DEPARTMENTAL INPUT
CONTRACT/PROJECT MEASURE ANALYSIS AND RECOMMENDATION

☐ New ☐ OTR ☐ Sole Source ☐ Bid Waiver ☐ Emergency Previous Contract/Project No.

Contract

☐ Re-Bid X Other LIVING WAGE APPLIES: ☐ YES X NO

Requisition No./Project No.:760-000-10 1 TERM OF CONTRACT YEAR(S) WITH YEAR(S) OTR
Requisition Nos. RQPR1100023, RQPR1100024, RQPR1100025, and RQPR1100026

Requisition /Project Title: Construction, Industrial, Agricultural, & Lawn Equipment

Description: To access State of Florida Contract No. 760-000-10 1 Construction, Industrial, Agricultural, & Lawn Equipment to purchase landscape equipment for Park and Recreation Department.

Issuing Department:MDPR Contact Person:Bill Solomon Phone: (305) 755-7873
Estimate Cost: $366,642.30. GENERAL FEDERAL OTHER
Funding Source: General

ANALYSIS

Commodity Codes: 02068, 02089, 07018, 51507

Contract/Project History of previous purchases three (3) years
Check here (X) if this is a new contract/purchase with no previous history.

	EXISTING	2ND YEAR	3RD YEAR
Contractor:			
Small Business Enterprise:			
Contract Value:		$	$

Comments: The Park and Recreation Department wants to access State of Florida Contract No. 760-000-10 1 to purchase landscape equipment.

Continued on another page (s): ☐ YES ☐ NO

RECOMMENDATIONS

	Set-aside	Sub-contractor goal	Bid preference	Selection factor
SBE				

Basis of recommendation:

Signed: Date sent to SBD: 9/2/2011

Date returned to DPM:

Revised April 2005

DEPARTMENT OF MANAGEMENT Services

Division of State Purchasing
4050 Esplanade Way, Suite 360
Tallahassee, Florida 32399-0950
Tel: 850.488.8440
Fax: 850.414-6122
www.dms.MyFlorida.com

Governor Charlie Crist

Secretary Linda H. South

CERTIFICATION OF CONTRACT

TITLE: Construction, Industrial, Agricultural, & Lawn Equipment

CONTRACT NO.: 760-000-10-1

ITB NO.: 03-760-000-S

EFFECTIVE: April 28, 2010 through June 30, 2012

CONTRACTOR(S) (REV 11 JUN 2010):

ADM Ventures, Inc. dba Yale Lift Trucks of Florida & Georgia (A)
Alamo Industrial dba Alamo Sales Corp. (A)
American SportWorks LLC (A)
Ariens Company – Gravely (A)
Barloworld Handling LLC (A)
Best Equipment & Repair Inc. (A)
Bobcat Company (A)
CNH America LLC (A)
Construction Sales & Service, Inc. (A)
Excel Industries Inc. dba Hustler Turf Equipment (A)
Florida Outdoor Equipment, Inc. (R)
Glade & Grove Supply Co., Inc. (A)
Golf Ventures (A)
Gradall Industries, Inc. (A)
G S Equipment, Inc. (A)
Gulf Coast Turf and Tractor LLC dba Gulf Coast Tractor and Equipment (A)
JCB, Inc. (A)
John Deere Company – A Division of Deere & Company (C&CE Division) (A)
John Deere Construction Retail Sales (A)
Kelly Tractor Co. (A)
Komatsu America Corporation (A)
Live Oak Lawn Supply, Inc. (R)
Magic Circle Corporation dba Dixie Chopper (A)
Nortrax Equipment Company SE LP (A)
Ring Power Corporation (A)
Roberts Supply, Inc. (A)
Robinson Outdoors, Inc (A)
Sarlo Power Mowers, Inc. (A)
Stihl Southeast, Inc. (A)
Superior Tractor Company (A)
Suwannee River Kubota LLC (A)
Tiger Corporation (A)
Trekker Tractor, LLC (A)
Triple D Equipment, Inc. (A)
U.S. Shoring & Equipment Co. (A)
Wesco Turf, Inc. (A)

A. AUTHORITY – Upon affirmative action taken by the State of Florida Department of Management Services, a Contract has been executed between the State of Florida and the designated Contractor(s).

B. EFFECT – This Contract was entered into to provide economies in the purchase of Construction, Industrial, Agricultural, & Lawn Equipment by all State of Florida agencies and institutions. Therefore, in compliance with Section 287.042, Florida Statutes, all purchases of these commodities shall be made under the prices, discounts, requirements, specifications, terms, and conditions of this Contract and with the Contractor(s) specified.

C. ORDERING INSTRUCTIONS – All purchase orders shall be issued in accordance with the attached ordering instructions, requirements, terms, and conditions. Purchaser shall order at the prices and discounts indicated, exclusive of all Federal, State, and local taxes.

All Contract Purchase Orders shall show the State Purchasing Contract Number, Commodity Group Number, Line Number, Commodity(ies) Description, quantity, with unit prices extended and purchase order totaled. (This requirement may be waived when purchase is made by a blanket purchase order.)

D. CONTRACTOR PERFORMANCE – Agencies shall report any Contractor failure to perform according to the requirements of this Contract on Complaint to Vendor, form PUR7017. Should the Contractor fail to correct the problem within a prescribed period of time, then form PUR7029, Request for Assistance, is to be filed with this office.

E. SPECIAL AND GENERAL CONDITIONS – Special and general conditions are enclosed for your information.

_____

Authorized Signature (date)

DSP/cw

Attachments

CONTRACT MANAGER

NAME: CHRISTOPHER WALKER
TELEPHONE: 850-488-7540
E-MAIL: christopher.walker@dms.myflorida.com

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SECTION 1.0
INTRODUCTION

CONTENTS:

1.1 PURPOSE AND SCOPE
1.2 TIMELINE

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1.1 Purpose and Scope

The State of Florida ("State"), Department of Management Services ("Department"), invites interested Vendors, including Construction, Industrial, Agricultural, & Lawn Equipment Manufacturers and Dealers, to submit Responses in accordance with these solicitation documents. The purpose of the solicitation is to establish a State Term Contract for the acquisition of Construction, Industrial, Agricultural, & Lawn Equipment with potential options for renewals as allowed by Chapter 287, Florida Statutes.

The intent of the solicitation is to obtain the most cost effective Construction, Industrial, Agricultural, & Lawn Equipment for the State of Florida while maximizing availability, quality, and level of service. Qualified Vendors must have the capability to provide Construction, Industrial, Agricultural, & Lawn Equipment in all respects in accordance with the solicitation documents and to the satisfaction of the Department.

The State Term Contract period, if awarded, is anticipated to begin on the Contract Formation date, per Section 2.17, and to end June 30, 2012, with potential options to renew per Chapter 287, Florida Statutes.

1.2 Timeline

Event	Event Date
Issue Solicitation within MyFloridaMarketPlace Sourcing Tool (Provide Notice within Vendor Bid System).	January 27, 2010
Requests for Approved Equivalents Due via Mail (No later than 2:00 pm ET). Note: See Section 3.8, Manufacturer / Brand Names and Approved Equivalents	February 03, 2010
Questions from Vendors Due via Q&A Board within MyFloridaMarketPlace Sourcing Tool (No later than 2:00 pm ET).	February 03, 2010
Post Responses to Vendor Requests for Approved Equivalents and Questions within MyFloridaMarketPlace Sourcing Tool and Vendor Bid System.	February 10, 2010
Solicitation Responses Due within MyFloridaMarketPlace Sourcing Tool (Some Required Documents via Mail) (No later than 2:00 pm ET).	February 18, 2010
Post Notice of Intended Award within Vendor Bid System (Per Section 2.13, Electronic Posting of Notice of Intended Award).	March 23, 2010
Contract Award.	Per Section 2.17, Contract Formation

DO NOT RELY ON THE MYFLORIDAMARKETPLACE SOURCING TOOL'S TIME REMAINING CLOCK. THE OFFICIAL SOLICITATION CLOSING TIME SHALL BE AS REFLECTED IN SECTION 1.2, TIMELINE. The response deadline(s) shall be as reflected in Section 1.2, Timeline, of this solicitation. The MyFloridaMarketPlace Sourcing Tool's time remaining clock is not the official submission date and time deadline, it is intended only to approximate the solicitation closing and may require periodic adjustments.

It is strongly recommended to submit your Response as early as possible. You should allow time to receive any requested assistance and to receive verification of your submittal; waiting until the last hours of the solicitation could impact the timely submittal of your Response.

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SECTION 2.0
GENERAL INSTRUCTIONS TO RESPONDENTS [PUR1001 (10/06)]

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2.1 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.

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

2.3 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.

2.4 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.

2.5 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.

2.6 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.

2.7 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.

2.8 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.

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

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

commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
  - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The product offered by the respondent will conform to the specifications without exception.
- The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

2.10 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.

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

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

2.12 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).

2.13 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.

2.14 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.

2.15 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.

2.16 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.

2.17 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.

2.18 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.

2.19 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.

2.20 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."

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

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SECTION 3.0
SPECIAL INSTRUCTIONS TO RESPONDENTS

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3.13 LOBBYING

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3.1 Contact Person

Refer ALL Inquiries to:

Christopher Walker, FCCM
Purchasing Analyst
Division of State Purchasing
Department of Management Services
4050 Esplanade Way, Suite 360
Tallahassee, FL 32399-0950
(850)488-7540 (voice)
(850)414-6122 (facsimile)
christopher.walker@dms.myflorida.com

Please Note: All solicitation related Questions must be submitted through the MyFloridaMarketPlace Sourcing Tool Q&A Board per Section 2.5; MyFloridaMarketPlace system Questions may be answered in the MyFloridaMarketPlace Solicitation Overview, Section 3.5. Any additional technical Questions related to the MyFloridaMarketPlace system can be directed to the MyFloridaMarketPlace Customer Service Desk at 866-FLA-EPRO (866-352-3776) or vendorhelp@myfloridamarketplace.com.

3.2 Terms and Conditions

Potential Respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare Responses accordingly.

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

- Section 1.0, Introduction
- Section 6.0, Technical Specifications
- Section 5.0, Special Conditions
- Section 3.0, Special Instructions to Respondents
- Section 4.0, General Contract Conditions [PUR 1000 (10/06)]
- Section 2.0, General Instructions to Respondents [PUR 1001 (10/06)]
- Section 7.0, Price Sheet & Ordering Instructions and Forms

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

This Section, 3.2, supersedes and replaces Section 2.4, Terms and Conditions.

3.3 Definitions

The Definitions found and referenced in the General Instructions to Respondents [PUR1001 (10/06)], Section 2.1, and General Contract Conditions [PUR1000 (10/06)], Section 4.1, shall apply to this Section. The following additional terms are also defined:

(a) "State" means the State of Florida.

(b) "Department" means the Florida Department of Management Services.

(c) "Procurement Officer", "Contract Manager", or "Contract Administrator" means the Buyer's contracting personnel, as identified in Section 3.1 or as amended by the Department.

(d) "Eligible User(s)" is defined in 60A-1.005, F.A.C. The following entities are eligible users:

1. All governmental agencies, as defined in Section 163.3164, F.S., which have a physical presence within the State of Florida;
2. Any independent, non-profit college or university that is located within the State of Florida and is accredited by the Southern Association of Colleges and Schools.

Section 287.056 of the Florida Statutes governs agencies' use of the Contract. Others may seek Department approval under section 287.042(2)(a) as an eligible user of the Contract.

(e) "Vendor(s)" means the entity that believes itself capable and is in the business of providing a Commodity and / or service similar to those within the solicitation, and may or may not respond to the solicitation.

(f) "Contractor(s)" means the Respondent that has been awarded and contracts to sell Commodities and / or contractual services, which meet the requirements, specifications, terms, and conditions herein, to an Eligible User.

(g) "OEM(s)" or "Manufacturer(s)" means the Original Equipment Manufacturer or original producer or provider of a Commodity and / or service.

(h) "Dealer(s)" means a Manufacturer's certified representative authorized by the Manufacturer to market, sell, provide, and / or service specific Commodities and / or services of the Manufacturer in the State of Florida.

(i) "Commodity(ies)" means a tangible good, which may or may not meet the specifications herein.

(j) "Commodity Code(s)" means the State of Florida specified numeric code for classifying Commodities and contractual services which meet specific requirements, specifications, terms, and conditions herein.

(k) "Approved Equivalent" means a Manufacturer / Brand Name, Commodity, or contractual service that meets or exceeds the requirements, specifications, terms, and conditions of the solicitation, and is approved by the Department as an equivalent to a Manufacturer / Brand Name, Commodity, or contractual service listed in the solicitation documents.

(l) "Base Equipment", "Base Vehicle(s)", "Equipment", "Machine(s)", "Unit(s)", or "Vehicle(s)" unless stated otherwise, means a Department specified Commodity, which meets the requirements, specifications, terms, and conditions herein, and may include components, features, and configurations different than those provided by the Manufacturer and Dealer on the standard version of the Commodity.

