

RESOLUTION No. 13-108

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA APPROVING A PURCHASE PURSUANT TO SECTION 2-322 OF THE CITY CODE FOR THE PROVISION OF A MICROSOFT ENTERPRISE AGREEMENT SUBSCRIPTION FOR A PERIOD OF THREE (3) YEARS; PURSUANT TO THE EXISTING AGREEMENT BETWEEN SHI AND THE STATE OF FLORIDA IN AN AMOUNT NO TO EXCEED \$454,621.40 (\$151, 540.47 PER YEAR FOR THREE (3) YEARS), WHICH WAS COMPETITIVELY ENTERED INTO IN A MANNER SIMILAR TO THAT SET FORTH IN CHAPTER 2, ARTICLE V, OF THE CITY CODE; AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY WITH RESPECT TO THE AGREEMENT APPROVED HEREIN; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral has budgeted for the purchase of a (3) year subscription to Microsoft Enterprise Agreement software licensing for Fiscal Year 2013-2014, for the purpose of adequately licensing the Microsoft software products that are installed on all the City owned servers, workstations and laptops; and

WHEREAS, SHI, a software vendor, has an existing contract with the State of Florida (Contract 252-001-09-1) which was competitively procured and entitled "Large Account Reseller for Microsoft Software, Licenses and Maintenance"; and

WHEREAS, pursuant to Section 2-322 of the City Code, Staff respectfully requests that the City Council approve the purchase of the (3) year subscription to the Microsoft Enterprise Agreement, renewed at an annual basis, pursuant to the existing agreement between SHI and the State of Florida, which was competitively entered into in a manner similar to that set forth in Chapter 2, Article V, of the City Code, in an amount no to exceed \$454,621.40 (\$151, 540.47 per year for three (3) years); and

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF DORAL, FLORIDA, AS FOLLOWS:**

Section 1. Recitals. The above recitals are true and correct and incorporated herein.

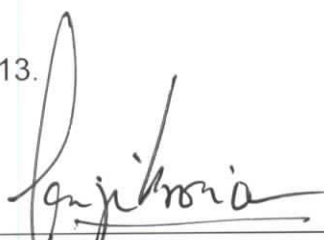
Section 2. Authorization. The purchase of a (3) year subscription to the Microsoft Enterprise Agreement in an amount not to exceed \$454,621.40, pursuant to the contract between SHI and the State of Florida, a copy of which is attached as Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form by the City Attorney, is hereby approved. The City Manager is authorized to execute any purchase orders or other documents and expend budgeted funds on behalf of the City with respect to the purchase approved herein.

Section 3. Effective Date. This resolution shall take effect immediately upon adoption.

The foregoing resolution was offered by Vice Mayor Rodriguez Aguilera who moved its adoption. The motion was seconded by Councilmember Fraga and upon being put to a vote, the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Bettina Rodriguez-Aguilera	Yes
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Christie Fraga	Yes
Councilwoman Sandra Ruiz	Yes

PASSED and ADOPTED this 9th day of October, 2013.



LUIGI BORIA, MAYOR

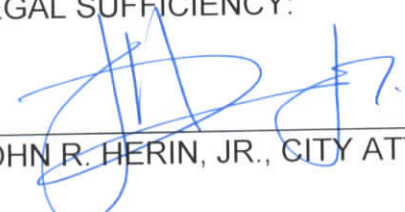
10/16/2013

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



JOHN R. HERIN, JR., CITY ATTORNEY

EXHIBIT “A”

AMENDMENT NO. 5
To State Term Contract 252-001-09-1
Microsoft License, Maintenance, & Services

This Amendment No. 5 ("Amendment"), effective as of the last date signed below, to the Microsoft License, Maintenance, & Services Contract No. 252-001-09-1 ("Contract") effective between the State of Florida, Department of Management Services ("Department" or "Customer") and SHI International Corporation ("Contractor"). Department and Contractor are collectively referred to herein as the "Parties." All capitalized terms used herein shall have the meaning assigned to them in the Contract, unless otherwise defined herein.

The parties hereto agree to amend the contract as follows:

1.0 THE ENROLLMENT FOR EDUCATION SOLUTIONS

The Enrollment for Education Solutions (EES) shall be added to the contract under the Master Business Agreement and shall be effective as of the last date signed below.

2.0 CONFLICT

To the extent any of the terms of this Agreement conflict with the terms of the Contract, the terms of this Agreement shall control. All other terms of the Contract, or as previously amended, remain in full force.

3.0 WARRANTY OF AUTHORITY

Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party.

**State of Florida,
Department of Management Services:**

By: _____

Name: Kelley J. Scott
Acting Director of State Purchasing
Title: and Chief Procurement Officer

Date: _____

SHI International Corporation:

By: _____

Name: _____

Title: _____

Date: _____

AMENDMENT NO. 5
To State Term Contract 252-001-09-1
Microsoft License, Maintenance, & Services

This Amendment No. 5 ("Amendment"), effective as of the last date signed below, to the Microsoft License, Maintenance, & Services Contract No. 252-001-09-1 ("Contract") effective between the State of Florida, Department of Management Services ("Department" or "Customer") and SHI International Corporation ("Contractor"). Department and Contractor are collectively referred to herein as the "Parties." All capitalized terms used herein shall have the meaning assigned to them in the Contract, unless otherwise defined herein.

The parties hereto agree to amend the contract as follows:

1.0 THE ENROLLMENT FOR EDUCATION SOLUTIONS

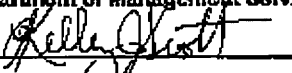
The Enrollment for Education Solutions (EES) shall be added to the contract under the Master Business Agreement and shall be effective as of the last date signed below.

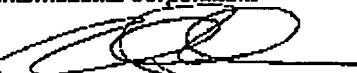
2.0 CONFLICT

To the extent any of the terms of this Agreement conflict with the terms of the Contract, the terms of this Agreement shall control. All other terms of the Contract, or as previously amended, remain in full force.

3.0 WARRANTY OF AUTHORITY

Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party.

State of Florida,
Department of Management Services:
By: 
Name: Kelley J. Scott
Acting Director of State Purchasing
Title: and Chief Procurement Officer
Date: 5/31/13

SHI International Corporation:
By: 
Name: Michael Bench
Title: Director
Date: 5/9/13

AMENDMENT NO. 4
To State Term Contract 252-001-09-1
Microsoft License, Maintenance, & Services

This Amendment, No. 4 ("Amendment"), effective as of the last date signed below, is to the Microsoft License, Maintenance & Services Contract No. 252-001-09-1 ("Contract") effective between the State of Florida, Department of Management Services ("Department" or "Owner") and SHI International Corporation ("Contractor"). Department and Contractor are collectively referred to herein as the "Parties." All capitalized terms used herein shall have the meaning assigned to them in the Contract, unless otherwise defined herein.

The parties hereto agree to amend the contract as follows:

1.0 Enterprise Agreement

The Enterprise Enrollment under the Enterprise Agreement is hereby amended to include the Office 185 Plan 03 and the associated unitful pricing.

2.0 CONFLICT

To the extent any of the terms of this Agreement conflict with the terms of the Contract, the terms of this Agreement shall control. All other terms of the Contract, or as previously amended, remain in full force.

3.0 WARRANTY OF AUTHORITY

Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party.

State of Florida,
Department of Management Services:

By: Kelly Ladd

Name: Kelly Ladd, C.P.M.
Chief Procurement Officer &
Title: Director of State Purchasing

Date: 3/1/13

SHI International Corporation:

By: [Signature]

Name: [Signature]

Title: [Signature]

Date: [Signature]

AMENDMENT NO. 4
To State Term Contract 252-001-09-1
Microsoft License, Maintenance, & Services

This Amendment No. 4 ("Amendment"), effective as of the last date signed below, to the Microsoft License, Maintenance, & Services Contract No. 252-001-09-1 ("Contract") effective between the State of Florida, Department of Management Services ("Department" or "Customer") and SHI International Corporation ("Contractor"). Department and Contractor are collectively referred to herein as the "Parties." All capitalized terms used herein shall have the meaning assigned to them in the Contract, unless otherwise defined herein.

The parties hereto agree to amend the contract as follows:

1.0 Enterprise Agreement

The Enterprise Enrollment under the Enterprise Agreement is hereby amended to include the Office 365 Plan G3 and the associated waterfall pricing.

2.0 CONFLICT

To the extent any of the terms of this Agreement conflict with the terms of the Contract, the terms of this Agreement shall control. All other terms of the Contract, or as previously amended, remain in full force.

3.0 WARRANTY OF AUTHORITY

Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party.

**State of Florida,
Department of Management Services:**

By: _____

Name: Kelly Loll, C.P.M.

Chief Procurement Officer &

Title: Director of State Purchasing

Date: _____

SHI International Corporation:

By: _____

Name: _____

Title: _____

Date: _____

Enterprise Agreement Amendment ID CTM

000-rudyg-S-009

This amendment ("Amendment") is entered into between the parties identified on the signature form. All terms used but not defined in this Amendment will have the same meanings provided in Enterprise Agreement No. 01E73214 ("Agreement"). The parties agree that the Agreement is amended as follows:

Notwithstanding anything to the contrary, the following is hereby added to the Agreement:

For purposes of this Amendment, the following additional definitions will apply:

"Aggregate G3 Count" means, as of the date it is measured, the aggregate total of unexpired Office 365 Plan G3 ("G3") User Subscription Licenses ("USL") across each of the Qualifying State Agencies' Enrollments;

"Maximum Aggregate G3 Count" means, for any invoice under the Enrollment amended by the Office 365 Price Waterfall Enrollment Amendment, the highest Aggregate G3 Count measured as of any Volume Determination Dates prior to the invoice date;

"Office 365 Price Waterfall Enrollment Amendment" means the amendment that is applied at the Enrollment level for each Qualifying State Agency that acquires G3;

"Qualifying State Agencies" means the Florida State Agencies listed in the following table;

Qualifying State Agencies
Division of Administrative Hearings
Agency for Enterprise Information Technology
Agency for Healthcare Administration
Agency for Persons with Disabilities
Dept of Agriculture & Consumer Services
Dept of Legal Affairs (Attorney General)
Auditor General
Department of Business & Professional Regulation
Dept of Children & Families
Dept of Citrus
Florida Commission on Human Relations

Dept of Corrections
Florida Developmental Disabilities Council
Dept of Economic Opportunity
Dept of Elder Affairs
Dept of Emergency Management
Dept of Environmental Protection
Dept of Financial Services
Fish & Wildlife Conservation Commission
Florida Cabinet
Florida Guardian Ad Litem Program
Executive Office of the Governor
Dept of Health
Dept of Highway Safety & Motor Vehicles
Enterprise Florida
Florida House of Representatives
Florida Housing Finance Corporation
Justice Administrative Commission
Dept of Juvenile Justice
Dept of Law Enforcement
Dept of Lottery
Dept of Management Services
Dept of Military Affairs
Northwood Shared Resource Center
Office of Financial Regulation
Office of Insurance Regulation
Office of Legislative Information
Technology Services
OPPAGA
Parole Commission
PERC
Public Services Commission
Florida Retirement System
Dept of Revenue
Florida Senate
Southwood Shared Resource Center
Space Florida
Dept of State
Florida State Board of Administration
Florida State Courts
State Fire Marshal
Dept of Transportation

Dept of Veterans' Affairs
Visit Florida
Workforce Florida

“Volume Determination Date” means the date at which the aggregate total of unexpired G3 USLs is calculated, as defined in the Office 365 Price Waterfall Enrollment Amendment.

