN	
AGE	28	25.00	

** END OF REPORT **			

ABLE United Transaction Data**C-2 Participation Valuation Summary Report**

The Participation Valuation Summary Report summarizes total contributions, total withdrawals, fees accessed, fund totals, and market value for all ABLE United accounts, since inception.

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ABR4PFR                               Participant Valuation Summary      5/11/17      Page    1
AWAL799                               ABLE United Program              8:58:41
                                      State of Residency ALL
                                      Reporting Period: 6/30/2016 To 5/10/2017

PLAN TOTALS

Total      Contributions      Withdrawals      Fees
          3,440,863.73      439,477.07-      3,048.87-

SOURCE

          Contributions
Regular      3,440,863.73
Rollover      .00
-----
Total      3,440,863.73
-----

FUND TOTALS

Fund      Beginning Balance      Ending Balance      Market Value
R1CON-Conservative Portfolio      .1250      75,694.0142      795,766.71
R2MOD-Moderate Portfolio      17.1250      54,095.8143      586,176.08
R3GRW-Growth Portfolio      4.7500      50,060.5518      561,409.31
R4CAP-Money Market Fund      .1250      68,493.3098      713,136.66
R5BND-US Bond Fund      .1250      9,385.1704      91,765.67
R6STK-US Stock Fund      .1250      23,969.7182      285,500.13
R7INT-International Stock Fund      .1250      7,277.1650      82,610.49

Total:      3,116,365.05

** END OF REPORT **

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Customer Service Data

C-3 Call Center Activity Report

The ABLE United Call Center Activity Report lists total received calls, answered calls, average wait time, maximum wait time, abandon rate, average wait time abandoned and maximum wait time abandon, and contact time average for month end.

ABLE United Call Center Activity Month End
Range: 4/1/2017 to 4/30/2017

	Received Contacts	Answered Contacts	Average Wait Time	Maximum Wait Time		Average Wait Time	Maximum Wait Time	Contact Time
	All	All	Answered	Answered	Abandon Rate	Abandoned	Abandoned	Average
ABLE-FL	156	152	00:00:24	00:07:37	2.6	00:00:42	00:02:23	00:05:12
Apr 03	8	8	00:00:22	00:01:45	0	00:00:00	00:00:00	00:03:28
Apr 04	4	4	00:01:58	00:04:11	0	00:00:00	00:00:00	00:05:52
Apr 05	3	3	00:00:12	00:00:21	0	00:00:00	00:00:00	00:03:53
Apr 06	7	7	00:00:10	00:00:41	0	00:00:00	00:00:00	00:04:16
Apr 07	15	15	00:00:06	00:00:14	0	00:00:00	00:00:00	00:03:33
Apr 10	11	11	00:00:08	00:00:27	0	00:00:00	00:00:00	00:05:10
Apr 11	7	7	00:00:06	00:00:11	0	00:00:00	00:00:00	00:05:13
Apr 12	8	8	00:00:08	00:00:12	0	00:00:00	00:00:00	00:07:10
Apr 13	11	10	00:00:09	00:00:45	9.1	00:00:02	00:00:02	00:05:06
Apr 14	6	6	00:00:07	00:00:10	0	00:00:00	00:00:00	00:05:35
Apr 17	7	7	00:00:09	00:00:14	0	00:00:00	00:00:00	00:03:49
Apr 18	3	3	00:01:03	00:02:58	0	00:00:00	00:00:00	00:05:29
Apr 19	7	7	00:00:05	00:00:10	0	00:00:00	00:00:00	00:04:27
Apr 20	7	7	00:00:05	00:00:08	0	00:00:00	00:00:00	00:03:13
Apr 21	8	8	00:00:07	00:00:11	0	00:00:00	00:00:00	00:09:22
Apr 24	8	8	00:00:08	00:00:13	0	00:00:00	00:00:00	00:05:53
Apr 25	10	10	00:01:15	00:05:58	0	00:00:00	00:00:00	00:05:32
Apr 26	10	10	00:00:59	00:07:37	0	00:00:00	00:00:00	00:07:45
Apr 27	11	10	00:00:44	00:06:10	9.1	00:02:23	00:02:23	00:04:51
Apr 28	5	3	00:01:35	00:04:29	40	00:00:12	00:00:16	00:03:42
	156	152	00:00:24	00:07:37	2.6	00:00:42	00:02:23	00:05:12

Appendix D – PUR 1000 and PUR 1001

**State of Florida
PUR 1000 (10/06)
General Contract Conditions
60A-1.002, F.A.C.**

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

15. Invoicing and Payment. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract. At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in

lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

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

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

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

18. Lobbying and Integrity. Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dlis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

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

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

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

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

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

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

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

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

24. Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

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

26. Renewal. Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any

renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

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

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

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

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

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

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

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

29. **Assignment.** The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.

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

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

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

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

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

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

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

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

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

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

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

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

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

42. Modification of Terms. The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the

Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

43. Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser. State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

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

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

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

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

**State of Florida
PUR 1001(10/06)
General Instructions to Respondents
60A-1.002(7), F.A.C.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- transact business with any public entity.

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

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
- The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
- The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
 - o 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
 - o 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 scope of services or 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 scope of services or 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 scope of services and 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 scope of services and requirements.

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

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

14. **Firm Response.** The Buyer may make an award within sixty (60) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, the response shall remain firm until either the Buyer awards the Contract or the Buyer receives from the

respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected.

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

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

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

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

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

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