(m) "OEM Option(s)", "OEM Accessory(ies)", "OEM Implement(s)", "Option(s)", "Accessory(ies)", and "Implement(s)" means an original Manufacturer's Base Equipment related optional component, feature, or configuration, which meets the requirements, specifications, terms, and conditions herein, and may be installed to, uninstalled from, or provided with or separately from the Base Equipment by the Manufacturer or Dealer, as is specified, ordered, legal, customary, reasonable, and prudent in the industry.

(n) "MSRP(s)" is an acronym for the Manufacturer's Suggested Retail Price. It represents the Manufacturer's pre-determined and recommended retail selling price, list price, published price, or other usual and customary price that would be paid by the purchaser for specific

Commodities and contractual services without benefit of a Contract resulting from the solicitation, if awarded.

"MSRP List(s)" is an acronym for the Manufacturer's Suggested Retail Price List, a collection of MSRPs and related information.
In the priority listed below, only the following are acceptable sources of current MSRPs and MSRP Lists for use under the solicitation and resulting Contract, if awarded:

1. Manufacturer's Annual U.S. Price Book, and
2. Manufacturer's official website.

MSRPs and MSRP Lists must be formally published, publicly listed and available, and verifiable by the Department. MSRPs and MSRP Lists may not be custom or solely developed, created, maintained, altered, revised, changed, modified, or utilized for purposes of the solicitation and resulting Contract, if awarded.

3.4 Who May Respond

The Department will accept Responses from capable Construction, Industrial, Agricultural, & Lawn Equipment Manufacturers and Dealers, who are in good standing with the State of Florida, satisfying the requirements, specifications, terms, and conditions of the solicitation documents. To be eligible for award, a Respondent shall have the demonstrated capability to perform a statewide Contract in the State of Florida.

By submitting a Response, each Respondent certifies that it understands, agrees to, and satisfies all criteria specified in the solicitation documents. The Department may request, and the Respondent shall provide, supporting information and documentation. **Failure to supply supporting information and documentation as required or requested will result in disqualification of the Response**.

3.5 MyFloridaMarketPlace Solicitation Overview

The Department uses the MyFloridaMarketPlace System ("MFMP") to receive Responses to solicitations electronically.

3.5.1 MyFloridaMarketPlace Vendor Registration Application

Vendors must have a revised, current, and complete Vendor Registration Application identified on the MyFloridaMarketPlace Vendor Registration System at: https://vendor.myfloridamarketplace.com/. If you have not registered or have requested a registration update, please be advised that a minimum of forty-eight (48) hours will be required for access to the MyFloridaMarketPlace Sourcing Tool. Completion of this registration is mandatory for those Vendors who wish to submit a Response.

3.5.2 MyFloridaMarketPlace Sourcing Tool Training

This solicitation will be conducted using the MyFloridaMarketPlace Sourcing Tool at: https://sourcing.myfloridamarketplace.com/. Optional training on how to respond to this solicitation electronically is offered at: http://marketplace.myflorida.com/vendor/vendor_solicitation_help.htm.

Download and review the document titled "ITB Event User Guide."

- For all technical questions about the Sourcing Tool, Vendors should contact the MyFloridaMarketPlace Customer Service Desk at 866-FLA-EPRO (866-352-3776) or: vendorhelp@myfloridamarketplace.com.
- For additional information or assistance on using the Sourcing Tool, please visit the MyFloridaMarketPlace website at the following link: http://marketplace.myflorida.com/vendor/vendor_solicitation_help.htm.

This site includes:

a. Solicitation User Guides
b. On Demand web-based Sourcing training link
c. WinZip FAQs
d. Vendor FAQs

3.5.3 MyFloridaMarketPlace Sourcing Tool Tips

When working in the MyFloridaMarketPlace Sourcing Tool, be aware of the twenty (20) minute time-out function in the tool. This means that you should save your work (click the SAVE button) at intervals of less than twenty (20) minutes to ensure your entries since you last saved are not lost.

Please note that clicking the SAVE button within the MyFloridaMarketPlace Sourcing Tool only saves your solicitation Responses. **The SAVE button does not transmit your solicitation Response to the State**. In order to transmit your solicitation Response to the State, you must click the SUBMIT button on the SUMMARY page of the solicitation Response.

After clicking the SUBMIT button, it is the Respondent's responsibility to check any submitted Response within the MyFloridaMarketPlace Sourcing Tool to verify that the Response is accurately and completely captured within the MyFloridaMarketPlace Sourcing Tool. Respondents must do this while there is sufficient time remaining in the solicitation period in the event you discover an error and need to resubmit a revised Response.

To validate your Response, you should do the following before the solicitation period ends:

- Go to the "My Bids / My Responses" tab within the MyFloridaMarketPlace Sourcing Tool after you submitted your Response.
- Click on the Response ID number of your last submitted Response.
- Review entire Response to make sure all responses are complete, accurate, and as you intended to submit.
- Minimum areas to check are:
  - Text boxes – Is your entire answer viewable?
  - Yes/No questions – Is the displayed answer correct?
  - All uploaded document files – Can you open attached document(s) and clearly view entire content? Does the content of the file(s) match your intended Response within the MyFloridaMarketPlace Sourcing Tool (e.g., not an earlier version, incomplete copy, or working copy)?
  - Pricing and Other Information – Are all Prices and other information you intended to submit visible and accurately captured within MyFloridaMarketPlace Sourcing Tool?
  - Required Items - Are all items listed in the solicitation completed as required within the MyFloridaMarketPlace Sourcing Tool?

DO NOT RELY ON THE MYFLORIDAMARKETPLACE SOURCING TOOL'S TIME REMAINING CLOCK. THE OFFICIAL SOLICITATION CLOSING TIME SHALL BE AS REFLECTED IN SECTION 1.2, TIMELINE. The response deadline(s) shall be as reflected in Section 1.2, Timeline, of this solicitation. The MyFloridaMarketPlace Sourcing Tool's time remaining clock is not the official submission date and time deadline, it is intended only to approximate the solicitation closing and may require periodic adjustments.

It is strongly recommended to submit your Response as early as possible. You should allow time to receive any requested assistance and to receive verification of your submittal; waiting until the last hours of the solicitation could impact the timely submittal of your Response.

3.5.4 MyFloridaMarketPlace and Vendor Bid System Email Notification

Vendors are reminded that the sourcing tools' Email Notifications are an option provided as a courtesy. The State of Florida is not under any obligation and does not guarantee that Vendors will receive Email Notifications concerning the posting, Addendum, Amendment, or close of solicitations. **Vendors are responsible for checking the MyFloridaMarketPlace Sourcing Tool and the Vendor Bid System for information and updates concerning solicitations.**

3.6 Amendments or Addendums to the Solicitation Documents

The Department reserves the right to issue Amendments or Addendums to the solicitation. Notice of any Amendment or Addendum will be posted within the MyFloridaMarketPlace Sourcing Tool and / or the Vendor Bid System. Such notice, if required, will contain the appropriate details for identifying and reviewing the formal notices and / or changes to the solicitation. Each Vendor is responsible for monitoring the MyFloridaMarketPlace Sourcing Tool and the Vendor Bid System sites for new or changing information concerning the solicitation.

3.7 Estimated Quantities

To assist Respondents in the solicitation process, average estimated annual historical spend information is provided. Spend information is based on historic data. This figure shall not be construed as a commitment.

- **Estimated Annual Spend: $30 Million ($30M USD)**

The above figure reflects estimated annual spend generated by Eligible Users of past contracts for similar Commodities and or contractual services and is not a commitment.

Additional estimations of usage, quantity, volume, weight, spend, and / or other estimates may be provided by the Department in the solicitation documents. The figures provided are to assist Respondents in the solicitation process and / or to assist the Department in evaluating, measuring, and / or scoring Responses to the solicitation and shall not be construed as commitments.

3.8 Manufacturer / Brand Names and Approved Equivalents

Unless otherwise specified, any Manufacturer / Brand Names, Commodities, or contractual services listed in the solicitation documents are descriptive, not restrictive. However, Vendors must request and receive a determination by the Department of an Approved Equivalency for any Manufacturer / Brand Name, Commodity, or contractual service not specifically listed. The term, Approved Equivalent, indicates a Manufacturer / Brand Name, Commodity, or contractual service that meets or exceeds the requirements, specifications, terms, and conditions of the solicitation, and is approved by the Department as an equivalent to a Manufacturer / Brand Name, Commodity, or contractual service listed in the solicitation documents.

To request an Approved Equivalent determination by the Department, the Vendor will submit in writing (via U.S. Mail or courier service) to the Contact Person, Section 3.1, a request for approval as an Approved Equivalent by the Requests for Approved Equivalents Due Date and Time from the Timeline, Section 1.2. The Request for Approved Equivalent must contain the following:

1. the requested Manufacturer / Brand Name;
2. the applicable Commodity Group(s);
3. a brief description of how the Vendor believes the requested Manufacturer / Brand Name's Commodities and / or contractual services meet or exceed listed Manufacturer / Brand Name's Commodities and / or contractual services and the solicitation's requirements, specifications, terms, and conditions;

4. supporting documentation, which demonstrates the comparability of the requested Manufacturer / Brand Name's Commodities and / or contractual services to the other listed Manufacturer / Brand Name's Commodities and / or contractual services, including:
    a. applicable Manufacturer's literature, documentation, specifications, test data, etc.; and
    b. any additional documentation demonstrating to the Department the comparability of the requested Manufacturer / Brand Name's Commodities and / or contractual services.
    c. Note:
        i. All supporting documentation shall be individually labeled with the applicable Commodity Group or Section Number.
        ii. <u>The Department, at its sole discretion, reserves the right to consider Manufacturer's literature or information that is in the possession of the Department or readily accessible by the Department, if the literature or information supersedes the Manufacturer's literature or information submitted by the Vendor.</u>
5. acceptable documentation that the requesting Vendor is an authorized Construction, Industrial, Agricultural, & Lawn Equipment Manufacturer or Dealer and capable of providing Commodities or contractual services to meet or exceed the complete requirements, specifications, terms, and conditions, and not just supply aftermarket options or third-party services;
6. the outer packaging of the request shall clearly state: Solicitation Number; Title, Request for Approved Equivalents (ITB No. 03-760-000-S; Construction, Industrial, Agricultural, & Lawn Equipment: Request for Approved Equivalents), and the Requests for Approved Equivalents Due Date and Time from the Timeline in Section 1.2 of the solicitation; and
7. multiple requests may be contained in one package, but each request must be documented and labeled independently and clearly.

<u>Failure to provide all required information with the Request for Approved Equivalent by the date and time specified on the Timeline will result in rejection of the request</u>.

As time is of the essence, should the Department receive Requests for Approved Equivalents that are either significant in number or in complexity, the Department in its sole discretion may prioritize the requests for evaluation purposes. The Department will make every reasonable effort to review Requests for Approved Equivalents in the time available, but not all requests may be evaluated. Requests for Approved Equivalents that are not evaluated by the Department will not be approved.

The Department shall determine in its sole discretion whether a request for an Approved Equivalent is compliant and complete, and whether the Manufacturer / Brand Name, Commodity, or contractual service requested is acceptable as an Approved Equivalent. Any determinations by the Department will be provided in the Post Responses to Vendor Requests for Approved Equivalents and Questions reply, as provided in the Timeline, Section 1.2. Approved Equivalent determinations will not be given by any other method. If the Department approves a requested Manufacturer / Brand Name, Commodity, or contractual service as an Approved Equivalent, the Department will amend the solicitation documents to list the approved Manufacturer / Brand Name, Commodity, or contractual service in the location(s) where the Department determines is the best fit.

The Respondent may offer only Manufacturer / Brand Names, Commodities, or contractual services that meet or exceed the solicitation's requirements, specifications, terms, and conditions, and which are listed as Manufacturer / Brand Names, Commodities, or contractual services. Should a Respondent submit a Response containing a Manufacturer / Brand Name, Commodity, or contractual service that does not meet or exceed the solicitation's requirements, specifications, terms, and conditions, or is not listed as a Manufacturer / Brand Name, Commodity, or contractual service in the applicable solicitation documents, the offer for the individual non-compliant or non-listed Manufacturer / Brand Name, Commodity, or contractual service will be disqualified as non-responsive.

This Section, 3.8, supersedes and replaces Section 2.10, Manufacturer's Name and Approved Equivalents.

3.9 Submittal of Response

3.9.1 Submittal of Offer

Respondents will submit their offers via the MyFloridaMarketPlace Sourcing Tool (https://sourcing.myfloridamarketplace.com/). The Response shall include all appropriate pricing, discounts, documents, forms, files, question responses, and information responses located within the MyFloridaMarketPlace Sourcing Tool for the solicitation. All required or requested pricing, discounts, documents, forms, files, question responses, and information responses will be entered electronically in the MyFloridaMarketPlace Sourcing Tool during this solicitation as indicated. If no indication for submission is provided for required or requested documents or files, or if instructions to mail a specific document, form, or file are provided, then those specific documents, forms, or files only shall be mailed to the attention of the Contact Person in Section 3.1 of the solicitation.