Office 365 Plan G3 Price Waterfall Amendment. Microsoft agrees to allow Qualifying State Agencies to sign the Office 365 Price Waterfall Enrollment Amendment to govern Microsoft’s price to Customer’s reseller for G3. Each Enrolled Affiliate’s price and payment terms for each payment for G3 will be established by its Reseller based upon confidential monthly per-user reseller prices provided to Reseller by Microsoft.

Microsoft has established three levels of monthly per-user Reseller pricing for G3 for the Qualifying State Agencies that sign the Office 365 Price Waterfall Enrollment Amendment under their Enrollments:

- (i) The “Sub-50K Level,” which will apply to all payments for which the Maximum Aggregate G3 Count, as of the Volume Determination Date which occurred immediately prior to the payment date, is less than 50,000;
- (ii) The “50K Level,” which will apply to all payments for which the Maximum Aggregate G3 Count, as of the Volume Determination Date which occurred immediately prior to the payment date, is between 50,000 and 69,999; and
- (iii) The “70K Level,” which will apply to all payments for which the Maximum Aggregate G3 Count, as of the Volume Determination Date which occurred immediately prior to the payment date, is equal to or greater than 70,000.

Per the terms of the Office 365 Price Waterfall Enrollment Amendment, Enrolled Affiliates will acknowledge that they have been provided a quote for each of the three price levels shown above, and understands if, when, and how its pricing will change according to the terms and conditions of the Office 365 Price Waterfall Enrollment Amendment.

This amendment is valid until expiration of the current term of this Agreement. No extension of this Agreement is provided without Microsoft’s prior written consent.

This amendment must be attached to a signature form to be valid.

AMENDMENT NO. 3
To State Term Contract 252-001-09-1
Microsoft Licenses, Maintenance & Services

This Amendment No. 3 ("Amendment"), effective as of the last date signed below, is made between the State of Florida Department of Management Services ("Customer") and SHI International Corporation ("Contractor"). Department and Contractor are collectively referred to herein as the "Parties." All capitalization used herein shall have the meaning assigned to them in the Contract, unless otherwise defined herein.

The parties hereby agree to amend the Contract as follows:

1.0 ACADEMIC SELECT AGREEMENT

The Academic Select agreement is ending by operation of contract February 26, 2013.

2.0 ACADEMIC SELECT PLUS AGREEMENT

The Academic Select Plus shall replace the Academic Select agreement as of the last date signed below.

3.0 CONFLICT

To the extent any of the terms of this Agreement conflict with the terms of the Contract, the terms of the Agreement shall control. All other terms of the Contract or as previously understood, remain in full force.

4.0 WARRANTY OF AUTHORITY

Each person signing this Agreement warrants that he or she is duly authorized to do so on behalf of the respective party.

5.0 REPLACEMENT CONTRACT

A replacement contract may be established for future services prior to the expiration of this renewed contract. The replacement contract shall supersede and cause early termination of this renewed contract number: 252-001-09-1.

State of Florida,
Department of Management Services:

By: Kathy G. F.M.

Name: Kathy G. F.M.
Chief Procurement Officer &
Title: Director of State Purchasing

Date: 2/23/13

SHI International Corporation:

By: [Signature]

Name: Michael P. [Signature]
Title: [Signature]

Date: 2/23/13

AMENDMENT NO. 3
To State Term Contract 252-001-09-1
Microsoft License, Maintenance, & Services

This Amendment No. 3 ("Amendment"), effective as of the last date signed below, to the Microsoft License, Maintenance, & Services Contract No. 252-001-09-1 ("Contract") effective between the State of Florida, Department of Management Services ("Department" or "Customer") and SHI International Corporation ("Contractor"). Department and Contractor are collectively referred to herein as the "Parties." All capitalized terms used herein shall have the meaning assigned to them in the Contract, unless otherwise defined herein.

The parties hereto agree to amend the contract as follows:

4.0 ACADEMIC SELECT AGREEMENT

The Academic Select agreement is terminated as of February 27, 2013.

5.0 ACADEMIC SELECT PLUS AGREEMENT

The Academic Select Plus shall replace the Academic Select agreement as of the last date signed below.

6.0 CONFLICT

To the extent any of the terms of this Agreement conflict with the terms of the Contract, the terms of this Agreement shall control. All other terms of the Contract, or as previously amended, remain in full force.

7.0 WARRANTY OF AUTHORITY

Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party.

8.0 REPLACEMENT CONTRACT.

A replacement contract may be established for these services prior to the expiration of this renewed contract. The replacement contract shall supersede and cause early termination of this renewed contract number 252-001-09-1.

**State of Florida,
Department of Management Services:**

SHI International Corporation:

By: _____

By: _____

Name: Kelly Loll, C.P.M.
Title: Chief Procurement Officer &
Director of State Purchasing

Name: _____
Title: _____

Date: _____

Date: _____



Volume Licensing

Academic Select Plus Agreement Amendment ID CTM

000-reychann-E19b

This Academic Select Plus Amendment ("Amendment") is entered into between the entities as of the effective date identified in the Signature Form. The terms and conditions in this Amendment supersede any conflicting terms and conditions in the Agreement.

1. Section 17.c. is hereby amended and restated in its entirety as follows:

Affiliates and contractors. Neither Microsoft nor Institution shall bring any action against the other's Affiliates or contractors in respect of any matter which is disclaimed on their behalf in this Section. *Except as prohibited or limited by Florida law*, each party will indemnify the other in the event of any breach of this provision.

This amendment must be attached to a signature form to be valid.

AcSelectPlus20-CA(1NA)US(ENG)(Dec2019)

Applicable Law:
CTM

BL:
Page 1 of 1

AMENDMENT NO. 2
Contract Renewal
To State Term Contract 252-001-09-1
Microsoft License, Maintenance, & Services

This Amendment No. 2 ("Amendment"), effective as of April 1, 2013, to the Microsoft License, Maintenance, & Services Contract No. 252-001-09-1 ("Contract") effective between the State of Florida, Department of Management Services ("Department" or "Customer") and SHI International Corporation ("Contractor"). Department and Contractor are collectively referred to herein as the "Parties." All capitalized terms used herein shall have the meaning assigned to them in the Contract, unless otherwise defined herein.

WHEREAS the Contract was originally entered on April 1, 2009 with Contractor for the provision of Microsoft License, Maintenance, & Services, and is scheduled to expire on March 31, 2012; and

WHEREAS the Contract was renewed on April 1, 2012 and is scheduled to expire on March 31, 2013; and

WHEREAS in accordance with Section 4.26 of the State Term Contract No. 252-001-09-1, 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; and

THEREFORE, in consideration of the mutual promises contained below, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

- 1.0 Contract Renewal.** The Department hereby executes its renewal option pursuant to the provision of Section 4.26 Renewal of Contract, Section 5.18 Pricing, and in accordance with Section 287.057(13), Florida Statutes, for two years and is hereby renewed effective April 1, 2013 through March 31, 2015.
- 2.0 Reporting Requirements.** Section 5.2, Amendment 1 of the Contract, is revised to remove NIGP reporting requirements and will include a new Quarterly Reporting Form (see Attachment A).
- 3.0 Warrant of Authority.** Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.
- 4.0 Effect.** Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract, as amended previously, shall continue in full force and effect.

State of Florida,
Department of Management Services:

By: Kelly Loh

Name: Kelly Loh, C.P.M.
Chief Procurement Officer &
Title: Director of State Purchasing

Date: 1/12/13

SHI International Corporation:

By: Michael Beach

Name: Michael Beach
Title: Director

Date: 1/8/13

Page 1 of 1

Microsoft Licenses, Maintenance & Service
252-001-09-1
Quarterly Report Form – Attachment A

[illegible]

Microsoft Licenses, Maintenance & Service
252-001-09-1
Quarterly Report Form – Attachment A

AMENDMENT NO. 1
To State Term Contract 252-001-09-1
Microsoft License, Maintenance, & Services

This Amendment No. 1 ("Amendment"), effective as of April 1, 2012, to the Microsoft License, Maintenance, & Services Contract No. 252-001-09-1 ("Contract") effective between the State of Florida, Department of Management Services ("Department" or "Customer") and SHI International Corporation ("Contractor"). Department and Contractor are collectively referred to herein as the "Parties." All capitalized terms used herein shall have the meaning assigned to them in the Contract, unless otherwise defined herein.

WHEREAS the Contract was originally entered on April 1, 2009 with Contractor for the provision of Microsoft License, Maintenance, & Services, and is scheduled to expire on March 31, 2012; and

WHEREAS in accordance with Section 4.26 of the State Term Contract No. 252-001-09-1, 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; and

THEREFORE, in consideration of the mutual promises contained below, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1.0 Contract Renewal. The Department hereby executes its renewal option pursuant to the provision of Section 4.26 Renewal of Contract, Section 5.16 Pricing, and in accordance with Section 287.057(13), Florida Statutes, for one year and is hereby renewed effective April 1, 2012 through March 31, 2013.