The outer packaging of mailed documents shall clearly state: Solicitation Title, Number (ITB No. 03-760-000-S; Construction, Industrial, Agricultural, & Lawn Equipment), and the Solicitation Responses Due Date and Time from the Timeline in Section 1.2 of the solicitation. **Failure to provide all required information within the solicitation Response shall result in rejection of the Response**.

In the event the Respondent submits more than one Response in the MyFloridaMarketPlace Sourcing Tool, only the last Response received by the system shall be considered for award. Previous Responses will not be visible to the State of Florida. Responses (other than document, file, or form submissions indicated by the solicitation to be mailed) not submitted within the MyFloridaMarketPlace Sourcing Tool shall be rejected. The system will require Respondents to review the Solicitation Preparation Checklist (Section 7.2) and confirm that they have completed all required activities before receiving the offer. The Solicitation Preparation Checklist does not relieve the Respondent of responsibility for ensuring that all requirements of the solicitation are included with the solicitation Response. The Solicitation Preparation Checklist does not have to be provided with the Response.

Each Respondent is responsible for ensuring that their offer is accurately and completely submitted before the Solicitation Responses Due Date and Time noted on the Timeline in Section 1.2 of the solicitation. The Department shall not consider late offers and the System will NOT accept offers after the Solicitation Responses Due Date and Time specified in the Timeline. **The Response must be accurate, complete, and submitted in the MyFloridaMarketplace Sourcing Tool, or as otherwise provided in the solicitation documents, by the date and time specified on the Timeline or the Response shall be deemed non-responsive**.

3.9.2 Price Sheet & Ordering Instructions Responses

Price Sheet & Ordering Instructions Responses will be submitted in the locations and formats provided in the Price Sheet & Ordering Instructions, Section 7.1, as described and / or referenced within this Section, 3.9.2.

The Price Sheet & Ordering Instructions, Section 7.1, is contained within a separate Microsoft Excel™ workbook. There are two (2) individual spreadsheet tabs within the Price Sheet & Ordering Instructions: one (1) Price Sheet tab (per this Section 3.9.2) and one (1) Ordering Instructions Form tab (per Sections 3.9.8, Ordering Instructions, and 5.5, Ordering Instructions Information). The Price Sheet tab contains twenty-four (24) Commodity Groups, each with individual lines (rows) for each related Manufacturer / Brand Name (listed in alphabetical order) and its associated fields: Line No.; Manufacturer / Brand Name; Organization Name; Base Equipment MSRP Discount [##.##%]; OEM Options, Accessories, & Implements MSRP Discount [##.##%]; OEM Parts MSRP Discount [##.##%]; and MSRP List [Include: MSRP List Name, MSRP List Date, and MSRP List

Pages / Sections]. Information regarding the Ordering Instructions and their submission can be found in Sections 3.9.8, Ordering Instructions, and 5.5, Ordering Instructions Information.

Respondents are encouraged to respond for as many of the provided Commodity Groups and Manufacturer / Brand Names (with their associated fields) as they may choose to offer, but for each Commodity Group and Manufacturer / Brand Name offered, all related information must be supplied and submitted in the appropriate fields, provided locations, and formats required on the Price Sheet & Ordering Instructions, Section 7.1. Unless specifically noted as optional, the Respondent must complete the following fields for each Commodity Group and Manufacturer / Brand Name offered in the Section 7.1, Price Sheet & Ordering Instructions, Price Sheet tab:

- Organization Name;
- Base Equipment MSRP Discount [##.##%];
- OEM Options, Accessories, & Implements MSRP Discount [##.##%] (Except Group No. 15);
- OEM Parts MSRP Discount [##.##%] (Optional); and
- MSRP List [Include MSRP List Name, MSRP List Date, and MSRP List Pages / Sections]. Note: See Section 3.9.5, Supporting Documents, MSRP List for additional information.

The light-yellow colored spaces (cells) on the Price Sheet & Ordering Instructions, Section 7.1, are the places where the Respondent may offer specific Base Equipment MSRP Discounts; OEM Options, Accessories, & Implements MSRP Discounts; and OEM Parts Discounts and is required to supply accurate, compliant, and complete information per the requirements, specifications, terms, and conditions herein. These light-yellow colored spaces (cells) on the Price Sheet & Ordering Instructions may contain bracketed notes providing instructions and requirements to assist the Respondent in providing the required information in the required format. Where provided, the Respondent shall follow the instructions and formats noted in any bracketed instructions for all Commodity Groups and Manufacturer / Brand Names offered.

Should a Respondent not offer a specific Commodity Group or Manufacturer / Brand Name, they shall leave the associated line (row), space(s), and field(s) untouched or blank (do not delete the line (row)); it is not required to mark a line as "No Bid". Where a Commodity Group and Manufacturer / Brand Name is offered, the Respondent must offer the associated Base Equipment MSRP Discount and OEM Options, Accessories, & Implements MSRP Discount along with supplying the applicable MSRP List information. The Respondent is not required, but is encouraged to offer the associated OEM Parts Discount. **Offers for Base Equipment Discounts without an offer for the associated OEM Options, Accessories, & Implements MSRP Discounts will be rejected as non-responsive. Offers for OEM Options, Accessories, & Implements MSRP Discounts and / or OEM Parts MSRP Discounts without an offer for the associated Base Equipment Discounts will be rejected as non-responsive. Offers not including the applicable MSRP List information will be rejected as non-responsive**.

All Prices will be in U.S. Dollars, whole ($USD; e.g., $999.999); all Discounts shall be a positive Percentage to the one-hundredth decimal place (%; e.g., 99.99%); and all Dates will be in full standard numerical format (e.g., ##/##/####). The Respondent agrees and confirms that the prices (net after discount, as applicable) offered do not exceed the MSRP for the respective Commodity.

The Respondent may offer only Commodities that meet or exceed the solicitation's requirements, specifications, terms, and conditions, and for which the Commodity Group and Manufacturer / Brand Name is listed in the Price Sheet & Ordering Instructions (Section 7.1). Should a Respondent submit a Response containing a Commodity that does not meet or exceed the solicitation's requirements, specifications, terms, and conditions, and for which the Commodity Group and Manufacturer / Brand Name is not listed in the Price Sheet & Ordering Instructions, that offer will be disqualified as non-responsive. The Department in its sole discretion shall determine the acceptability of a Manufacturer / Brand Name and Commodity offered.

The Price Sheet & Ordering Instructions, Section 7.1, will be submitted to the Department electronically using the MyFloridaMarketPlace Sourcing Tool, per Section 3.9.1 of the solicitation.

Failure to properly submit or provide a compliant Section 7.1, Price Sheet & Ordering Instructions, with the Response shall result in the Respondent being deemed non-responsive.

3.9.3 Alternate Responses

Respondent may not submit more than one offer for each listed Manufacturer / Brand Name per Commodity Group. The Department seeks each Respondent's single-best Response by Manufacturer / Brand Name per Commodity Group.

3.9.4 Full-Service Repair Facilities

Respondent must offer Commodities and contractual services having a minimum of one (1) Manufacturer's authorized Full-Service Repair Facility available in the State of Florida from which the Commodities offered may be installed, serviced, and repaired under Warranty and the requirements, specifications, terms, and conditions of the Contract, if awarded. Provision of a Manufacturer's authorized Full-Service Repair Facility shall be a requirement for the entire Period of Agreement, Section 5.2. Respondent shall submit with their Response an answer in the MyFloridaMarketPlace Sourcing Tool RFX Info section of the solicitation attesting to this requirement. **A positive, "Yes", answer is one requirement of a responsive Response**.

3.9.5 Supporting Documents

Respondent shall submit the following Supporting Documents with their Response, as noted:

- **MSRP List**: With the Response, Respondent shall provide one (1) applicable, current, complete, and separate MSRP List (as defined under Section 3.3(n)) for each Commodity Group and Manufacturer / Brand Name offered under Section 7.1, Price Sheet & Ordering Instructions. Therefore, multiple MSRP Lists may be required (e.g., by Commodity Group and Manufacturer / Brand Name).

  The MSRP List will include the Manufacturer's Item Number, Manufacturer's Item Description, and MSRP for only and each of the Manufacturer / Brand Name and Commodity Group's applicable Base Equipment; OEM Options, Accessories, & Implements; and OEM Parts offered. The MSRP List must include the applicable Commodity Group, Manufacturer / Brand Name, MSRP List Name, and MSRP List Date on the cover or first page.

  The submitted MSRP List(s) shall only be submitted and accepted as follows:
  - MSRP List specific terms and conditions which conflict with the requirements, specifications, terms, and conditions of the solicitation and resulting Contract, if awarded, must be deleted, omitted, removed, concealed, or marked void;
  - In Adobe Acrobat 9 or earlier (.pdf) electronic format (encoded or scanned) with logical electronic filenames, and
  - On CD(s) or DVD(s) [clearly mark the exterior of each CD or DVD for its general content].
  - Note: It is the Respondent's responsibility to ensure that the documents and discs are applicable, complete, and readable. Non-compliant or non-readable documents and discs will be rejected.

The Supporting Documents shall be mailed to the Department per Section 3.9.1 of the solicitation. **Failure to provide accurate and compliant Supporting Documents with the Response will result in the Respondent being deemed non-responsive.**

3.9.6 Manufacturer's Certification

Respondent shall submit one (1) completed Manufacturer's Certification form (Section 7.3), certifying that the Respondent is the Manufacturer or a Dealer for each Manufacturer / Brand Name they offer Commodities for as part of their Response. The Manufacturer's Certification form must be executed by the Manufacturer only and may not be completed by a Dealer or third-party. Dealer agreements will not be accepted in lieu of a Manufacturer's Certification form. The Manufacturer's Certification form shall be mailed to the Department per Section 3.9.1 of the solicitation. **Failure to provide a complete and compliant Manufacturer's Certification form with the Response will result in the Respondent being deemed non-responsive.**

3.9.7 Savings / Price Reductions

Respondent shall submit one (1) accurately completed Savings / Price Reductions form (Section 7.4) with their Response containing the required aggregate Base Equipment MSRP Discount; OEM Options, Accessories, & Implements MSRP Discount; and OEM Parts Discount savings information for each Commodity Group and Manufacturer / Brand Name offered and a method(s) for the Department to verify the savings information provided. The Savings / Price Reductions form will not be used to determine award, only to verify the Savings / Price Reductions being offered. The Savings / Price Reductions form shall be mailed to the Department per Section 3.9.1 of the solicitation. **Failure to provide the Savings / Price Reductions form with the Response may result in the Respondent being deemed non-responsive.**

3.9.8 Ordering Instructions

Respondent shall submit one (1) completed Ordering Instructions Form (contained within Section 7.1, Price Sheet & Ordering Instructions) with their Response identifying persons responsible for answering questions about the Response and administering the Contract, if awarded, and shall provide information necessary for placing orders and remitting payments under the Contract, if awarded. Additional Ordering Instruction requirements, terms, and conditions can be found in Section 5.5, Ordering Instructions Information. The Ordering Instructions Form will be submitted with Section 7.1, Price Sheet & Ordering Instructions, to the Department electronically using the MyFloridaMarketPlace Sourcing Tool, per Section 3.9.1 of the solicitation. **Failure to provide the Ordering Instructions Form with the Response may result in the Respondent being deemed non-responsive.**

3.10 Evaluation Criteria

The Department shall evaluate eligible responsive offers. Responses that do not meet all requirements of the solicitation or fail to provide all required information, documents, or materials may be rejected as non-responsive. Respondents whose Responses, past performance, or current status do not reflect the capability, integrity, or reliability to fully and in good faith perform the requirements of a Contract may be rejected as non-responsible. The Department reserves the right to determine which Responses meet the requirements, specifications, terms, and conditions of the solicitation, and which Respondents are responsive and responsible.

3.11 Basis for Award

The Department shall make a single award statewide for each Manufacturer / Brand Name (Line Number) per Commodity Group to the responsive and responsible Respondent offering the highest Base Equipment MSRP Discount from the most recent and complete MSRP List (therefore providing the lowest Net Prices). Therefore, multiple Manufacturer / Brand Name awards per Commodity Code group are possible.

The Department reserves the right to make awards as determined to be in the best interest of the State of Florida, and to accept or reject any and all offers, or separable portions, and to waive any minor irregularity, technicality, or omission if the Department determines that doing so will serve the State of Florida's best interest.

3.12 State Objectives

Within thirty (30) calendar days following award of the Contract, if awarded, the successful Respondent shall submit plans addressing each of the State's five (5) objectives listed below, to the extent applicable to the items / services covered by this solicitation.

3.12.1 Diversity

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

The State is dedicated to fostering the continued development and economic growth of small, minority-, women-, and service-disabled veteran business enterprises. Participation by a diverse group of Vendors doing business with the State is central to this effort. To this end, it is vital that small, minority-, women-, and service-disabled veteran business enterprises participate in the State's procurement process as both Contractors and Sub-Contractors in this solicitation. Small, minority-, women-, and service-disabled veteran business enterprises are strongly encouraged to contribute to this solicitation.

The Contractor shall submit documentation addressing diversity and describing the efforts being made to encourage the participation of small, minority-, women-, and service-disabled veteran business enterprises.

Information on Certified Minority Business Enterprises (CMBE) and Certified Service-Disabled Veteran Business Enterprises (CSDVBE) is available from the Office of Supplier Diversity at:

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

Quarterly Reports of revenue paid to certified W/MBE and certified SDVBE Contractors (agents or Sub-Contractors) as a result of any award shall be provided to the Agency Purchasing Office by the Prime Contractor on an Agency by Agency (or other Eligible User) level.

3.12.2 Environmental Considerations

The State supports and encourages initiatives to protect and preserve our environment. The Contractor shall submit as part of any response the Contractor's plan to support the procurement of products and materials with recycled content, and the intent of Section 287.045, Florida Statutes. The Contractor shall also provide a plan for reducing and or handling of any hazardous waste generated by Contractor's company. Reference Rule 62-730.160, Florida Administrative Code. It is a requirement of the Florida Department of Environmental Protection that a generator of hazardous waste materials that exceeds a certain threshold must have a valid and current Hazardous Waste Generator Identification Number. This identification number shall be submitted as part of Contractor's explanation of its company's hazardous waste plan and shall explain in detail its handling and disposal of this waste.

3.12.3 Certification of Drug-Free Workplace Program

The State supports and encourages initiatives to keep the workplaces of Florida's Suppliers and Contractors drug free. Section 287.087 of the Florida Statutes provides that, where identical tie responses are received, one preference shall be given to a response received from a Respondent that certifies it has implemented a drug-free workforce program. If applicable, Respondent shall certify that the Respondent has a drug-free workplace program using the Certification of Drug-Free Workplace form included in Section 7.6 of the solicitation. The Contractor shall describe how it will address the implementation of a drug free workplace in offering the items of the solicitation.

3.12.4 Products Available from the Blind or Other Handicapped (RESPECT)

The State supports and encourages the gainful employment of citizens with disabilities. It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this Contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, 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.

The Contractor shall describe how it will address the use of RESPECT in offering the items of the solicitation.

3.12.5 Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE)

The State supports and encourages the use of Florida correctional work programs. It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this Contract shall be purchased from the corporation identified under Chapter 946, F.S., in the same manner and under the same procedures set forth in Section 946.515(2), and (4), F.S.; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for this agency insofar as dealings with such corporation are concerned. Additional information about PRIDE and the products it offers is available at http://www.pridefl.com.

The Contractor shall describe how it will address the use of PRIDE in offering the items of the solicitation.

3.13 Lobbying

Please reference Section 2.21, Limitation on Vendor Contact with Agency During Solicitation Period.

Respondents are advised that the following will be included in the Contract for these services: In accordance with Section 216.347, Florida Statutes, and as provided herein, the Contractor may not expend any State funds for the purpose of lobbying the legislature, the judicial branch, the executive branch, or any State Agency.

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SECTION 4.0
GENERAL CONTRACT CONDITIONS [PUR1000 (10/06)]

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4.1 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).

4.2 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.

4.3 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.

4.4 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.

4.5 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.

4.6 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.

4.7 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.

4.8 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.

4.9 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.

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

4.11 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.

4.12 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.

4.13 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.

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

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

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

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

4.15 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.

4.16 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.

4.17 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.

4.18 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.

4.19 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.

4.20 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.

4.21 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.

4.22 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.

4.23 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.

4.24 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.

4.25 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.

4.26 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.

4.27 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.

4.28 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.

4.29 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.

4.30 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.

4.31 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.

4.32 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.

4.33 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.

4.34 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.

4.35 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.

4.36 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.

4.37 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.

4.38 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.

4.39 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.

4.40 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.

4.41 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.

4.42 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.

4.43 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.

4.44 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.

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

4.46 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.

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

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SECTION 5.0
SPECIAL CONDITIONS

CONTENTS:

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5.1 Definitions

The Definitions found and referenced in the General Contract Conditions [PUR1000 (10/06)], Section 4.1, and the Definitions found and referenced in Section 3.3, Definitions, shall apply to this Section 5.1, Definitions.

5.2 Period of Agreement

The State Term Contract shall be in effect beginning on the Contract Formation date, per Section 2.17, and end June 30, 2012. This agreement has the option to renew for one (1) additional three (3) year period, or any portion or portions thereof. Renewal is contingent upon satisfactory performance by the Contractor and will not be subject to pricing or discount adjustments.

5.3 Catalog Data

The MyFloridaMarketPlace ("MFMP") third-party service provider is responsible for converting Contract catalog information into a format supported by the system. To accomplish this conversion, the Contractor, if requested, shall provide certain information in electronic format directly to the service provider (Note: This format is generally Microsoft Excel™.).

Within ten (10) business days of written notice from the MFMP service provider, Contractor shall provide all information necessary to facilitate electronic purchases from this Contract. Such information may include, but is not limited to, Contractor Name, Manufacturer / Brand Name, SKU, Commodity Description, unit of measure, and Contract Ceiling Price, per Section 5.6. Contractor shall provide this information in the format required by the MFMP service provider. No costs or expenses associated with providing this information shall be charged to the State, Department, Eligible Users, or MFMP service provider. With the Contractor's timely assistance, the MFMP service provider shall create and maintain web-based placement of the requested Contract information.

5.4 Internet Posting of Authorized Lists

During the Contract Period of Agreement, Section 5.2, the Department shall maintain on the internet a working copy of the complete Contract, including, but not limited to, the Section 7.1, Price Sheet & Ordering Instructions, with the associated and Department approved MSRP List(s). The MSRP List(s) will be provided to the Department by the Contractor in electronic format as stipulated in Section 3.9.5, Supporting Documents, MSRP List; as required herein; and in accordance with the prices, discounts, requirements, specifications, terms, and conditions of the Contract.

The Contractor agrees to not maintain, publish, provide, or allow discovery of competing, conflicting, unofficial, unauthorized, or non-Department approved contract similar documents to or by Eligible Users. However, the Contractor may manually or electronically direct Eligible Users to the Department's Contract website. The Contractor shall not accept any orders using unofficial MSRP List(s) until the Department approves the respective MSRP List(s) and publishes it / them to the Contract website as noted above.

The Department may, in its sole discretion, prohibit any update or change of the MSRP List(s), or direct a Contractor to undo any update or change made. In addition, the Department may direct rescission of any purchase entered into on the basis of competing, conflicting, unofficial, unauthorized, or non-Department approved documents or lists.

5.5 Ordering Instructions Information

The Ordering Instructions are contained or referenced via a link from the individual Line No.'s Organization Name field in the Section 7.1, Price Sheet & Ordering Instructions. Click on the specific link for the associated Ordering Instructions.

The Ordering Instructions contained or referenced within Section 7.1, Price Sheet & Ordering Instructions, will contain current information relevant to the acquisition of the awarded Commodities and / or contractual services under the Contract. This information shall include, but not be limited to, the Contractor's Organization Information, the Contractor's Representative Information, the Contractor's Remit-To Information, and a list of Department maintained instructions to assist Eligible Users in placing orders under the Contract.

Should the Contractor be the Manufacturer (not a Dealer) of the Commodities and / or contractual services awarded, they may also include specific Dealer information within the Ordering Instructions in the provided locations. The Manufacturer as Contractor who selects to also include specific Dealer information within the Ordering Instructions is also required to appropriately register the listed Dealers as locations under the Contractor's vendor registration in the State of Florida Vendor Registration System (Vendor Information Portal ("VIP"): https://vendor.myfloridamarketplace.com/). A Dealer as Contractor may not include other Dealer's information in the Ordering Instructions. The Manufacturer as Contractor is fully responsible for compliance with all the prices, discounts, requirements, specifications, terms, and conditions of the Contract and for any actions or inactions of the Dealer(s) they include in the Ordering Instructions.

It is the Contractor's responsibility to notify the Department of any updates to organization information, relevant personnel, and contact information contained in the Ordering Instructions. The Contractor shall notify the Department of a requested change to the Ordering Instructions in writing (email is acceptable) and received by the Contract Manager no later than five (5) business days prior to the effective date of the proposed change. The Department may accept or reject any proposed change, or may unilaterally amend the Ordering Instructions as it deems is in the best interest of the State and / or will best assist Eligible Users.

Please Note: Any changes to the Ordering Instructions will also require the Contractor to appropriately update their vendor registration in the State of Florida Vendor Registration System (Vendor Information Portal ("VIP"): https://vendor.myfloridamarketplace.com/).

5.6 Ceiling Prices

The individual Base Equipment Net Price (after the applicable Base Equipment MSRP Discount is applied to the approved MSRP); OEM Option, Accessory, & Implement Net Price (after the applicable OEM Options, Accessories, & Implements MSRP Discount is applied to the approved MSRP); and OEM Part Net Price (after the applicable OEM Parts MSRP Discount is applied to the approved MSRP) contained or referenced in the Section 7.1, Price Sheet & Ordering Instructions, will be the not-to-exceed Ceiling Prices under the Contract. The Ceiling Prices for the Base Equipment; OEM Options, Accessories, & Implements; and OEM Parts individually and collectively include (as applicable): all profit, administrative charges / fees, environmental charges / fees, title application and registration charges / fees, license plate transfer charges / fees, preparation charges / fees, assembly charges / fees, installation charges / fees (except OEM Parts), shop charges / fees, warehousing charges / fees, packing charges / fees, handling charges / fees, transit charges / fees, freight charges / fees, shipping charges / fees, delivery charges / fees to any point within the State of Florida, fuel charges / fees, warranty charges / fees, and any other charges or fees necessary to provide and deliver the Base Equipment; OEM Options, Accessories, & Implements; and OEM Parts according to the requirements, specifications, terms, and conditions, exclusive of taxes.

Where a Ceiling Price is a Base Equipment Net Price; OEM Option, Accessory, & Implement Net Price; or OEM Part Net Price, the individual Net Prices shall be calculated by applying the applicable Base Equipment MSRP Discount; OEM Options, Accessories, & Implements MSRP Discount; or OEM Parts MSRP Discount from Section 7.1, Price Sheet & Ordering Instructions, to the individual Base Equipment's; OEM Option's, Accessory's, & Implement's; and OEM Part's approved MSRP and rounding to the nearest whole cent. For example, if the applicable Discount is 30.00% and the

individual Commodity's MSRP is $24,447.59, then the Net Price will be $17,113.31 [$24,447.59 – 30.00% = $17,113.313 = $17,113.31 (as rounded to the nearest whole cent)].

The individual and applicable Base Equipment MSRP Discounts; OEM Options, Accessories, & Implements MSRP Discounts; and OEM Parts Discounts listed in Section 7.1, Price Sheet & Ordering Instructions shall be the minimum Discounts used under the Contract. The Contractor may, and is encouraged to provide larger Discounts (e.g., lower Net Prices) for contracted and awarded Commodities.

Eligible Users may negotiate Base Equipment Net Prices; OEM Options, Accessories, & Implements Net Prices; and OEM Parts Net Prices for the contracted and awarded Commodities with the Contractor, provided the negotiated prices do not exceed the Ceiling Prices for the respective Base Equipment; OEM Option, Accessory, & Implement; and OEM Part. The Contractor is prohibited from negotiating and charging prices that exceed the Ceiling Prices set forth or referenced in the Price Sheet & Ordering Instructions, Section 7.1, and from invoicing or billing at prices that exceed the total ordered (e.g., via Purchase Order or Purchasing Card, as applicable). The Ceiling Prices are only subject to adjustments per Sections 4.4, 4.25, and 5.8, and any revision requests must have received the prior approval of the Department.

The Ceiling Price for any Base Equipment; OEM Options, Accessories, & Implements; and OEM Parts must not exceed the current MSRP. In the event a Ceiling Price for any Commodity is found to be above the current MSRP, the Department, at its sole option, shall reduce the Ceiling Price to the current MSRP less the applicable contracted Discount or terminate and remove the Contractor's award from the Contract.