2.0 Reporting Requirements. Section 5.9, of Contract No. 252-001-09-1, is superseded and entirely replaced with the following:

5.9 Sales Summary Reports

Each Contractor shall submit a sales report on a Quarterly basis. Reporting periods coincide with the State Fiscal Year:

- Quarter 1- (July-September)
- Quarter 2 - (October-December)
- Quarter 3 - (January-March)
- Quarter 4 - (April-June)

Each Quarterly Sales Report must be in Excel format and shall include:

- Contractor's Name and contact information as required on the Department of Management Services "Contract Quarterly Report"
- Detail of time period covered by included data
- Total sales including detail of list price and contract price
- Transaction detail will include:

Part Number/SKU	Your product part number if applicable
Item / Service Name	Given name of Item or Service
MFG	Manufacturer, Publisher, Service Provider
Item Category	Description of the product category, according to attached table
Item Subcategory	Additional grouping for item
Product Description	Additional detail for item
Customer Name	State Agencies, Universities, Political Subdivisions, Other Eligible Users
NIGP Code	National Institute of Government Procurement code
Florida Commodity Code	Florida Commodity Code
UOM	Unit of Measure
UOM Desc	Description of unit of measure (see example)
Volume Qty	Number of items/services purchased/provided
Order Date	Order date
Date Delivered	Delivered date to customer
Purchase Type	Purchase Order, Payment Card, Other
List Price	List price (Market + fee contracts use market price)
Contract Price	Contracted price with state per contract terms
Additional Fields	Any new information related to your company's products/services

Failure to provide quarterly and annual sales reports, including no sales, within thirty (30) calendar days following the end of each quarter (January, April, July and October) and/or contract year may result in the contract supplier being found in default and cancellation of the contract by the Department. Upon request, the Contractor shall report to the Department, spend with certified and other minority business enterprises. Reports must include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this contract. 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.

- 3.0 Employment Verification.** Pursuant to State of Florida Executive Orders Nos.: 11-02 and 11-116, Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Contractor during the contract term. Also, Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing

services pursuant to the state contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the contract term.

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

5.0 Preferred Pricing. The Contractor agrees to submit to the Department, at least annually, an affidavit from an authorized representative attesting that the Contractor is in compliance with the preferred pricing provision in Section 4(b) of form PUR 1000.

6.0 Warrant of Authority. Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.

7.0 Effect: Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract shall continue in full force and effect.

**State of Florida,
Department of Management Services:**

By: _____

Name: Kelly Loll, C.P.M.
Title: Chief Procurement Officer &
Director of State Purchasing

Date: _____

SHI International Corporation:

By: _____

Name: _____
Title: _____

Date: _____

Approved as to form and legality

By: _____
Office of the General Counsel
Department of Management Services

Date



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: Large Account Reseller for Microsoft Software, Licenses and Maintenance

CONTRACT NO.: 252-001-09-1

ITN NO.: 11-252-001-H

EFFECTIVE: April 1, 2009 – March 31, 2012

SUPERSEDES: 255-001-01-1 Large Account Reseller for Microsoft Software, Licenses and Maintenance, expiring March 31, 2009

CONTRACTOR(S): Software House International, Inc.

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 contractors.

B. EFFECT - This contract was entered into to provide economies in the purchase of Microsoft Software, Licenses and Maintenance 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 terms, prices, and conditions of this contract and with the suppliers specified.

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

All contract purchase orders shall show the State Purchasing contract number, product number, quantity, description of item, 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 vendor failure to perform according to the requirements of this contract on Complaint to Vendor form PUR 7017. Should the vendor fail to correct the

problem within a prescribed period of time, then form PUR 7029, Request for Assistance, is to be filed with this office.

- E. SPECIAL AND GENERAL CONDITIONS - Special and general conditions are enclosed for your information. Any restrictions accepted from the supplier are noted on the ordering instructions.

Authorized Signature (date)

DSP/llp

Attachments

Contract Administrator

Lori Potts

Phone: 850-487-4196

Email: Lori.Potts@dms.myflorida.com

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- 4.0 GENERAL CONTRACT CONDITIONS (PUR 1000)**
- 5.0 SPECIAL CONTRACT CONDITIONS**
- 6.0 TECHNICAL SPECIFICATIONS**
- 7.0 FORMS, ATTACHMENTS, AND WORKSHEETS**

SECTION 1.0

INTRODUCTION

CONTENTS:

- 1.1 PURPOSE / TERM
- 1.2 PRODUCT OFFERINGS
- 1.3 CONTACT INFORMATION
- 1.4 EVENT TIMELINE

1.1 Purpose / Terms

The State of Florida, Department of Management Services, Division of State Purchasing provides centralized statewide contracts for software and other commodities and services for use by all state agencies, political sub-divisions (such as municipalities, towns, schools, universities, etc.) and others authorized by law to use state contracts.

The purpose of this solicitation is to establish a 36 month contract with the option for renewals per section 287.057 (14) (a.) for the purchase of Microsoft Software, Licenses and Maintenance. The contract term is anticipated to begin on or about April 1, 2009. The State's MyFloridaMarketPlace e-Procurement system (the "System") will be used to conduct this competitive event.

If you are interested in bidding on this software contract, you must be registered in MyFloridaMarketPlace and adhere to "who may bid" requirements as outlined in section 3.4 of this solicitation.

1.2 Product Offerings

Products available under this Contract are set forth in Section 6 of this solicitation. These offerings may be updated during the Contract term to incorporate new Product offerings, as well as price revisions and to discontinue items no longer offered by Microsoft. Offering updates must be submitted as outlined in Section 5.18 of this solicitation.

1.3 Contact Information

The primary contact for this solicitation is:

Lori Potts
Purchasing Analyst, State Purchasing
Department of Management Services
4050 Esplanade Way, Suite 360
Tallahassee, FL 32399-0950
Office: (850) 487-4196 (850) 414-8331 (facsimile)
Lori.Potts@dms.myflorida.com

1.4 Event Timeline.

EVENT TIMELINE

Event	Time (EDT)	Date
ITN Release		25 Nov 08
Optional MFMP Sourcing Training	2:00 PM	2 Dec 08
Deadline for Questions Submitted via the Q&A Board within MyFloridaMarketPlace	2:00 PM	9 Dec 08
Answers to Respondents Questions Posted		12 Dec 08
ITN Submission Deadline	2:00 PM	6 Jan 09
Evaluation		12 Jan 09 – 23 Jan 09
Evaluation Scoring Session (Public meeting will be held in building 4050, Room 101)	2:00 PM	27 Jan 09
Electronic Posting of Promotion to Stage 2 (Pricing and Negotiation)		27 Jan 09
Final Pricing and Negotiation (if required)		28 Jan – 13 Feb 09
Posting of Intent to Award		On or about 19 Feb 09
Contract Start Date		On or about 1 Apr 09

IT IS STRONGLY RECOMMENDED THAT YOU SUBMIT YOUR BID 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 BID.

DO NOT RELY ON THE “MYFLORIDAMARKETPLACE” SOURCING TOOL’S TIME REMAINING CLOCK. THE OFFICIAL SOLICITATION CLOSING TIME SHALL BE AS REFLECTED IN THE TIMELINE (SECTION 1.4) OF THIS ITN.

SECTION 2.0

GENERAL INSTRUCTIONS TO RESPONDENTS, STATE OF FLORIDA FORM PUR 1001

Please refer to section 1.4 on the RFX info tab of this solicitation within the MyFloridaMarketPlace Sourcing Tool.

CONTENTS:

- 2.1 Definitions
- 2.2 General Instructions
- 2.3 Electronic Submission of Responses
- 2.4 Terms and Conditions
- 2.5 Questions
- 2.6 Conflict of Interest
- 2.7 Convicted Vendors
- 2.8 Discriminatory Vendors
- 2.9 Respondent's Representation and Authorization
- 2.10 Manufacturer's Name and Approved Equivalents
- 2.11 Performance Qualifications
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- 2.15 Clarifications/ Revisions
- 2.16 Minor Irregularities/Right to Reject
- 2.17 Contract Formation
- 2.18 Contract Overlap
- 2.19 Public Records
- 2.20 Protests
- 2.21 Limitation on Vendor Contact with Agency During Solicitation Period

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 requires 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.

SECTION 3.0

SPECIAL INSTRUCTIONS TO RESPONDENTS

SPECIAL INSTRUCTIONS TO RESPONDENTS CONTAINED IN THIS SECTION 3.0 MAY SUPERCEDE OR SUPPLEMENT GENERAL INSTRUCTIONS TO RESPONDENTS CONTAINED IN SECTION 2.0.

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3.1 Additional Definitions.

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

- a) **“Certified Dealer”** refers to a person authorized by the Manufacturer to sell the Manufacturer’s products in the Florida government market.
- b) **“Commercial Software”** means software developed or regularly used that (1) has been sold, leased, or licensed to the general public; (2) has been offered for sale, lease, or license to the general public; (3) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or (4) satisfies a criterion expressed in (1), (2), or (3) above and would require only minor modifications to meet the requirements of this contract.
- c) **“Department”** means the Florida Department of Management Services. The Department will be a party to the Contract. “State Purchasing,” a division within the Department’s Support Program, is responsible for administration of this solicitation and will be responsible for day-to-day administration of the Contract. State Purchasing may be reached at 4050 Esplanade Way, Suite 360, Tallahassee, FL 32399-0950, or via links posted at <http://www.myflorida.com/myflorida/business/index.html>.
- d) **“Documentation”** means the complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable an Eligible User to properly test, install, operate and enjoy full use of the Product.
- e) **“Eligible Users”** means political subdivisions of the State of Florida (county, local county board of public instruction, municipal, or other local public agency or authority), State Universities, and any other public entities authorized by State statute, which may desire to purchase under the terms and conditions of the Agreement.
- f) **“Enterprise”** means the total business operations in the United States of Eligible User(s) without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Eligible Users.
- g) **“Enterprise License”** means a license grant of unlimited rights to deploy, access, use, and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