5.7 Commodity, Commodity Group, and Manufacturer / Brand Name Additions and Deletions

During the Contract Period of Agreement, Section 5.2, the Department shall have the right to add or delete Commodities, Commodity Groups, and / or Manufacturer / Brand Names to or from this agreement by adding them to or removing them from the Price Sheet & Ordering Instructions, Section 7.1. Any new Commodities, Commodity Groups, and / or Manufacturer / Brand Names added will be at the requirements, specifications, terms, and conditions herein or as later stipulated by the Department, and at mutually agreed pricing and discounts accepted, in writing, by both the added Commodity's, Commodity Group's, and / or Manufacturer / Brand Name's Vendor(s) and the Department. Commodities, Commodity Groups, and / or Manufacturer / Brand Names may be removed at the sole discretion of the Department, per the requirements, specifications, terms, and conditions herein or as permitted by Florida Statutes or Florida Administrative Code.

5.8 MSRP List and Price Adjustment

The per Commodity Group and Manufacturer / Brand Name Department authorized MSRP List will be contained or referenced in Section 7.1, Price Sheet & Ordering Instructions. The Department authorized MSRP List shall be based on the Section 7.1, Price Sheet & Ordering Instructions, Commodity Group and Manufacturer / Brand Name, and in accordance with the Contract requirements, specifications, terms, and conditions.

The Contract's initial MSRP List shall be based on the Section 7.1, Price Sheet & Ordering Instructions, Commodity Group and Manufacturer / Brand Name MSRP List awarded under the Contract's solicitation. The Department authorized per Commodity Group and Manufacturer / Brand Name MSRP List for use under the Contract may be updated from time-to-time as specified herein; however, the per Commodity Group and Manufacturer / Brand Name Base Equipment MSRP Discount; OEM Options, Accessories, & Implements MSRP Discount; and OEM Parts MSRP Discount shall not decrease for the length of the Contract, during both the original and any renewal term(s) of the Contract. At any time during the Contract, during both the original and any renewal term(s) of the Contract, the Contractor may request an increase of the per Commodity Group and Manufacturer / Brand Name Base

Equipment MSRP Discount; OEM Options, Accessories, & Implements MSRP Discount; and OEM Parts MSRP Discount. The Department may, in its sole discretion, accept or deny any requested per Commodity Group and Manufacturer / Brand Name Base Equipment MSRP Discount; OEM Options, Accessories, & Implements MSRP Discount; and OEM Parts MSRP Discount increases. If a per Commodity Group and Manufacturer / Brand Name Base Equipment MSRP Discount; OEM Options, Accessories, & Implements MSRP Discount; and OEM Parts MSRP Discount increase request is approved by the Department, it shall not become effective for new orders placed by Eligible Users until the Department approved effective date and posting by the Department. Any Department approved updates to the MSRP List, if Department approved, shall be based on the Section 7.1, Price Sheet & Ordering Instructions, Commodity Group and Manufacturer / Brand Name, and in accordance with the Contract requirements, specifications, terms, and conditions.

During the Contract Period of Agreement, Section 5.2, including any renewal term(s), after the first twelve (12) months following the start of the Contract term, and no more often than one (1) time per calendar year, the Contractor may request to use an updated per Commodity Group and Manufacturer / Brand Name MSRP List for use under the Contract. The Contractor shall advise the Department of a request for a per Commodity Group and Manufacturer / Brand Name MSRP List update in writing (email is acceptable) and received by the Contract Manager no later than sixty (60) days prior to the requested effective date of the proposed update. However, the Department will not consider a per Commodity Group and Manufacturer / Brand Name MSRP List update request received by the Contract Manager within one hundred fifty (150) days of Contract termination, including any renewal term(s). The Contractor fully agrees that any per Commodity Group and Manufacturer / Brand Name MSRP List update request must:

- include a detailed request letter identifying the requested per Commodity Group and Manufacturer / Brand Name MSRP List information to be used in the Section 7.1, Price Sheet & Ordering Instructions, per Commodity Group and Manufacturer / Brand Name [Include MSRP List Name, MSRP List Date, and MSRP List Pages / Sections] field;
- be from the most current per Commodity Group and Manufacturer / Brand Name MSRP List publicly listed and verifiable at the time of the requested MSRP List update;
- include the applicable requested per Commodity Group and Manufacturer / Brand Name MSRP List in accordance with Section 3.9.5, Supporting Documents, MSRP List;
- fully offer, provide, and demonstrate through a separate electronic analysis document that the per common Commodity (those specific Commodities currently on the pre-existing per Commodity Group and Manufacturer / Brand Name MSRP List and the requested per Commodity Group and Manufacturer / Brand Name MSRP List update) difference in the pre-existing MSRP and requested MSRP update does not exceed the resulting percent change in the latest version of the U.S. Department of Labor, Producer Price Index ("PPI") for Series ID:
    - for Commodity Group Nos. 1 and 8: WPU112D03; Not Seasonally Adjusted; Group: Machinery and equipment; Item: Graders, rollers, compactors, forklifts; Base Date: 0312; from the Base Month (Contract Formation Date, Section 2.17, or last approved MSRP List update date, whichever is later) to the latest month for which non-preliminary data is available at the time of the requested MSRP List update;
    - for Commodity Group No. 2: WPU112B05; Not Seasonally Adjusted; Group: Machinery and equipment; Item: Power cranes, excavators & equipment; Base Date: 9912; from the Base Month (Contract Formation Date, Section 2.17, or last approved MSRP List update date, whichever is later) to the latest month for which non-preliminary data is available at the time of the requested MSRP List update;
    - for Commodity Group Nos. 3, 7, 9, 10, and 11: WPU114403; Not Seasonally Adjusted; Group: Machinery and equipment; Item: Industrial trucks and tractors; Base Date: 8200; from the Base Month (Contract Formation Date, Section 2.17, or last approved MSRP List update date, whichever is later) to the latest month for which non-preliminary data is available at the time of the requested MSRP List update;
    - for Commodity Group Nos. 4, 5, and 6: WPU114A04; Not Seasonally Adjusted; Group: Machinery and equipment; Item: Tractor shovel loaders; Base Date: 8200; from the Base Month (Contract Formation Date, Section 2.17, or last approved MSRP List update

date, whichever is later) to the latest month for which non-preliminary data is available at the time of the requested MSRP List update;

- for Commodity Group Nos. 12, 13, and 14: WPU149111; Not Seasonally Adjusted; Group: Transportation equipment; Item: Transportation equipment, n.e.c.; Base Date: 198506; from the Base Month (Contract Formation Date, Section 2.17, or last approved MSRP List update date, whichever is later) to the latest month for which non-preliminary data is available at the time of the requested MSRP List update;
- for Commodity Group No. 15: WPU111408; Not Seasonally Adjusted; Group: Machinery and equipment; Item: Farm machinery and equipment, nec excl parts; Base Date: 0212; from the Base Month (Contract Formation Date, Section 2.17, or last approved MSRP List update date, whichever is later) to the latest month for which non-preliminary data is available at the time of the requested MSRP List update;
- for Commodity Group Nos. 16, 17, 18, 19, 20, 21, 22, 23, and 24: WPU111401; Not Seasonally Adjusted; Group: Machinery and equipment; Item: Commercial turf & grounds care equipment; Base Date: 200212; from the Base Month (Contract Formation Date, Section 2.17, or last approved MSRP List update date, whichever is later) to the latest month for which non-preliminary data is available at the time of the requested MSRP List update; and
  - Note: The U.S. Department of Labor, PPI indices are available at: http://www.bls.gov/ppi/home.htm. Scroll to and click on: "Series Report"; Enter Series ID "WPU#######" (see Series ID codes above) and scroll to and click on "Retrieve Data".

- be in accordance with the requirements, specifications, terms, and conditions of the Contract.

The Department may, in its sole discretion, accept or deny any requested per Commodity Group and Manufacturer / Brand Name MSRP List update. If a per Commodity Group and Manufacturer / Brand Name MSRP List update request is approved by the Department, it shall not become effective for new orders placed by Eligible Users until the Department approved effective date and posting by the Department.

5.9 Acquisition by Eligible Users

Eligible Users are encouraged to purchase any contracted Commodities and contractual services, including Base Equipment; OEM Options, Accessories, & Implements; and OEM Parts, that will meet their needs, provide the lowest total cost, and be in accordance with the Eligible User's applicable procurement and fleet statutes, laws, ordinances, codes, rules, policies, and procedures. Any non-contract products and services must be ordered and invoiced as non-contract options separately from Contract purchases in accordance with the Eligible User's applicable procurement and fleet statutes, laws, ordinances, codes, rules, policies, and procedures.

Eligible Users may purchase Base Equipment with any individual or combination of contracted OEM Options, Accessories, & Implements and OEM Parts or without any contracted OEM Options, Accessories, & Implements and OEM Parts. Additionally, OEM Options, Accessories, & Implements and OEM Parts may be purchased separate of any contracted Base Equipment.

5.10 Contract Price Quotes and Sales Literature / Technical Information

Eligible Users may request and the Contractor will provide within five (5) business days no charge Contract Price Quotes under the Contract. The Contractor agrees that Contract Price Quotes provided to an Eligible User shall be submitted for only those Commodity Groups, Manufacturer / Brand Names, and Commodities which the Contractor is awarded, and that the awarded Commodities quoted are the minimum required to meet the Eligible User's needs. All Contract Price Quotes will be according to the Prices, Discounts, requirements, specifications, terms, and conditions of the Contract, and will include the following:

- Quotation Date.
- Quotation Number (as applicable).

- Contractor Information.
- State Term Contract Number and Name.
- Base Equipment: Commodity Group, Line Number, Base Equipment code and description, and negotiated Base Equipment Net Price (per Section 5.6, Ceiling Prices).
- OEM Options, Accessories, & Implements (if applicable, individually listed): OEM Option, Accessory, & Implement code and description; OEM Option, Accessory, & Implement negotiated OEM Option, Accessory, & Implement Net Price (as applicable, per Section 5.6, Ceiling Prices).
- OEP Parts (if applicable, individually listed): OEM Part code and description, and negotiated OEM Part Net Price (per Section 5.6, Ceiling Prices).
- New License Plate Fee (if applicable, per Section 5.14, Commodities Title and Registration).
- Total State Term Contract negotiated Price (sum of the applicable negotiated Base Equipment Net Price(s); OEM Options, Accessories, & Implements Net Price(s); OEM Parts Net Price(s), and New License Plate Fee(s)).

During the Term of the Contract, the Contractor shall supply no charge printed Sales Literature and Technical Information to Eligible Users upon request, unless the literature and information requested is available on the Contractor's or Manufacturer's website. If the literature and information is available on the Contractor's or Manufacturer's website, the Contractor will direct the requesting Eligible User to the specific website location. All Eligible User requests for Sales Literature and Technical Information shall be completed by the Contractor within five (5) business days.

5.11 Purchase Orders

Under the Contract, Eligible Users may place orders using a Purchase Order or using a Purchasing Card, per Section 5.12. Purchase Orders issued by Eligible Users shall be in accordance with the Ordering Instructions (contained within Section 7.1, Price Sheet & Ordering Instructions) and the Prices, Discounts, requirements, specifications, terms, and conditions of the Contract. The Contractor and the Eligible User agree to the following:

- Under the Contract, Eligible Users may only place and Contractors shall only accept Purchase Orders for Commodity Group and Manufacturer / Brand Name and Commodities the Contractor is awarded.
- For each Commodity and contractual service ordered, Eligible Users are responsible for notating the following information on and with the Purchase Order based on their negotiations (per Section 5.6, Ceiling Prices) with the Contractor:
    - Eligible User's issuing contact person and contact information;
    - Contractor Information from the Ordering Instructions;
    - State Term Contract Number and Name;
    - Base Equipment: Commodity Group, Line Number, Base Equipment code and description, and negotiated Base Equipment Net Price (per Section 5.6, Ceiling Prices);
        - **Note:** Specify any special needs or instructions (e.g., other associated equipment).
    - OEM Options, Accessories, & Implements (if applicable, individually listed): OEM Option, Accessory, & Implement code and description; OEM Option, Accessory, & Implement negotiated OEM Option, Accessory, & Implement Net Price (as applicable, per Section 5.6, Ceiling Prices);
        - **Note:** Specify any special needs or instructions (e.g., other associated equipment).
    - OEP Parts (if applicable, individually listed): OEM Part code and description, and negotiated OEM Part Net Price (per Section 5.6, Ceiling Prices);
    - New License Plate Fee (if applicable, per Section 5.14, Commodities Title and Registration); and
    - Any Eligible User special instructions, requirements, terms, and conditions;

- Total State Term Contract negotiated Price (sum of the applicable negotiated Base Equipment Net Price(s); OEM Options, Accessories, & Implements Net Price(s); OEM Parts Net Price(s), and New License Plate Fee(s)).