- h) **“Error Corrections”** means machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.
- i) **“Licensed Software”** means software transferred upon the terms and conditions set forth in the Contract. “Licensed Software” includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, program temporary fix (PTF), programs, code or data conversion, or custom programming).
- j) **“Licensee”** means one or more Eligible Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term “Licensee” shall be deemed to refer separately to the individual Eligible User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of Florida.
- k) **“License Effective Date”** means the date Product is delivered to an Eligible User. Where a License involved Licensee’s right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.
- l) **“Licensor”** means a Contractor who transfers rights in proprietary Product to Eligible User(s) in accordance with the rights and obligations specified in the Contract.
- m) **“Mandatory” - The Terms “must”, “shall”, “will”, “is required,” identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor may result in the rejection of the offeror’s/bidder’s proposal.**
- n) **“Manufacturer”** means the entity that holds the trademark in the identified brand name.
- o) **“Manufacturer’s Price List”** means the most recent document published by the Manufacturer that details products available, model numbers, options, and prices for each.
- p) **“New Product Releases” (Product Revisions)** means any commercially released revisions to the licensed version of a Product as may be generally offered and available to Eligible Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

- q) **“Operating Software”** means those routines, whether or not identified as Program products that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- r) **“Product”** means a deliverable under any Bid or Contract which may include commodities, services, and/or technology. The term “Product” includes Licensed Software.
- s) **“Purchase Order”** means the Eligible User’s fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, electronic Purchase Order, or other authorized instrument).
- t) **“Responsible Bidder”** means a bidder who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.
- u) **Responsive Bidder or “Responsive Proposal”** means an offer or proposal that conforms in all material respects to the requirements set forth in the Invitation to Negotiate. Material respects of an Invitation to Negotiate include, but are not limited to price, quality, quantity, or delivery requirements.
- v) **“Site License”** means for each product, the term “Site License” shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Statement of Work.
- w) **“Software”** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- x) **“Software Failure”** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly.
- y) **“State”** means the State of Florida and its agencies.
- z) **“Terms of License”** means the terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of the order placement.
- aa) **“Virus”** means any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner

the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

3.2 Order of Events.

Respondents will review and become familiar with the Event Timeline and solicitation documents, enter any questions in the MFMP Sourcing Tool Q&A Board before the date and time specified in the Event Timeline, answer all questions requested for the proposal, submit required documents, develop cost savings structures, and upload final responses into the MFMP Sourcing Tool.

The Event Timeline gives the date and time (where applicable) for major activities in the solicitation. See Section 1.4 of this solicitation document for the Event Timeline.

3.3 Order of Precedence.

Potential respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly. In the event any conflict exists between the Special and General Instructions, those instructions specified in the Special Instructions shall prevail.

All responses are subject to the terms of the following sections of this ITN, which, in case of conflict, shall have the order of precedence listed:

- Technical Specifications, Section 6.0
- Price Sheets
- Special Instructions to Respondents, Section 3.0
- Special Contract Conditions, Section 5.0
- General Instruction to Respondents (PUR 1001), Section 2.0
- General Contract Conditions (PUR 1000), Section 4.0
- Introduction, Section 1.0
- Forms, Attachments and Worksheets

3.4 Who May Respond.

The State of Florida is similar in purchasing size and volume to Texas, California and New York. In order to meet the large purchasing, licensing, and maintenance needs of Florida, the Department will accept Responses from responsive and responsible Respondents that meet all requirements of this Invitation to Negotiate including, but not limited to, the following:

- Respondents must be a Microsoft Certified Large Account Reseller (LAR) and provide a copy of the certification documentation in addition to the following requirements:

- Preference will be given to Large Account Resellers who have the following certifications (copies of certifications must be provided):
 - Technology Series Certification
 - Professional Series Certification
 - Master Services Certification
- LARs must have the following on their staff:
 - At least five (5) of the following:
 - Certified IT Professional (MCITP)
 - At least one (1) of each of the following (copies of certifications must be provided):
 - Microsoft Certified Business Management Solutions Specialist
 - Certified Business Management Solutions Professional
 - Certified Systems Engineer (MCSE)
 - Certified Database Administrator (MCDBA)
 - Certified Solutions Developer (MCSO)
 - Certified Systems Administrator (MCSA)
 - Certified Professional Developer (MCPD)
 - Certified Application Professional (MCAP)
 - Certified Trainer (MCT) or
 - Certified Learning Consultant (MCLC)
- The LAR must also have at least fifteen (15) members certified through the Microsoft Sales Certification Training Program to allow for State of Florida Account Coverage and Microsoft Trained Sales force for selling products. Copies of the Certificates must be included in the proposal submittal. Failure to do so may result in proposal rejection.
- Reseller must have at least one Microsoft Sales Certified staff member available Monday through Friday, 8:00 a.m. to 6:00 p.m. EST on weekly basis, except for State of Florida holidays, to answer phone calls and questions.
- Respondents must be a registered vendor in MyFloridaMarketPlace (MFMP) to do business with the State of Florida. If you are not already a registered vendor, you may view registration information as well as other pertinent information at: http://dms.myflorida.com/business_operations/state_purchasing/myflorida_marketplace/vendors/vendor_toolkit/mfmp_vendor_registration
- Respondents may create and maintain a MyFloridaMarketPlace (MFMP) Punch-Out site. If Respondent is not capable of creating a punch-out site, Respondent must agree to work with MFMP to create a line item catalog in MFMP through the Aravo tool. See Section 7.10 Punch-Out Capability Questionnaire for details. See Section 7.16 to view a sample Line-Item Template and additional information for consideration.

- Respondents shall utilize Electronic Invoicing through MyFloridaMarketPlace. See Sections 5.13 and 7.11 MyFloridaMarketPlace Electronic Invoicing Requirements for additional information.

3.5 MyFloridaMarketPlace (MFMP) Overview

MyFloridaMarketPlace is the State of Florida's online eProcurement system for buyers and vendors. In operation for more than five years, the system streamlines interactions between vendors and state government entities, is a source for centralized procurement activities, and provides the tools to support world-class procurement for the State of Florida.

3.6 The MFMP Sourcing Tool

This solicitation will be conducted using the MyFloridaMarketPlace Sourcing Tool ("Sourcing Tool"). Training materials can be found at:

http://marketplace.myflorida.com/vendor/vendor_solicitation_help.htm.

Copy link and paste in to web browser to access site!

Download and review the document titled RFP Event User Guide.

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

This site includes:

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

3.6.1 Optional MFMP Sourcing Tool Training

An optional conference call training session on how to use the MyFloridaMarketPlace Sourcing Tool for this ITN is scheduled on the date indicated on the Event Timeline at 2:00PM ET. The Conference Call number is (888) 808-6959. Conference Code 4881086.

Please go to:

http://marketplace.myflorida.com/vendor/vendor_solicitation/rfp_event_user_guide.pps. Please have this document open on your desktop while participating on the call. To participate in the conference call, please call in to the number provided approximately 1 minute before the scheduled time.

3.6.2 On-Demand Training

On-Demand is a web-based interactive training application available to all respondents to assist in learning how to respond to an event using the MyFloridaMarketPlace sourcing tool. The link is <http://training.myfloridamarketplace.com/vendor/toc.html> click on Responding to Sourcing Event.

3.7 Sourcing Tool Tips

When working in the Sourcing Tool, be aware of the twenty (20) minute time-out function (with a two (2) minute warning in the tool. This means that you should save your work (click the SAVE button) at intervals of less than twenty minutes to ensure your entries (since last saved) are not lost.

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

After clicking the SUBMIT button, it is the **Respondents** responsibility to check your submitted bid response within the Sourcing Tool to verify that your response is accurately and completely captured within the Sourcing Tool. You must do this while there is time remaining in the response period in case you discover an error and need to resubmit a revised bid response.

To validate your bid response, you should do the following before the bidding period ends:

- a. Go to the “My Bids / My Responses” tab within Sourcing Tool after you submitted your bid response
- b. Click on the Bid ID number of your last submitted bid response
- c. Review entire bid 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 / scanned documents – Can you open attached document and clearly view entire content?
- ✓ Offline electronic backup copy sent to the State (if applicable) - Can you open attached document and clearly view entire content? Does content of this file match your bid response within the tool (e.g., not an earlier version or working copy)?
- ✓ Pricing Information – Are all prices you intended to submit visible and accurately captured within Sourcing Tool?

IT IS STRONGLY RECOMMENDED THAT YOU SUBMIT YOUR BID 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 BID.

DO NOT RELY ON THE “MYFLORIDAMARKETPLACE” SOURCING TOOL’S TIME REMAINING CLOCK. THE OFFICIAL SOLICITATION CLOSING TIME SHALL BE AS REFLECTED IN THE TIMELINE (SECTION 1.4) OF THIS ITN.

The MyFloridaMarketPlace (MFMP) 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

3.8 Email Notification

Respondents are reminded that the Sourcing Tool’s email notifications are an option provided to respondents as a courtesy. The State of Florida is not under any obligation to provide, and does not guarantee that respondents will receive, email notifications concerning any posting, amendment or close of solicitations (ITNs).

Vendors are responsible to check the Sourcing Tool and / or the Vendor Bid System for information and updates concerning solicitations.

3.9 Submittal of Response.

Respondents shall view and download the documents in the MFMP Sourcing Tool (http://dms.myflorida.com/egovernment_tools/myflorida_marketplace). Each Respondent is responsible for ensuring that its response and all associated documents are submitted before the proper date and time. In the event a Respondent submits more than one response, only the last response received prior to the response deadline specified in Section 1.4 shall be considered for award. Other responses will not be opened. Offers not submitted as indicated in this section shall be rejected.

The Department shall not consider late responses and the MyFloridaMarketPlace Sourcing Tool will NOT accept responses after the due date and time specified in the Event Timeline, or as amended by the Department. **RESPONSES MUST BE SUBMITTED IN THE MYFLORIDAMARKETPLACE SOURCING TOOL BEFORE THE DATE AND TIME SPECIFIED IN THE EVENT TIMELINE.**

Failure to provide all requested information within the response package before the response deadline specified in Section 1.4 may result in rejection of the response.

DO NOT RELY ON THE MFMP SOURCING TOOL’S TIME-REMAINING CLOCK. The official response deadline shall be as reflected in Section 1.4, Timeline, of this solicitation. The MFMP Sourcing Tool’s time-remaining clock is intended only to approximate the solicitation closing, and may require periodic adjustments.

3.9.1 Response Format / Instructions

The Respondent shall review this entire ITN, complete the Certifications Table in Section 3.11, and submit all forms required as part of the Respondent's bid proposal. Failure to provide completed documents, forms, or certification documentation may result in the disqualification of the respondent.

A Respondent shall, in a separate and clearly identified response paragraph(s), expressly condition or qualify its Response on acceptance or identify any proposed changes to the terms and conditions outlined in this ITN. To facilitate this process, the Respondent is required to review Sections 3, 5, and 6 on a provision by provision basis. The Respondent shall respond in these sections by inserting their response immediately below the text of each numbered provision and respond to each provision with one of the following conventions:

a. Agreed

Where the term is acceptable as stated.

b. Modification Proposed

Where Respondent is unable to accept the term as stated but will accept a modification of the term. Respondent must provide: (1) the reason for its inability to accept the term as stated and (2) modified language which would be acceptable.

c. Not Agreed

Where the term is completely unacceptable to Respondent and no modification is possible. Respondent must state the reason such term is unacceptable.

The Department reserves the right to modify, by addition or deletion, terms and conditions during the negotiation process.

Respondents are reminded that the terms and conditions listed in Sections 2 and 4 will not be negotiated and are required language for all State of Florida Contracts. Minor clarification within Sections 2 & 4 may be added in Section 3.11 beneath the Responsiveness Checklist chart.

CERTIFICATION OF ACCEPTANCE FOR THE TERMS AND CONDITIONS DETAILED IN SECTIONS 2 AND 4 IS TO BE DONE WITHIN THE TABLE IN SECTION 3.10 OF THIS ITN.

3.10 Amendments to the ITN Documents.

The Department reserves the right to issue amendments to this ITN. Notice of any amendment will be posted within the MFMP Sourcing Tool and the Vendor Bid System (VBS). Such notice, if required, will contain the appropriate details for identifying and/or reviewing the formal changes to this ITN. Each Respondent is responsible for monitoring the sites for new or changing information concerning this ITN.

3.11 Initial Determination of Responsiveness

The Department shall evaluate eligible (“responsible and responsive”) responses. Responses that do not meet the minimum requirements of this 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 with the State do not reflect the capability, integrity or reliability to fully, and in good faith, perform the requirements of the Contract, may be rejected as non-responsive. The Department reserves the right to determine which responses meet the requirements of this solicitation, and which Respondents are responsive and responsible. This paragraph is in addition to, and shall not be construed to limit or override, any right or remedy available to the Department in, Section 2.0, PUR 1001, or Section 4.0 PUR 1000.

Failure to comply with each of the requirements listed below may result in the response being deemed non-responsive and therefore may not receive further consideration in this ITN process. This includes, but is not limited to the following:

Initial Responsiveness Checklist	
1.	Did the Respondent submit its reply <u>before</u> the indicated deadline?
2.	Is Respondent a Certified Large Account Reseller for Microsoft software Products and has provided documentation?
3.	Did the Respondent submit a detailed pricing structure indicating the minimum percentage discount?
4.	Did the Respondent submit a Supplier Qualifier Report (SQR) from Dun & Bradstreet (D&B)? (See Section 3.12.)
5.	Has the Respondent met the requirement for having no Conflicts of Interest? (See Section 2.6.)
6.	Does the Respondent comply with the requirement for not being placed on the Convicted Vendor list for committing a public entity crime within the last 36 months? (See Section 2.7.)
7.	Does the Respondent comply with the requirement for not being placed on the Discriminatory Vendor List per Section 287.134, F.S.? (See Section 2.8.)
8.	Did Respondent provide a completed copy of the Vendor Responsibility Form and receive a passing score?

Please certify that your Response conforms to each of the following requirements by responding with either a “Yes” or “No” in the blocks and submit the completed WORD Document in the MyFloridaMarketPlace Sourcing Tool.

Certifications

	YES	NO
1. Does the Respondent certify acceptance and compliance with all of the Terms and Conditions detailed in Section 2 (PUR1001) of the ITN document?		
2. Does the Respondent certify acceptance and compliance with all of the Terms and Conditions detailed in Section 4 (PUR1000) of the ITN document?		
3. Has the Respondent completed pricing worksheets as noted in Section 7.1 of the ITN Document?		
4. Respondent is a Certified Large Account Reseller for the Microsoft Software Products and has provided documentation to verify such certification?		
5. Respondent is a registered vendor in MFMP and is eligible to do business with the State of Florida?		
6. Respondent is capable of creating and maintaining an MFMP punch-out site.		
7. If Respondent is not capable of creating an MFMP punch-out site, Respondent agrees to work with MFMP to create a line-item catalog in MFMP through the Aravo tool.		
8. Respondent is fully capable of providing electronic invoicing through MyFloridaMarketPlace.		
9. Respondent certifies that they will accept the State of Florida's Purchasing Card.		

*** Respondents must provide an explanation for any "No" answer indicated above.**

3.12 Evaluation and Selection Process

Evaluation will consist of the review and assessment of the Respondents' submittals. While award will mainly be based upon the best price, the Department reserves the right to invite top scoring respondents to negotiate their offerings and proposed pricing.

All areas of evaluation listed in the table below are to be addressed by the Respondent in its submittal.

Proposals that are substantially incomplete or lack key information may be rejected as non-responsive by the Department, at its discretion. Responses should be concise, summarizing the Respondent's pertinent experience and capabilities. Emphasis should be placed on completeness and clarity. Responses that do not provide sufficient content or satisfactory information, as requested in this ITN document, may receive lower scores. Points will be assigned to all categories (see table, below, for

point-allocation per category) and then totaled in order to determine each Respondent's ranking:

Evaluation Category	Maximum Possible Pts.
Vendor Responsiveness	Pass/Fail
Vendor Responsibility	Pass/Fail
Section 1 – Respondent is a LAR	Pass/Fail
Section 2 – PUR 1001	Agree/Disagree
Section 3 – Financials	24
Section 3 – Vendor Certifications	100
Section 4 – PUR 1000	Agree/Disagree
Section 5 – Special Contract Conditions	75
Section 5 - Track record of Vendor in meeting commitments (verified through references and vendor performance tracking within MFMP)	50
Section 6 – Technical Specifications	60
Section 7 – Pricing Models, Strategies and Commitments proposed	140
Section 7 – Vendor Responsibility Questionnaire	Pass/Fail
Total Points Possible:	449 pts.

All evaluation categories will be scored with each response having the opportunity to achieve the maximum total point allocation indicated.

Financials (Supplier Qualifier Report):

Each Respondent is required to provide information regarding its “Financial and Industry Standing and Strength” in order to demonstrate that it is financially stable, in good standing with creditors and manufacturers, and has the resources necessary to perform the services outlined in this ITN on a state-wide basis. The State requires each Respondent to provide a Supplier Qualifier Report (SQR) prepared by Dun & Bradstreet (D&B), in accordance with the instructions below. The SQR is a standard report that details financial and operational capabilities. This report must be submitted to the Department **prior to the proposal opening date and time**. Each Respondent will be responsible for the cost and timely submission of this report. Each Respondent will be assigned points during the evaluation phase of the solicitation based on the D&B score.

The prospective Contractor will request the SQR from D&B at:

<https://sor.dnb.com/sor/jsp/forms/SOF.jsp?SORTAG1=JQ37hS4r&SORTAG2=j58Gjk4x>

1. Enter the ITN number in the text field entitled "Enter your RFP Number" and select "Submit."
2. Enter your company's Duns Number. (If you don't know your company's Duns number, you may use the search feature to find it.)
3. Confirm Registration
4. Enter payment method and information and complete registration. The cost of the preparation of the D&B report shall be the responsibility of the Respondent.

Respondents are advised to allow a minimum of ten (10) business days for D&B to process a report request. If the Department does not receive an SQR from D&B prior to the opening date and time of the solicitation but one is submitted as part of a Respondent's Response, the Respondent shall be required to demonstrate that it requested the SQR after the posting date of the ITN and that the SQR was requested for this particular solicitation. Once the process is complete, a copy of the report will be provided to the Department and an identical report will be sent to the Respondent. If the Department does not receive a report or cannot determine on the face of the document that the SQR is that of the proposing entity, then the Department will instruct the Evaluation Team to award zero points to that company for that evaluation category. It is the responsibility of the Respondent to ensure the timely submission of a D&B report to the Department prior to the opening date of the proposals. The Department will use the financial scoring scale below when evaluating and scoring the financial viability of the prospective Contractors.

Financial Scoring Scale:

SQR Risk Score		Points Assigned
1	Lowest Risk Rating	24.0
2		21.0
3		18.0
4		15.0
5		12.0
6		9.0
7		6.0
8		3.0
9	Highest Risk Rating	0.0

3.13 Invitation to Negotiation Phase.

The Department shall evaluate and rank responsive responses against all evaluation criteria set forth in the Invitation to Negotiate and shall select, based on the ranking, one or more Respondents with which to commence negotiations. Invitations to the negotiations will be posted in the MFMP Sourcing Tool and in the Vendor Bid System (VBS). Email will be sent to each selected Respondent's contact person.

3.14 Negotiations and Contract Award.

The Department, at its discretion, may require Respondents to make formal presentations of their responses.

The Department reserves the right to finalize the negotiations at any point and post a notice of Intent to Award. Respondents should recognize the Department's right to finalize the negotiation process without the need to explicitly request a revised final offer after negotiations.

After negotiations are conducted, the Department shall award the Contract to a single responsible and responsive Respondent whose product(s) and prices the Department determines will provide the best value to the State.

3.15 Electronic Posting of Ranking of Respondents prior to Negotiations and upon Final Award.

Offers shall be opened on the date and time indicated in Section 1.4 on the Event Timeline ("Timeline"), and thereafter evaluated. Prices will not be read, pursuant to Section 119.071(1) (b) 2.a. of the Florida Statutes. After evaluating the responses, on the date indicated on the Timeline, the Department shall electronically post the rankings in the MFMP Sourcing Tool.