- Contractor will place all orders received with the Manufacturer(s) within seven (7) calendar days after receipt of the Purchase Order unless the Contractor has the applicable Base Equipment; OEM Options, Accessories, & Implements (if applicable); and OEM Parts (if applicable) ordered in their possession and can Deliver the order to the Eligible User within fourteen (14) calendar days. All orders placed with the Manufacturer(s) shall be made in full compliance with the requirements, specifications, terms, and conditions herein.
- Contractor shall honor all Purchase Orders received during the Contract Period of Agreement (Section 5.2) for Commodity Group and Manufacturer / Brand Name Commodities the Contractor is currently awarded (Section 7.1, Price Sheet & Ordering Instructions).
- Unless the Contractor has the applicable Base Equipment; OEM Options, Accessories, & Implements (if applicable); and OEM Parts (if applicable) ordered by the Eligible User in their possession, the Contractor will provide an Acknowledgement of Order form, per Section 5.#, to the Eligible User.
- Contractor, from receipt of the Purchase Order until delivery is made to the ordering Eligible User, shall promptly notify the Eligible User of any potential delivery delays. Additionally, the Contractor must promptly advise the ordering Eligible User if their order may not be delivered prior to the end of the Eligible User's Fiscal Year (State Agency's Fiscal Year ends June 30). **Evidence of intentional delays in delivery shall be cause for default proceedings and / or Contract termination**.

This Section 5.11, Purchase Orders, does not modify or replace Section 4.2, Purchase Orders, of the Contract.

5.12 Purchasing Card

The State of Florida and numerous Eligible Users have adopted and implemented various Purchasing Card programs using different universal card formats (e.g., American Express, MasterCard, and Visa). Accordingly, the Contractor and the Manufacturer's authorized Dealers must have the ability to accept universal card format Purchasing Cards, including American Express, MasterCard, and Visa, during the Contract term. Contractors and Manufacturer's authorized Dealers may receive payments from Eligible Users by universal card format Purchasing Cards in the same manner as other credit / debit card purchases. Universal card format Purchasing Cards (e.g., American Express, MasterCard, and Visa) acceptance is mandatory, but is not the exclusive method of payment (e.g., Purchase Order). The method of ordering and payment (e.g., Purchase Order, Purchasing Card) shall be selected by the Eligible User.

The Eligible User will not fill out any Contractor or Manufacturer's authorized Dealer forms or separate contracts in association with the Contractor or Manufacturer's authorized Dealer accepting a Purchasing Card payment. Contractors and Manufacturer's authorized Dealers are not allowed to charge a fee for accepting a Purchasing Card payment. Surcharges or convenience fees are prohibited. On-line billing or payment systems maintained by the Contractor, Manufacturer's authorized Dealer, or their respective agent will not store the card holder's name, account number, and expiration date for re-use. Card holders will provide the Contractor or Manufacturer's authorized Dealer, as applicable, with card account information at each Purchasing Card transaction.

All individual purchases made using a Purchasing Card must be equal to or less than $500.00, and Contractors, Manufacturer's authorized Dealers, and Eligible Users may not intentionally segment or divide orders to avoid the stated dollar limitation.

5.13 Acknowledgement of Order

For orders which the Contractor does not have the awarded Commodities in stock and cannot Deliver the Commodities to the ordering Eligible User within fourteen (14) calendar days, the Acknowledgement of Order form shall be fully completed and issued by the Contractor to notify the ordering Eligible User of the receipt of the Purchase Order for Commodities awarded under the Contract, the Manufacturer's order confirmation information, and the estimated delivery date.

The Contractor must mail, email, or fax the fully completed Acknowledgement of Order form to the ordering Eligible User's issuing office within fourteen (14) calendar days from the date the Contractor receives the Purchase Order under the Contract. Failure of the Contractor to provide the ordering Eligible User the Acknowledgement of Order form within fourteen (14) calendar days from the date the Contractor received the Purchase Order will be considered acceptance of the order by default, which, if necessary, shall require the provision of the next new model of the Commodity, which meets the Prices, Discounts, requirements, specifications, terms, and conditions herein.

Submission of the Acknowledgement of Order form is to be the responsibility of the Contractor without prompting or notification by the Contract Manager or Eligible User. **Repeated failures by the Contractor to submit completed Acknowledgement of Order forms to the ordering Eligible Users shall be cause for default proceedings and / or Contract termination**.

Upon Contract Formation, Section 2.17, the Department shall distribute, in electronic format, the Acknowledgement of Order form to be used by the Contractor.

5.14 Commodities Title and Registration

Applicable awarded Commodities delivered under the Contract will be titled and registered by the Contractor in accordance with Chapters 319 and 320 of the Florida Statutes. The Contractor shall send any necessary form(s) that must be signed by an authorized representative of the Eligible User with the awarded Commodity(ies) upon delivery, and the Contractor shall obtain any necessary signature(s) and complete the titling and registration process for the Eligible User in a timely manner.

In the event the Eligible User is permitted by statute, law, rule, ordinance, code, policy, and procedure to obtain Title and Registration independent of the Contractor, and chooses to obtain Title and Registration independent of the Contractor, the Eligible User shall notify the Contractor in writing of this decision no later than three (3) business days following receipt of the Acknowledgement of Order form, per Section 5.8, Acknowledgement of Order. However, the Eligible User will then be obligated to Title and Register the awarded Commodity per applicable statute, law, rule, ordinance, code, policy, and procedure, and the Contractor shall provide any documents necessary for the Eligible User to do so.

For applicable awarded Commodities, Eligible Users may elect to transfer an existing license plate, or may choose to obtain a new license plate.

- Should an Eligible User elect to transfer an existing license plate, this is the standard default order type and does not require specific notation on the Purchase Order. All related fees, see Section 5.6, Ceiling Prices, are included in the Base Equipment Net Price.
- Should an Eligible User elect to obtain a new license plate in lieu of transferring their old license plate, or if the awarded Commodity is an addition to their fleet and requires a new license plate, the Purchase Order should include a notation and an additional amount to cover the cost of a new license plate. The Contractor is not required to obtain new license plates for the Eligible User unless there is a notation and a new license plate fee is included on the Purchase Order. All related charges and fees, see Section 5.6, Ceiling Prices, except the new license plate cost are included in the Base Equipment Net Price.
    - The Eligible User's Purchase Order notation for a new license plate must include the request for a new license plate, what type of license plate is required, and a contact person's name, title, and telephone number should there be any questions.

- The Contractor may obtain special plates such as "State", "County", or "City" from most county tax offices, but agency plates such as "DOT", "DC", "DNR", etc. must be obtained from the Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, in Tallahassee, Florida.

Note: The State of Florida is self-insured; therefore, a "Proof of Insurance" form is not required (Refer to F.S. Chapter 284.30, Part II) for Title and Registration. Questions concerning the lack of a "Proof of Insurance Certificate" when applying for a license plate may be answered by calling (850) 488-4127.

5.15 Transportation and Delivery

In conjunction with Section 5.6, Ceiling Prices, Base Equipment Net Prices; OEM Options, Accessories, & Implements Net Prices; and OEM Parts Net Prices shall include all charges for packing, handling, freight, distribution, and delivery. Transportation and Delivery of goods shall be FOB Destination to any point statewide as follows:

- Manufacturer direct to the Eligible User: Within one hundred eighty (180) calendar days after receipt of order.
- Dealer to the Eligible User: Within fourteen (14) calendar days after receipt of order or the Commodities from the Manufacturer(s), with one exception – Commodities requiring post-Manufacturer Dealer installed OEM Options, Accessories, & Implements must be delivered within thirty (30) calendar days after receipt of the Commodities from the Manufacturer(s).

Delivery of the awarded Commodity is defined as receipt of the Commodity at the Eligible User's place of business or designated location. Delivery does not constitute Acceptance, per Section 5.16 of the Contract. The Contractor must give the ordering Eligible User a minimum of twenty-four (24) hours notice prior to delivery. Deliveries will be received as stipulated by the Eligible User.

Deliveries of awarded Commodities shall be made by either private or common carrier transport. Where deliveries may be accomplished by driving the self-propelled, street-legal, Commodity three (3) road miles or less, the self-propelled Commodity may be driven, under supervision, to the delivery location. The Contractor must comply with the Manufacturer's break-in requirements and all applicable traffic laws.

All self-propelled operator occupied Commodities Delivered by the Contractor to the Eligible User shall contain no less than one-quarter (1/4) tank of fuel as indicated by the fuel gauge at the time of delivery. At the Eligible User's option, Commodities with less than one-quarter (1/4) tank of fuel at delivery may be rejected or $3.00 per gallon or gallon equivalent up to one-quarter of the Commodity's fuel tank capacity may be deducted from the invoice and payment.

The Contractor will perform the standard Manufacturer's Pre-Delivery Inspection, and is responsible for delivering an awarded Commodity that is properly serviced, clean, and in first class operating condition. Pre-delivery service, at a minimum, shall include the following:

- Complete lubrication of operating chassis, engine, and mechanisms with Manufacturer's recommended grades of lubricants;
- Check / Fill all fluid levels to assure proper fill;
- Adjust engine(s) to proper operating condition(s);
- Inflate tires to proper pressure;
- Check to assure proper operation of all accessories, gauges, lights, and mechanical and hydraulic features;
- Clean equipment, if necessary, and remove all unnecessary tags, stickers, papers, etc.;
- Assure that the awarded Commodity is completely assembled (unless otherwise noted in the following sub-section) including Base Equipment and OEM Options, Accessories, & Implements, thoroughly tested, and ready for immediate operation upon delivery; and
    - For Commodities within Commodity Group No. 16, the Commodities shall be fully assembled except that components vulnerable to damage, pilferage, and loss, or that

would otherwise increase cubage, such as controls, control rods, levers, and handles may be packed separately. For such Commodities, printed assembly instructions along with all bolts, nuts, pins, and washers necessary to assemble removed components shall be securely packaged with the Commodities.

- Where applicable, packaged to insure safe delivery to the destination. Packaging shall comply with the requirements of Section 403.7191, Florida Statutes. Each package will be marked to include the name of the Contractor, the State Term Contract number, Purchase Order number, and brief description of the contents.

All Commodities will be delivered with each of the following applicable documents completed and included:

- Copy of the Manufacturer's Pre-Delivery Inspection form, which meets or exceeds the requirement herein;
- Copy of ordering Eligible User's Purchase Order;
- Copy of the applicable Manufacturer(s)'s specification(s);
- Copy of the Manufacturer's Invoice(s) (prices may be deleted or obscured) for each Commodity, including individual Base Equipment and OEM Options, Accessories, & Implements, in the shipment;
- Manufacturer's Window Sticker(s), if applicable;
- Manufacturer's Certificate of Origin, if applicable;
- Manufacturer's Operator Manual, and (if not included in the operator manual) one (1) each of the Manufacturer's lubrication and maintenance instructions;
- Copy of the Manufacturer's Standard Warranty Certifications;
- Sales Tax Exemption Form, if applicable;
- Temporary Tag and twenty (20) day Extension Tag, if applicable; and
- DHSMV82040, Application for Certificate of Title and/or Vehicle Registration, if applicable.

Deliveries that do not include the above applicable forms and publications, or that have forms that have been altered, or are not properly completed, will be refused! Repeated failures by the Contractor to include the above properly completed forms and publications, or that have submitted altered forms, to the ordering Eligible Users shall be cause for default proceedings and / or Contract termination.

These Transportation and Delivery requirements, terms, and conditions also apply to the re-delivery of an awarded Commodity that was previously rejected upon initial delivery.

This Section 5.13, Transportation and Delivery, supersedes and replaces Section 4.11, Transportation and Delivery.

5.16 Acceptance

The Eligible User, within three (3) business days of delivery, will thoroughly inspect the Commodity(ies) received for acceptability. The Eligible User shall compare the physical Commodity(ies) delivered; Contract Prices, Discounts, requirements, specifications, terms, and conditions; Purchase Order; and Manufacturer's Window Sticker / Manufacturer's Invoice(s) to ensure the Commodity(ies) received meet or exceed the requirements, specifications, terms, and conditions of the Contract and Purchase Order. Additionally, the Eligible User will inspect the Commodity(ies) for any physical damage. The Contractor is obligated to correct any errors or damage in the Commodity(ies). Failure by the Eligible User to discover an error in the Commodity(ies) shall not relieve the Contractor from their obligation to correct the error in the event it is found anytime after the Commodity(ies) is delivered.

The Parties agree that inspection and Acceptance will be the Eligible User's responsibility and occur at the location of the Eligible User. Title and risk of loss or damage to all Commodities shall be the responsibility of the Contractor until Accepted by the Eligible User. The Contractor shall be responsible for filing, processing, and collecting all damage claims. The Eligible User shall assist the Contractor by:

- Recording any evidence of visible damage on all copies of the delivering carrier's bill of lading;

- Report any known visible and concealed damage to the carrier and the Contractor;
- Confirm said reports in writing within fifteen (15) business days of delivery, requesting that the carrier inspect the damaged merchandise; and
- Provide the Contractor with a copy of the carrier's bill of lading and damage inspection report.

Transportation and Delivery of the Commodity(ies), per Section 5.15 of the Contract, does not constitute Acceptance for the purpose of payment. Final Acceptance and authorization of payment shall be given by the Eligible User only after a thorough inspection indicates that the Commodity(ies) is undamaged and meets the Contract requirements, specifications, terms, and conditions. Should the delivered Commodity(ies) be damaged or differ in any respect from the Contract requirements, specifications, terms, and conditions, payment will be withheld until such time as the Contractor completes the required, Eligible User approved, corrective action(s).

Should the Commodity(ies) require service or adjustments as part of the Eligible User approved corrective action(s), the Contractor shall either remedy the defect(s) or be responsible for reimbursing the Manufacturer's local authorized service Vendor or others selected by the Eligible User to remedy the defect(s). The Contractor shall initiate such required service or adjustments within two (2) business days following notification by the Eligible User. The Commodity(ies) will not be Accepted until all service and / or adjustments are satisfactory and the Commodity(ies) is re-delivered in acceptable condition. The costs of any Transportation and Delivery, Section 5.15, required as part of the initial or any re-deliveries due to error or damage are the responsibility of the Contractor.

The ordering Eligible User shall notify the Department of any Contract deviation that it cannot resolve with the Contractor. The Department and Eligible User will develop a corrective action plan related to the Contract deviation, which may include the Eligible User's permanent refusal to Accept the Commodity(ies), in which case the Commodity(ies) shall remain the property of the Contractor, and the Eligible User and the State will not be liable for payment for any portion thereof.

5.17 Contract Sales Summary and Transaction Fee Reports

Contract Sales Summary: The Contractor is required to provide annual fiscal year Contract Sales Summaries to the Contract Manager within fifteen (15) calendar days after the end of each fiscal year during the term of the Contract, including any renewals. The fiscal year is a twelve (12) month period beginning July 1 and ending on June 30 of each year. Contract Sales Summaries shall document all orders completed, for which payment was received, during the specified fiscal year. Contract Sales Summaries will have two (2) separate components:

1. The report's first component shall specifically document the quantity and total sales by Commodity Group and Manufacturer / Brand Name sold; including Base Equipment; OEM Options, Accessories, & Implements; and OEM Parts; differentiating between Eligible User types, State Agencies and Other Eligible Users.
2. The report's second component shall specifically document all individual sales, including the sales date, Eligible User's organization name, a brief Commodity and / or contractual service description, quantity, and total sales amount.

The Contractor is also required to provide partial year Contract Sales Summaries under the same terms as the annual summaries for portions of the Contract term that occur outside a complete fiscal year. These partial summaries will be due July 15, 2010 for the period beginning on the Contract Formation date, per Section 2.17, and ending June 30, 2010, and within fifteen (15) calendar days after the termination of the Contract for the period beginning July 1 of the Contract's final year and ending on the Contract termination date. The Department may require additional ad hoc Contract Sales Summaries for various periods of time; the Contractor shall submit these specific ad hoc summaries within twenty (20) calendar days of notification by the Department.

Initiation and submission of the Contract Sales Summaries are to be the responsibility of the Contractor without prompting or notification by the Contract Manager. The Contractor will submit the completed

Contract Sales Summary forms by email to the Contract Manager as stipulated. The Department shall distribute, in electronic format, the Contract Sales Summary forms to be used by the Contractor upon Contract Formation, Section 2.17.

Transaction Fee Report: The Contractor is required to submit monthly Transaction Fee Reports in electronic format. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online at the Transaction Fee Reporting and Vendor Training subsections under Vendors on the MyFloridaMarketPlace website (located at http://dms.myflorida.com/mfmp). Assistance is also available with the Transaction Fee Reporting System from the MyFloridaMarketPlace Customer Service Desk at feeprocessing@myfloridamarketplace.com or 866-FLA-EPRO (866-352-3776) between the hours of 8:00 AM to 5:30 PM Eastern Time.

5.18 Lobbying

In accordance with Section 216.347, Florida Statutes, and as provided herein, the Contractor may not expend any State funds for the purpose of lobbying the legislature, the judicial branch, the executive branch, or any State Agency. This restriction does not apply to requests of the Contractor to provide any information relating to any aspect of this Contract, if requested by any legislative, judicial, or executive branch, or any State Agency.

5.19 Compliance with Laws

The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example, the Contractor shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination.

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SECTION 6.0
TECHNICAL SPECIFICATIONS

CONTENTS:

6.1 DEFINITIONS
6.2 SCOPE AND ELIGIBLE COMMODITIES
6.3 COMMODITY SPECIFICATIONS AND STANDARDS
6.4 FEDERAL AND STATE STANDARDS
6.5 TESTING
6.6 WARRANTY
6.7 COMMODITY COMPLIANCE AND COMPATIBILITY

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6.1 Definitions

The Definitions found and referenced in the Special Conditions, Section 5.1, shall apply to this Section 6.1, Definitions.

6.2 Scope and Eligible Commodities

The Construction, Industrial, Agricultural, & Lawn Equipment Commodities (including the Base Equipment; associated OEM Options, Accessories, & Implements; and associated OEM Parts) offered under the Contract shall be classified under twenty-four (24) Commodity Groups, which are listed and described as follows:

GROUP	APPLICABLE COMMODITY CODE(S)*	GROUP DESCRIPTION
Group No. 1	760-360	CONSTRUCTION/INDUSTRIAL, MOTOR GRADER & MAINTAINER
Group No. 2	760-840	CONSTRUCTION/INDUSTRIAL, EXCAVATOR: CRAWLER/TRACK, WHEEL, & TRUCK MOUNTED
Group No. 3	760-900	CONSTRUCTION/INDUSTRIAL, DOZER: CRAWLER/TRACK & WHEEL
Group No. 4	760-420	CONSTRUCTION/INDUSTRIAL, LOADER: CRAWLER/TRACK
Group No. 5	760-460	CONSTRUCTION/INDUSTRIAL, LOADER: SKID STEER
Group No. 6	760-480	CONSTRUCTION/INDUSTRIAL, LOADER: WHEEL
Group No. 7	760-960	CONSTRUCTION/INDUSTRIAL, BACKHOE-LOADER: CRAWLER/TRACK & WHEEL
Group No. 8	560-650	FORKLIFT/TELESCOPIC HANDLER, RIDING TYPE (INCLUDING ROUGH TERRAIN)
Group No. 9	765-900	TRACTOR, AGRICULTURAL/SPECIALTY: CRAWLER/TRACK & WHEEL (INCLUDING 4WD)
Group No. 10	765-900	TRACTOR, UTILITY: CRAWLER/TRACK & WHEEL (EQUAL TO OR GREATER THAN 40 HP)
Group No. 11	765-900	TRACTOR, COMPACT UTILITY: CRAWLER/TRACK & WHEEL (LESS THAN 40 HP)
Group No. 12	071-860	UTILITY VEHICLE, OFF-ROAD: PASSENGER, CARGO, INDUSTRIAL, & TURF (NOT INCLUDING LOW-SPEED VEHICLE ("LSV") OR NEIGHBORHOOD ELECTRIC VEHICLE ("NEV"))
Group No. 13	071-820	ALL TERRAIN VEHICLE ("ATV")
Group No. 14	071-840	AMPHIBIOUS ALL TERRAIN VEHICLE ("AATV")
Group No. 15	020-010, 020-030, 020-150, 020-360, 020-660, 020-670, 515-070, 515-140, 515-210, 515-280, 515-350, 515-490, 515-700, 515-770, 515-860, 765-430, 765-640, Etc.	ACCESSORY & IMPLEMENT, MOWER/TRACTOR/VEHICLE/EQUIPMENT MOUNTED OR TOWED: INCLUDING AERATOR, BACKHOE, BLOWER, BOX BLADE, CATCHER, CHIPPER/SHREDDER, DETHATCHER, DOZER BLADE, EDGER, GRINDER, LOADER, MATERIAL HANDLING (E.G., FORKS), MOWER/CUTTER (FINISHING, FLAIL, ROTARY, SICKLE, & REEL TYPES; BOOM MOUNTED OR PULL BEHIND), PAINTER, PLOW, POSTHOLE DIGGER, PULVERIZER, RAKE, SEEDER, SOD CUTTER, SPIKER, SPLITTER, SPRAYER, SPREADER, TILLER, TOPDRESSER, TRENCHER, TRIMMER, & VACUUM
Group No. 16	020-660, 515-070, 515-140, 515-210, 515-350, 515-490, 515-700, 515-770, 545-680, Etc.	LAWN EQUIPMENT; STANDING, HAND-HELD, BACKPACK, & WALK/WORK-BEHIND: INCLUDING AERATOR, BLOWER, CHAIN SAW, CHIPPER/SHREDDER, EDGER, GRINDER, PAINTER, OVERSEEDER, RAKE, SEEDER, SOD CUTTER, TILLER, TOPDRESSER, TRIMMER, & VACUUM (NOT INCLUDING MOWER)
Group No. 17	515-630	MOWER, LAWN, WALK/STAND-BEHIND, OCCASIONAL/RESIDENTIAL TYPE
Group No. 18	515-630	MOWER, LAWN, WALK/STAND-BEHIND, PROFESSIONAL/COMMERCIAL TYPE
Group No. 19	515-630	MOWER/TRACTOR, LAWN, RIDING TYPE
Group No. 20	515-630	MOWER/TRACTOR, LAWN & GARDEN, RIDING TYPE
Group No. 21	515-630	MOWER, FRONT (REAR WHEEL STEERING), RIDING TYPE
Group No. 22	515-630	MOWER, ZERO TURN RADIUS, RIDING TYPE
Group No. 23	515-630	MOWER, WIDE-AREA, RIDING TYPE
Group No. 24	515-900	GOLF & TURF EQUIPMENT, OTHER (NOT INCLUDED IN OTHER GROUPS)

* - Applicable Commodity Codes are provided for general information purposes only. Eligible Users must confirm the appropriate and applicable Commodity Code(s) to be used.

The Contract is intended to cover only those Construction, Industrial, Agricultural, and Lawn Equipment Commodities generally used by the State of Florida as listed and described herein, and does not include all varieties of equipment that are commercially available. Commodities not eligible, permitted, included, or available under the requirements, specifications, terms, and conditions of the Contract include, but are not limited to, portable generators, pressure washers, specialty forestry equipment, and street-legal small utility vehicles (a.k.a. Low-Speed Vehicles ["LSVs"], Neighborhood Electric Vehicles ["NEVs"]). The Department in its sole discretion shall determine the eligibility and acceptability of all Commodities available and included under the Contract. The Contractor will be responsible for removing all non-eligible and unacceptable Commodities under the Contract.

Delivery of non-conforming Commodities and contractual services, which are not remedied as required herein, shall be cause for default proceedings and / or Contract termination.

6.3 Commodity Specifications and Standards

The Commodity Specifications and Standards are based on the known needs of Eligible Users and best information available to the Department at the time the Commodity Specifications and Standards were created.

The following specifications and standards form a part of the overall Technical Specifications except as modified or noted herein.

All Commodities, including all Base Equipment; OEM Options, Accessories, & Implements; OEM Parts; and their respective features, equipment, and components, must individually and jointly comply with the following:

- All Commodities shall be designed, constructed, equipped, assembled (except as specified in Section 5.15, Transportation and Delivery), and installed (OEM Parts do not include installation) to be fully suitable for their intended use, purpose, and service;
- All Commodities shall be new and unused (except as specified in Section 5.15, Transportation and Delivery), for the current Manufacturer's model year or later, of current or recent production, and of the latest design and construction;
- All Commodities shall be bio-diesel (B-20), compressed natural gas ("CNG"), diesel, electric, gasoline (E-10 to E-85), liquefied petroleum gas ("LPG"), natural gas, or propane powered;
- All Commodities shall include all OEM standard features, equipment, and components, Manufacturer or Dealer installed according to the Manufacturer's standard procedures, requirements, and specifications;
- All Commodities shall be free of damage and / or rust which may affect appearance or serviceability;
- All Commodities shall comply with current legal, customary, reasonable, and prudent standards of professionalism and care in the industry;
- All Commodities shall comply with current mandatory and applicable federal and State of Florida motor vehicle, mobile equipment, legal, safety, and environmental standards and requirements; and
- All Commodities shall meet the requirements, specifications, terms, and conditions herein.

No Contractor's or Dealer's advertising or identification (name, logos, etc.) is permitted on the Commodities, including all Base Equipment; OEM Options, Accessories, & Implements; OEM Parts; and their components. Commodity Manufacturer's advertising or identification (name, model, logos, etc.) shall be permitted on the respective Commodities if such advertising or identification is a Manufacturer's standard on the specific Commodity. The Department in its sole discretion will determine what is Contractor's or Dealer's advertising or identification, what is Commodity Manufacturer's advertising or identification, and what advertising or identification is acceptable. The Contractor shall be responsible for removing, without damage, all unacceptable advertising or identification.

Delivery of non-conforming Commodities and contractual services, which are not remedied as required herein, shall be cause for default proceedings and / or Contract termination.