After negotiations, on the date indicated on the Timeline, the Department shall electronically post a notice of intent to award. If the ranking or award is delayed, in lieu of posting it on the date indicated on the Timeline, the Department shall post a notice of the delay and a revised date for posting the ranking or notice of intent to award. Any person who is adversely affected by the decision shall file with the Department a notice of protest within 72 hours after the electronic posting (see Section 2.20 of the General Instructions (PUR 1001) for more information on protests). The Department shall not provide reply rankings or notices of award by telephone.

3.16 State Objectives.

Within thirty (30) calendar days following award of the Contract, 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.

3.16.1 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 subcontractors) 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.

3.16.2 Certification of Drug-Free Workplace Program.

The State supports and encourages initiatives to keep the workplaces of Florida's Suppliers and Prime Contractors drug free. Section 287.087 of the Florida Statutes provides that, where identical tie responses are received, 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" as provided in Sourcing Tool for this solicitation. The Prime Contractor shall describe how it will address the implementation of a drug free workplace in offering the items of the solicitation. Certification shall be submitted (in the Sourcing Tool) using the form in Section 7.5.

3.16.3 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 Respondent shall describe how it will address the use of RESPECT in offering the items of the solicitation.

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

3.17 Firm Response.

The Department may make an award within one hundred eighty (180) 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 one hundred eighty (180), the response shall remain firm until either the Department awards the Contract or the Department 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.

3.18 Lobbying.

The Service Provider or Respondent shall not lobby the legislative, judicial, or executive branches, or any State Agency about any aspect of this Contract during the procurement process (i.e. from the time the Contract is advertised to the execution of the Contract) associated with the Contract. Violation of this restriction may be cause for disqualification from the procurement process.

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 Service Provider or Contractor may not expend any State funds for the purpose of lobbying the legislature, the judicial branch, the executive branch, or any State Agency.

SECTION 4.0

GENERAL CONTRACT CONDITIONS, STATE OF FLORIDA FORM PUR 1000

Contents

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1. Definitions.

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

- (a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.
- (b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.
- (c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.
- (d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

2. Purchase Orders.

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

3. Product Version.

Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order, unless the Customer specifically

requests in writing an earlier model or version and the contractor is willing to provide such model or version.

4. Price Changes Applicable only to Term Contracts.

If this is a term contract for commodities or services, the following provisions apply.

- (a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.
- (b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
- (c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.
- (d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.
- (e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

5. Additional Quantities.

For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.

6. Packaging.

Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

7. Inspection at Contractor's Site.

The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

8. Safety Standards.

All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

9. Americans with Disabilities Act.

Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

10. Literature.

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

11. Transportation and Delivery.

Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.

12. Installation.

Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall

clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

13. Risk of Loss.

Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

14. Transaction Fee.

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

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

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

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

15. Invoicing and Payment.

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

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

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

16. Taxes.

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

17. Governmental Restrictions.

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

18. Lobbying and Integrity.

Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State,

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

19. Indemnification.

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

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

Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

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

20. Limitation of Liability.

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

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

21. Suspension of Work.

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

22. Termination for Convenience.

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

23. Termination for Cause.

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

24. Force Majeure, Notice of Delay, and No Damages for Delay.

The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract

price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

25. Changes.

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

26. Renewal.

Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

27. Purchase Order Duration.

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

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

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

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

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

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

28. Advertising.

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

29. Assignment.

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

30. Antitrust Assignment.

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

31. Dispute Resolution.

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

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

32. Employees, Subcontractors, and Agents.

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

33. Security and Confidentiality.

The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of

performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

34. Contractor Employees, Subcontractors, and Other Agents.

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

35. Insurance Requirements.

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

36. Warranty of Authority.

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

37. Warranty of Ability to Perform.

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

38. Notices.

All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the

Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

39. Leases and Installment Purchases.

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

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

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

41. Products Available from the Blind or Other Handicapped.

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

42. Modification of Terms.

The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of

documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

43. Cooperative Purchasing.

Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser.

State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

44. Waiver.

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

45. Annual Appropriations.

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

46. Execution in Counterparts.

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

47. Severability.

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

SECTION 5.0
SPECIAL CONDITIONS

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5.1 Purchasing Card Program.

The State of Florida has implemented a purchasing card program, using the Visa platform. Vendors may receive payment from state agencies by the purchasing card in the same manner as other Visa purchases. Visa acceptance is mandatory but is not the exclusive method of payment.

5.2 Product Acceptance.

Unless otherwise provided by mutual agreement of the Eligible Users and the Contractor, Eligible User(s) shall have thirty (30) days from the date of delivery to accept all newly licensed software Product(s). Eligible users shall accept renewal of software maintenance or renewal of software licenses upon the effective date of the Eligible User contract or purchase order. Where the Contractor is responsible for installation, acceptance shall be from completion of installation, configuration and setup, including training, as specified in the Eligible User contract or purchase order. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Eligible User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Eligible User agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Eligible User and the Contractor, Eligible User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by Eligible User. Where using its own data or tests, Eligible User must have the tests or representative set of data available upon delivery.

This demonstration will take the form of a documented installation test, capable of observation by the Eligible User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Eligible User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Eligible User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. The Eligible User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Eligible User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Eligible User elects to provide a deficiency statement specifying how the product fails to meet the specifications within the testing period, the Contractor shall have thirty (30) days to correct the deficiency, and the Eligible User shall have an additional thirty (30) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, the Eligible User, upon prior

written notice to the Contractor, may then reject the Product and return all defective Product to the Contractor, and the Contractor shall refund any monies paid by the Eligible User to Contractor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by the Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Eligible User's agents or employees.

5.3 Ownership/Title.

Title and ownership to Software Product(s) delivered by the Contractor under the Contract to an Eligible User under a valid Eligible User contract or purchase order that is normally commercially distributed on a license basis by the Contractor or other third party products which are included under any contract resulting from this solicitation, shall remain with the Contractor or Microsoft. Effective upon acceptance, such Product shall be licensed to Eligible Users in accordance with the Contractor or Microsoft's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Eligible Users a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Eligible Users as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Eligible User's satisfaction) and distribute Existing Licensed Product to the Eligible User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Eligible User's contract or Purchase Order and (b) recognize the State of Florida as the licensee where the Eligible User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by Microsoft's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Eligible User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph. See Section 6.4 (e) for transfer of license language, which shall apply to all software purchased under this agreement.

5.4 Proof of License.

The Contractor must provide to each Eligible User either: (i) the Contractor's certified license confirmation certificates in the name of such Licensee; or (ii) a written confirmation from the Contractor or Microsoft accepting the Eligible User's contract or purchase order as proof of license. Contractor shall submit the certificate, or alternatively such written confirmation from Microsoft to the benefit of the Eligible User. Such certificates must be in a form acceptable to the Eligible User.

5.5 Product Version.

Purchase Orders shall be deemed to reference the Contractor's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by the Eligible User and the Contractor is willing to provide such version.

5.6 Changes to Product or Service Offerings.

- a. **Product or Service Discontinuance** In the event that Microsoft publicly announces to all U.S. customers ("date of notice") that a Product, maintenance, or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, the Contractor shall be required to: (i) notify the Contract Manager and each Eligible User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current State of Florida Contract for the greater of: a) the best terms offered by the Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed re-bundling change to the Contract Manager for approval prior to its becoming effective for the remainder of the Contract term.

The Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of the Contractor receiving notice from Microsoft, and (ii) include in such notice the period of time from the date of notice that Microsoft will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate the Contractor's obligations where withdrawn support is being provided by Microsoft. In the event that Microsoft ceases to provide service, the Contractor shall be responsible for subcontracting such service, subject to state approval, to an alternate Subcontractor.

- b. **No Hardship/Passive License Monitoring**. Unless an Eligible User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, the Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Eligible User shall not have an adequate remedy at law, including monetary damages, and that Eligible User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

5.7 Contract Service Requirements.

Requests by State Agencies and Eligible Users for Product Literature, Price Lists, and Specifications must be provided within five (5) working days after receipt of written request, at no charge to Eligible Users. However, the Department reserves the right to

review and approve all Product Literature, Price Lists, and promotional materials before distribution to State Agencies and Eligible Users.

Awarded contractor(s) shall have a single point of contact for customer support. This individual may support multiple Eligible Users and respond to Eligible User calls and/or emails within twenty-four (24) hours. Customer Support contact information shall be provided on the Ordering Instructions form. The Contractor(s) shall make all Eligible Users of the contract aware of its existence at the time of order to ensure that contractual pricing is utilized.

Contractor(s) shall provide toll-free customer service phone support from 7:00 AM (EST) to 6:00 PM (EST) Monday through Friday, except for National and State recognized holidays. TDD (Telecommunication Device for the Deaf) access must be made available during the above customer service operating hours.

Contractor(s) shall provide an after-hours contact number for use by Eligible Users for emergency orders after standard customer service operating hours.

5.8 Delivery.

Pricing shall include inside delivery to the ordering agency within 30 days after receipt of purchase order.

5.9 Contract Reporting Requirements.

The Contractor shall report sales data to the Contract Manager on a quarterly basis using the STC Reporting Form in Section 7.15 of the ITN.

- The following data must be reported to the Contract Manager on a quarterly contract basis: Report shall include:
 - Contractor's Name and FEIN number
 - Contact Information
 - Reporting Period
 - Total dollar value of purchases per quarter as noted on the form.
 - Total dollar value of purchases per quarter indicating product group.
 - Minority Business Spend shall be included in the same report on the tab marked CMBE Spend Report.
- Financial Viability Statement. Contractor shall provide a copy of their Dun and Bradstreet report and shall be responsible to immediately notify the Contract Manager of any changes in the company's financial status that would affect the Contractor's ability to fulfill their contract obligations with the State.

Failure to provide quarterly sales reports, including providing a report when there have been no sales, within thirty (30) calendar days following the end of each quarter (January, April, July and October) may result in the contract supplier being found in default and may cause termination of the contract.

Submission of the Contract Sales Summaries shall be the responsibility of the Contractor without prompting or notification by the Contract Manager. The Contractor will submit the completed Contract Sales Summary report by email to the Contract Manager.

5.10 Business Review Meetings.

In order to maintain the partnership between the Department and the Contractor, each quarter the Department may request a Business Review meeting. The business review meeting may involve, but not be limited to, the following:

- Review of Contractor performance
- Review of minimum required reports
- Review of continuous improvement plans

The Department encourages Contractors to identify opportunities to generate lower costs. A continuous improvement effort, consisting of various ideas to enhance business efficiencies, may be discussed at the Business Review meetings or as identified.