6.4 Federal and State Standards

It is the intent of the Department that all specifications herein are in full and complete compliance with all federal and State of Florida laws, requirements, and regulations applicable to the type and class of Commodities and contractual services being provided. This includes, but is not limited to, Federal Motor Vehicle Safety Standards ("FMVSS"), Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA") Standards, and State of Florida laws, requirements, and regulations that apply to the type and class of Commodities and contractual services being provided. In addition, any applicable federal or State legislation that should become effective during the term of the Contract, including any renewals, regarding the Commodities and contractual services' specifications, safety, and environmental requirements shall immediately become a part of the Contract. The Contractor must meet or exceed any such requirements of the laws and regulations. If an apparent conflict exists, the Contractor and Authorized Dealer must contact the Contract Manager immediately.

Delivery of non-conforming Commodities and contractual services, which are not remedied as required herein, shall be cause for default proceedings and / or Contract termination.

6.5 Testing

Samples of delivered Commodities and contractual services may be selected at random by the Department or Eligible User and tested for compliance with the requirements, specifications, terms, and conditions.

Delivery of non-conforming Commodities and contractual services, which are not remedied as required herein, shall be cause for default proceedings and / or Contract termination.

6.6 Warranty

The Manufacturer's Standard Warranty shall cover all Commodities and contractual services of the Contract. The Manufacturer's Standard Warranty is required to provide coverage against defective material, workmanship, and failure to perform in accordance with the specifications and required performance criteria. The Manufacturer's Standard Warranty coverage must be identical to or exceed the most inclusive of those normally provided for the Commodities and contractual services specified herein that are sold to any state or local governments. The Manufacturer's Standard Warranty shall have a minimum term of one (1) year from the date of Acceptance, Section 5.16, and will begin only at the time of Acceptance by the Eligible User.

Should the Manufacturer's Standard Warranty conflict with any requirements, specifications, terms, or conditions of the Contract, the Contract requirements, specifications, terms and conditions shall prevail. The Manufacturer's Standard Warranty terms and conditions are not part of the Contract requirements, specifications, terms, and conditions.

Delivery of non-conforming Commodities and contractual services, which are not remedied as required herein, shall be cause for default proceedings and / or Contract termination.

6.7 Commodity Compliance and Compatibility

It is the Contractor's responsibility to insure that the Commodity / Commodities supplied are compliant with the Contract requirements, specifications, terms, and conditions. Additionally, the Contractor must insure that the Commodity / Commodities ordered by the Eligible User are fully compatible with each other and with any associated pre-existing Commodity / Commodities possessed by the Eligible User

and pre-disclosed to the Contractor by the Eligible User. The Contractor's acceptance of the Eligible User's Purchase Order shall indicate that the Contractor agrees to deliver Commodity / Commodities that will be fully compliant and compatible with the Contract requirements, specifications, terms, and conditions.

In the event any ordered Base Equipment; OEM Options, Accessories, & Implements; OEM Parts; and their respective features, equipment, and components are found by the Eligible User to be missing, incorrect, defective, damaged, non-compatible, or non-compliant, the Contractor shall, at the Eligible User's discretion, be required to do one of the following:

- Install or repair the Base Equipment; OEM Options, Accessories, & Implements; OEM Parts; and their respective features, equipment, and components;
- Replace the Base Equipment; OEM Options, Accessories, & Implements; OEM Parts; and their respective features, equipment, and components; or
- Refund the purchase price of the applicable Base Equipment; OEM Options, Accessories, & Implements; and OEM Parts to the Eligible User.

Any changes necessary after the delivery of the Commodity / Commodities that are required to bring a Commodity / Commodities into compliance and / or compatibility due to an incorrect order fulfillment by the Contractor will be accomplished at the Contractor's expense.

Delivery of non-conforming Commodities and contractual services, which are not remedied as required herein, shall be cause for default proceedings and / or Contract termination.

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SECTION 7.0
PRICE SHEET & ORDERING INSTRUCTIONS AND FORMS

CONTENTS:

7.1 PRICE SHEET & ORDERING INSTRUCTIONS
(MICROSOFT EXCEL™ ATTACHMENT REQUIRING SEPARATE DOWNLOAD; SUBMITTED ORIGINAL(S) MAINTAINED BY THE DEPARTMENT OF MANAGEMENT SERVICES.)

7.2 SOLICITATION PREPARATION CHECKLIST
(SUBMITTED ORIGINAL(S) MAINTAINED BY THE DEPARTMENT OF MANAGEMENT SERVICES.)

7.3 MANUFACTURER'S CERTIFICATION
(SUBMITTED ORIGINAL(S) MAINTAINED BY THE DEPARTMENT OF MANAGEMENT SERVICES.)

7.4 SAVINGS / PRICE REDUCTIONS
(SUBMITTED ORIGINAL(S) MAINTAINED BY THE DEPARTMENT OF MANAGEMENT SERVICES.)

7.5 CONTRACT SIGNATURE PAGE
(PLEASE NOTE: THIS DOCUMENT IS PROVIDED FOR REFERENCE PURPOSES AND IS NOT REQUIRED TO BE SUBMITTED AS PART OF A SOLICITATION RESPONSE. HOWEVER, SHOULD THE DEPARTMENT DETERMINE TO MAKE AWARD, SUBMITTAL OF THIS DOCUMENT IN DUPLICATE SHALL BE REQUIRED. ANY SUBMITTED ORIGINAL(S) MAINTAINED BY THE DEPARTMENT OF MANAGEMENT SERVICES.)

7.6 CERTIFICATION OF DRUG-FREE WORKPLACE
(SUBMITTED ORIGINAL(S) MAINTAINED BY THE DEPARTMENT OF MANAGEMENT SERVICES.)

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7.2 Solicitation Preparation Checklist

The Solicitation Preparation Checklist is a guide to assist the Respondent in verifying the completeness of their response. The Solicitation Preparation Checklist does not relieve the Respondent of the responsibility of ensuring that all requirements of the solicitation are met with submittal of their response. Check off each of the following as you comply:

_____ The Respondent has fulfilled all Sales Summary, Usage Fee, and Transaction Fee reporting and payment requirements as specified in the requirements, terms, and conditions of all previous or existing agreements with State of Florida agencies.

_____ Download, read, understand, and agree to the entire solicitation, including all attachments (ITB No. 03-760-000-S; Construction, Industrial, Agricultural, & Lawn Equipment: Sections 1.0 through 7.6 of the solicitation, and the MyFloridaMarketPlace RFX Info tab contents).

_____ Review and abide by the Timeline, Section 1.2 of the solicitation.

_____ If necessary, review the MyFloridaMarketPlace Sourcing Tool Online Training Guide and / or receive assistance from the MyFloridaMarketPlace Customer Service Desk at 866-FLA-EPRO (866-352-3776) or vendorhelp@myfloridamarketplace.com.

_____ Submit any Questions via the MyFloridaMarketPlace Q&A Board, no later than as specified in the Timeline, Section 1.2 of the solicitation.

_____ View the Department's Answers to the submitted questions as posted in any Addendum or Amendment to the solicitation on the MyFloridaMarketPlace Sourcing Tool and / or Vendor Bid System.

_____ Download the Price Sheet & Ordering Instructions (Section 7.1), review carefully, enter required discounts and information on the Price Sheet & Ordering Instructions, and upload the Price Sheet & Ordering Instructions to the MyFloridaMarketPlace Sourcing Tool as required.

_____ Provide answers to all required questions within the MyFloridaMarketPlace Sourcing Tool.

_____ Submit response using the MyFloridaMarketPlace Sourcing Tool.

_____ Mail any required documents and forms specified in Section 3.9, Submittal of Response, of the solicitation documents to the attention of:

Christopher P. Walker, FCCM
Purchasing Analyst
Division of State Purchasing
Department of Management Services
4050 Esplanade Way, Suite 360
Tallahassee, FL 32399-0950

The outer packaging shall **clearly state** Solicitation Title, Solicitation Number, and Solicitation Opening Date and Time.

7.3 Manufacturer's Certification

This is to certify that _____
Organization Name

is the Manufacturer or Manufacturer's authorized Dealer of _____.
Manufacturer / Brand Name

BY:

DATE:_____

MANUFACTURER NAME:_____

ADDRESS:_____

TELEPHONE NUMBER(S):_____

E-MAIL:_____

AUTHORIZED EMPLOYEE NAME:_____

TITLE:_____

SIGNATURE:_____

NOTE: THE MANUFACTURER'S CERTIFICATION FORM MUST BE COMPLETED AND SUBMITTED PER SECTION 3.9.6, MANUFACTURER'S CERTIFICATION.

7.4 Savings / Price Reductions

The Respondent is required to furnish the combined average percent (%) savings offered compared to MSRP, retail, list, published, or other usual and customary prices that would be paid by the purchaser without benefit of a contract resulting from this solicitation.

DATE_____

Competitive Discounts offered in Section 7.1, Price Sheet & Ordering Instructions, provide *[Insert Savings % for Commodities Offered in Table Below]* % combined average savings off of the MSRP, retail, list, published, or other usual and customary prices for:

GROUP	COMBINED AVERAGE % SAVINGS OFF MSRP
Group No. 1	%
Group No. 2	%
Group No. 3	%
Group No. 4	%
Group No. 5	%
Group No. 6	%
Group No. 7	%
Group No. 8	%
Group No. 9	%
Group No. 10	%
Group No. 11	%
Group No. 12	%
Group No. 13	%
Group No. 14	%
Group No. 15	%
Group No. 16	%
Group No. 17	%
Group No. 18	%
Group No. 19	%
Group No. 20	%
Group No. 21	%
Group No. 22	%
Group No. 23	%
Group No. 24	%
TOTAL AVERAGE:	%

HOW CAN WE VERIFY THE CLAIMED SAVINGS (example: retail or other usual and customary prices published at [URL], or other source of benchmark prices [supply documents])?

_____

_____

_____

_____

AUTHORIZED SIGNATURE: _____

TELEPHONE NUMBER: _____

RESPONDENT NAME: _____

IF CONTRACT AWARDED, STATE PURCHASING ANALYST / SPECIALIST TOOK THE FOLLOWING STEPS TO VERIFY THE SAVINGS OFFERED:

_____

_____

_____

_____

WHAT WERE THE RESULTS? _____

PURCHASING ANALYST / SPECIALIST: _____

PUR 7064 (Rev 2/04)

7.5 Contract Signature Page

CONTRACT

This Contract, effective the last date signed below, is by and between the State of Florida, Department of Management Services ("Department"), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and the entity identified below as Contractor ("Contractor").

The Contractor responded to the Department's Invitation to Bid ("ITB") No. 03-760-000-S; Construction, Industrial, Agricultural, & Lawn Equipment. The Department has determined to accept select Contractor's offers and to enter into this Contract in accordance with the requirements, specifications, terms, and conditions of the solicitation.

Accordingly, and in consideration of the mutual promises contained in the Contract documents, the Department and the Contractor do hereby enter into this Contract, which is a state term contract authorized by section 287.042(2)(a) of the Florida Statutes (2001). The term of the Contract begins on the Contract Formation Date, per Section 2.17, and expires June 30, 2012. The Contract consists of the following documents, which, in case of conflict, shall have priority in the order listed, and which are hereby incorporated as if fully set forth:

- Any written Amendments to the Contract
- Section 6.0, Technical Specifications
- Section 5.0, Special Conditions
- Section 4.0, General Contract Conditions [PUR1000 (10/06)]
- This document, Section 7.5, Contract Signature Page
- Section 7.1, Price Sheet & Ordering Instructions
- Section 3.0, Special Instructions to Respondents
- Section 2.0, General Instructions to Respondents [PUR1001 (10/06)]
- Any Purchase Order under the Contract
- Contractor's Response

_____

State of Florida, Date
Department of Management Services
By: Linda H. South, Secretary

Contractor Name: _____ (Seal)
Street Address or P.O. Box: _____
City, State, Zip: _____

_____

By: Date
Its' (Title):

Approved as to form and legality by the Department of Management Services, General Counsel's Office:

_____

Print Name: _____ Date: _____

7.6 Certification of Drug-Free Workplace

Section 287.087 of the Florida Statutes provides that, where identical tie offers are received, one preference shall be given to an offer received from a Respondent that certifies it has implemented a drug-free workforce program. Please sign below and return this form to certify that your business has a drug-free workplace program.

1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.

3) Give each employee engaged in providing the commodities or contractual services that are under the solicitation a copy of the statement specified in Subsection (1).

4) In the statement specified in Subsection (1), notify the employees, as a condition of working on the commodities or contractual services that are under the solicitation, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any State, for a violation occurring in the workplace no later than five (5) days after such conviction.

5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by any employee who is so convicted.

6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements. False statements are punishable at law.

DATE: _____

ORGANIZATION NAME: _____

BY: _____

Authorized Signature Print Name and Title