5.11 Implementation of Contract.

In order to streamline the procurement process and ease of use for state agency buyers, the Contractor may provide its catalog data electronically using the State's eProcurement system through a "punch-out" solution in which the Agency accesses the Contractor's website directly from the system, rather than the system maintaining the Contractor's data. This solution must allow the Agency to reach the Contractor's site, browse for Contracted items only, and return to the system with a list of items ready to be inserted into a requisition. Returned product information must include, but is not limited to, Contractor name, brand/manufacturer, SKU, product name, brief description (for supplies, include what machine product is for), recycled content flag, approved green product flag, certifying green label / standard, unit of measure, and price.

If the Contractor does not choose to provide a punch-out catalog, the Contractor must provide a Line Item catalog and make their awarded products available on the Contractor's Florida Specific website as required in Section 5.12 Contractor's State Contract Webpage.

The Contractor will have up to sixty (60) days, after contract award, to establish a State Contract punch-out website or up to thirty (30) days to establish a Line Item Catalog. The MyFloridaMarketPlace ("MFMP") third-party Service Provider, Accenture, is responsible for working with Contractor to assist in the implementation of a punch-out solution with the eProcurement System or a Line Item Catalog in Aravo. To accomplish this conversion, the awarded Contractor shall provide requested information directly to the Service Provider in the format required by the Service Provider. No costs or expenses associated with providing this information shall be charged to the Department, Eligible Users, or Service Provider.

Contractor punch-out solution must meet the following requirements:

- The solution must conform to cXML 1.0 or 1.1 standards.
- The solution must conform to the technical specifications and implementation requirements provided by Accenture, and the Contractor must work with Accenture to ensure successful integration of the punch-out solution into the system
- The solution must have the capability to provide only those products awarded under the Contract, and block any non-Contract item(s) from being added to the requisition.
- The punch-out site must provide the Contract Manager, or designee, the ability to audit catalog items and prices and must provide a method to download loaded items and prices into an Excel file format. Audit time and date shall be determined by the Contract Manager and shall occur at random intervals.

(Note: Contractors who currently have e-commerce capabilities should already have the ability to do a punch-out site. See Section 7.10 to review the Punch-out Capability Questionnaire and Section 7.11 to view the Electronic Invoicing Requirements.)

5.12 Contractor's State Contract Webpage.

The Contract resulting from this solicitation will become a public document. State Purchasing is using <http://myflorida.com> on the Internet to distribute State Term Contracts and product information to eligible users and other interested entities.

The Contractor shall, within sixty (60) days after the date of award listed on the Certification of Contract document, develop and maintain a State Contract web page on the Internet to post approved Contract information, which shall include pricing, percentage discounts, terms, catalogs, ordering instructions, descriptive information, list of products that meet the State of Florida's *approved green product labels / standards, and product pictures. The Home Page must be compatible with the most recent version of browser software being used by State Purchasing. As of the writing of this solicitation, Internet Explorer 7.0 is the State Purchasing browser standard. State Purchasing intends to upgrade to new browser versions as they become available and fully tested, at its discretion. The Universal Resource Locator (URL) for the Internet Home Page must be listed in the space provided on the Ordering Instructions page of the solicitation. No costs or expenses associated with providing this information shall be charged to the State.

* Contractors should note that the US Federal Trade Commission's Guides to the Use of Environmental Marketing Claims (Green Guides) regulate how companies label and advertise using environmental claims / terms. See www.ftc.gov/bcp/grnrule/guides980427.htm 16 C.F.R. Part 260 for details. It is the Contractor's responsibility to accurately identify their products that meet the State of Florida's approved green product labels / standards (e.g., Energy Star, Green Seal) in their electronic catalog, punch-out site and on State Contract web

page. Failure to accurately represent green products may result in the Contractor's immediate removal from the contract.

The State Contract vendor supplied web site must have the following requirements:

- Specify that the web page is for the State of Florida
- Contract Number and Beginning and Ending Contract Dates
- State of Florida approved Contract pricing;
- Detailed item descriptions, item numbers, unit of measure;
- Robust search engine capabilities;
- Additional links or information to access product literature of awarded items;
- Additional links to the vendor's home page, the history of the company, etc.;
- Additional links to access technical product literature of awarded items;
- Servicing dealers with current contact information;
- Offer photos of awarded products (where applicable);
- List of products that meet the State of Florida's approved green product labels / standards;
- When possible, provide indicators of recycled product and minority manufactured products; and
- Universal Resource Locator (URL) for the Internet Page must be supplied to the Department prior to the implementation of the Contract.

Additional mandates include:

- If unauthorized information is discovered on the State Contract Web Page, the Contractor's link may be immediately disconnected and the Contractor shall be liable for any incorrect or unauthorized purchases.
- Access to the Contractor's State Contract Web Page, or to links or documents on that Web Page, shall not require a password.
- Contractor's State Contract Web Page shall be compatible with the current version of browser software used by State Purchasing.
- Barring unexpected technological interruptions or forces of nature, frequent or consistent web page inaccessibility may be grounds for contract termination.
- Additional links to the Contractor's home page, product literature, or other pertinent information may be included on the State Contract Web Page.

5.13 Electronic Invoicing.

Notwithstanding any provision of the contract, the contractor shall supply electronic invoices in lieu of paper-based invoices for those transactions processed through the State's eProcurement system. Electronic invoices shall be submitted to the agency through the Ariba Supplier Network (ASN) in one of the following mechanisms – cXML, EDI 810 or web-based invoice entry within the ASN.

For the purposes of this section, the contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third party provider of MFMP, a State contractor, the right and license to use, reproduce, transmit, distribute and publicly display within the system the information outlined above. In addition, the

contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third party provider the right and license to reproduce and display within the system the contractor's trademarks, system marks, logos, trade dress or other branding designation that identifies the products made available by the contractor under the contract. If the contractor is not the manufacturer, it shall be the contractor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this section, including securing any intellectual property rights of the manufacturer.

5.14 Estimated Quantities

Based upon current spend projections, it is anticipated that a contract resulting from this ITN may have sales volume of approximately \$15 million. These estimated figures are given only as a guideline for preparing your proposal and should not be construed as representing actual figures under the contract.

5.15 Requests for Quotes.

The awarded vendor shall be the only vendor authorized to sell Microsoft products under this contract. No additional Request for Quotes or bid requests are required under this contract.

5.16 Pricing.

It is the intent of this solicitation to obtain pricing that is better than or comparable to pricing models provided to other government entities of the same size and class as the State of Florida.

Pricing shall be a discount percentage off of the awarded contractor(s) current "Manufacturers Retail Price." The prices and percentage discount offered with the bid shall be firm against any increase for the entire term of this contract and any renewals thereof.

Price lists shall be submitted via the MFMP Sourcing Tool on the Price Sheet form in section 7.1 of this ITN. Any subsequent revisions shall be submitted using the same Excel format to the Contract Manager, for review and approval prior to implementation. After contract award, product updates may be submitted using the Product Update form located in Section 7.7 of this ITN to the Contract Manager by email or on CD.

All current and future Microsoft Software Licenses shall be sold under the Microsoft Master Business Agreement, which includes the following:

- Microsoft Select – State and Local
- Microsoft Enterprise
- Academic Select

5.16.1 Pricing Models - Respondent shall provide pricing models for Microsoft software licensing and maintenance based on the Microsoft Government Select

MVLP-D 50,000 unit level; and Microsoft Education Select MVLP-A designation status. Prices must be submitted using the attached Price Sheet in Section 7.1 of this solicitation. Pricing models shall include the following:

- a) All proposals must provide a manufacturer's cost plus percentage based on the Microsoft products to a qualified Microsoft Large Account Reseller.
- b) Transfer or assignment of contracts from state agencies to hosting or "primary" data centers.
- c) Location licensing, which will allow for a change in location and transfer of ownership.
- d) Replacement Products
- e) Competitive upgrade costs including Upgrade Advantage
- f) Option to purchase Microsoft's official documentation and CDs must be included in bid proposals; CD-ROM sets per product pool (Applications, Systems, Server), as applicable.
- g) Maintenance agreements
- h) Added Value such as tiered discounts, additional service, etc.

5.17 Contract Revisions

Revisions to product offerings, pricing, terms, or presented materials must be approved by the Department prior to advertisement or implementation. Revision requests must be submitted to the Contract Manager on the Product Update Form in Section 7.7.

5.18 New Product Additions

New products may be considered for addition to the contract. All requests for review shall be made in writing via the Product Update form in Section 7.7 to the Contract Manager and shall include product literature and pricing in a format acceptable to the Department. New products must utilize the same percentage discount originally bid, based on the manufacturer's prices in effect at the time the new product is offered and may not be marketed as approved products prior to written approval from the Contract Administrator.

5.19 Sales Promotion

A contractor, during the term of the contract, may lower prices of products on the contract, for a specified period of time. The contractor shall document sales promotions to and receive approval of the Department prior to offering sales promotions to contract users. Documentation of sales promotions shall specify starting and ending dates of the promotion, specify list prices and promotional prices, and shall contain a statement that the promotional prices are available to all contract users. Sixty (60) days is established as the minimum period of time for which a sales promotion can be offered. Sale pricing shall be made available on contract items only and promoted to all users of the contract. Evidence of offering of a sales promotion

to a contract user prior to the submittal to and approval of the Department may subject the contractor to removal from the contract.

5.20 No Substitutions

The types/versions of software specified in this Solicitation are compatible with other systems/software currently installed. Therefore, NO SUBSTITUTES ARE ALLOWED. Compatibility with existing software allows for warehousing of supplies as well as technical and upgrade advantage support for peripheral software.

5.21 Agent of Record

The successful Contractor shall act as “Agent of Record” during the term of the contract and shall maintain and update the licensing records of each eligible agency that purchases from the resultant contract. If an Enrollment Form is required by Microsoft, the bidder will be responsible to contact each agency, upon receipt of that agency’s initial purchase order to have the agency complete the form. In turn, the agencies shall designate a liaison to maintain pertinent records and inform the Agent of Record of any changes.

5.22 Upgrade Advantage

Upgrade Advantage, under Microsoft’s Master Business Agreement includes:

- Master upgrade to include one master of each version of software for which upgrade advantage maintenance has been purchased.
- Master Interim Releases and software change notices for software for which upgrade advantage has been purchased.

5.23 References

All respondents shall provide a minimum of five references for products sold to “Eligible Customers” in the last twenty-four (24) months. References shall include the following: the name of the agency, university, city, county or school board, responsible personnel and phone number where this specific software was purchased. Failure to supply the required documentation may result in disqualification of your proposal. The State of Florida reserves the right to contract the references regarding the products/services provided.

5.24 Purchase Orders

All respondents shall provide a minimum of five (5) purchase orders or invoices with the proposal package to document the sales of each manufacturer’s brand proposal. Failure to supply the required documentation may result in disqualification of your proposal.

SECTION 6.0

TECHNICAL SPECIFICATIONS

Contents

6.1 ELIGIBLE SOFTWARE

6.2 SOFTWARE ACCEPTANCE

6.2.1 ACCEPTANCE OF STAND ALONE SOFTWARE

6.2.2 ACCEPTANCE OF SELF-DEVELOPED SOFTWARE OR SOFTWARE DEVELOPED BY THIRD PARTIES

6.3 STANDARD SUPPORT

6.4 SOFTWARE LICENSE

6.5 ENVIRONMENTAL STANDARDS

6.1 Eligible Software

Respondent shall propose the latest version of all software at the time of order, unless an earlier version is specifically requested in writing by the Eligible User and the Contractor is willing to provide such version. In addition, Products and upgrade advantage shall be bid under the MASTER BUSINESS AGREEMENT and shall include all software listed in the referenced Manufacturer's Certification including Products offered under the MICROSOFT SELECT, ENTERPRISE, and ACADEMIC SELECT agreements.

6.2 Software Acceptance

Once software has been physically received, the Contractor shall consider the Product accepted for use in order to comply with the Sarbanes Oxley reporting requirements; however, the State has additional acceptance criteria, which will be used to justify product returns. Eligible users who have software installation permissions granted by the user's agency shall be responsible for determining acceptance of products purchased. Minimum acceptance criteria are as follows:

6.2.1 Acceptance of Stand Alone Software: Acceptance of software products is conditioned upon the following:

- The software is free of computer viruses
- The software is compatible with other products in use
- The software can operate in the intended working environment and required parameters
- The software was delivered with the relevant manuals or access was provided to electronic manuals.
- The required functionality is fulfilled.

6.2.2 Acceptance of software will be denied if any of the following occur:

- Serious errors are detected in the software
- Test cases occur where the calculated results do not correspond to the estimated results
- User manuals or operating instructions are not available or are inadequate

6.3 Standard Support

Contractors shall provide the following levels of support under the Contract:

- Inside delivery, with buyer set-up and installation
- Standard manufacturer's warranty
- 30-day money back guarantee (after acceptance), return to Contractor, with no shipping charges or restocking fee or comparable charges
- Installation advisory support – help with installation and updating of standalone applications or products in a network environment.
- Corrective support – to resolve identifiable and reproducible software product problems and to help customers identify problems that are difficult to

reproduce; includes assistance with trouble-shooting and with setting configuration parameters.

- Escalation management – Establish escalation procedures and enlist specialized expertise from Contractor and selected third parties.
- Electronic software information – Provide access to software patches, a symptom-solution database, product descriptions, specifications, technical literature, etc.
- Coverage windows – minimum of 8:00 – 6:00 p.m. EST Monday – Friday, excluding holidays.

Optional Support that may be offered on particular purchases:

- Warranty upgrade (to 3-year maximum). Warranty upgrade may be purchased at time of system purchase or during the warranty period
- Software product and documentation updates
- Manufacturer provided installation

Optional support levels resulting in increased cost to Customers shall be clearly and separately identified on the Contractor's authorized product and price list. Integrated components shall carry the same support level and warranty provisions as the system. Optional support shall also be offered at the same percentage discount as the awarded category of items that the optional support is associated with.

6.4 Software License.

Where product is acquired on a licensed basis, the following terms shall constitute the license grant.

- a. Scope: Licensee is granted a non-exclusive license to use, execute, reproduce, display, perform, or merge the product within its business enterprise in the United States up to the maximum licensed capacity identified on the purchase order. The product may be accessed, used, executed, reproduced, displayed, or performed up to the capacity measured by the applicable licensing unit identified on the purchase order. Licensee shall have the right to use and distribute modifications and customizations of the product to and for use by any Customers otherwise licensed to use the product, provided that any modifications, however extensive, shall not diminish licensor's proprietary title or interest. This paragraph grants no license, right, or interest in any trademark, trade name, or service mark.
- b. Term: The license term shall begin the date the product is accepted. Where a license involves licensee's right to copy a previously licensed and accepted master copy, the term shall begin the date the purchase order is executed.
- c. Documentation: Contractor shall provide to the licensee one (1) free copy of the installation media. Additional copies may be purchased at a fee. As applicable,

basic product documentation may be in the form of electronic files that are included in the installation media.

- d. Technical Support and Maintenance: Licensee may elect the technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to the Contractor any time during the Contract term. Maintenance shall include, at a minimum, (1) providing error corrections, patches, updates, revisions, fixes, upgrades, and new releases to licensee, and (2) Help Desk assistance accessible via toll-free or local telephone call or on-line. The Contractor shall maintain the products so as to provide licensee with the ability to use the products in accordance with the product documentation, without significant functional downtime to ongoing operations during the maintenance term. The maintenance term(s) and any renewals are independent of the Contract term. The Customer may discontinue maintenance at the end of any current maintenance term upon notice to the Contractor; provided, the term shall not automatically renew. If the Customer does not initially acquire, or discontinues, maintenance, the Customer may at any later time reinstate maintenance without any penalties or other charges, by paying the Contractor the amount, if any, that would have been due under the Contract for the period that maintenance had lapsed, or for twelve months, whichever is less.
- e. Transfers/Reassignment: Licensee's operations may be altered, expanded, or diminished. Licenses may be transferred, renegotiated or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between agencies and sites. There shall be no additional license or other transfer fees due, provided that (1) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (see pricing model in Section 5.16.1) or (2) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system to restrict use and access to the product to that unit of licensed capacity solely dedicated to beneficial use for licensee. If the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due the Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.
- f. Restricted Use by Third Parties: Outsourcers, facilities management, service bureaus, or other services retained by licensee shall have the right to use the product to maintain licensee's operations, including data processing, provided that (1) licensee gives notice to the Contractor of such third party, site of intended use of the product, and means of access, (2) the third party has executed, or agrees to execute, the product manufacturer's standard nondisclosure or restricted use agreement, which agreement shall be accepted

by the Contractor, and (3) the third party shall maintain a logical or physical partition within its computer system to restrict access to the program to that portion solely dedicated to beneficial use for licensee. Licensee shall not be liable for any third party's compliance or noncompliance with the terms of the nondisclosure agreement, nor shall the nondisclosure agreement create or impose any liabilities on the State or the licensee. Any third party with whom a licensee has a relationship for a State function or business activity shall have the temporary right to use product (e.g., Java applets), provided that such use shall be limited to the period during which the third party is using the product for the function or activity.

- g. Archival Backup: Licensee may use and copy the product and related documentation in conjunction with reproducing a reasonable number of copies for archival backup and disaster recovery procedures.
- h. Source Code Escrow: If either the product manufacturer/developer or the Contractor offers source code or source code escrow to any other commercial customer, or if either entity seeks bankruptcy protection, then the Contractor shall either (1) provide licensee with source code for the product, (2) place the source code in a third-party escrow arrangement with a designated escrow agent, which shall be identified to the Department, and which shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable to the Department, or (3) certify to the Department that the product manufacturer/developer has named the State, acting by and through the Department, and the licensee, as named beneficiaries of an established escrow arrangement with its designated escrow agent, which shall be identified to the Department and licensee, and which shall be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements, shall be updated for each new release of the product in the same manner as provided above and such updates shall be certified in writing to the Department. The Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph. The State may release the source code to licensees under the Contract which have licensed the product or obtained services, and which may use the copy of the source code to maintain the product.
- i. Confidentiality: The product is a trade secret, copyrighted and propriety product. Licensee and its employees shall not disclose or otherwise distribute or reproduce any product to anyone other than as authorized under the Contract. Licensee shall not remove or destroy any of the Contractor's proprietary markings.
- j. Restricted Use: Except as expressly authorized by the terms of license, licensee shall not: copy the product; cause or permit reverse compilation or reverse

assembly of the product or any portion; or export the product in violation of any U.S. Department of Commerce export administration regulations.

- k. Proof of License: The Contractor shall provide to each licensee that places a purchase order either (1) the product developer's certified license confirmation certificates in the name of the licensee or (2) a written confirmation from the proprietary owner accepting the product invoice as a proof of license. The Contractor shall submit a sample certificate, or alternative confirmation, which shall be in a form acceptable to the licensee.
- l. Audit of Licensed Usage: The Contractor may periodically audit, no more than annually and at its expense, use of licensed product at any site where a copy resides provided that (1) the Contractor gives licensee at least thirty days written advance notice, (2) the audit is conducted during the licensee's normal business hours, (3) the audit is conducted by a State Inspector General's office or, for non-State licensees, by an independent auditor chosen by mutual agreement of the licensee and Contractor as follows: the Contractor shall recommend a minimum of three auditing/accounting firms, from which the licensee shall select one; in no case shall the Business Software Alliance, Software Publishers Association, or Federation Against Software Theft be recommended by the Contractor or used, directly or indirectly, to conduct audits, (4) the Contractor and licensee shall designate a representative who shall be entitled to participate, who shall mutually agree on audit format, and who shall be entitled to copies of all reports, data, or information obtained from the audit, and (5) if the audit shows that the licensee was not in compliance, the licensee shall purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the Contract price then in effect or, if none, then at the Contractor's U.S. commercial list price. Once such additional licenses and capacities are purchased, licensee shall be deemed to have been in compliance retroactively, and licensee shall have no further liability of any kind for the unauthorized use of the product.
- m. Bankruptcy: The Contract is subject to the terms of section 365(n) of the United States Bankruptcy Code ("Code") if the licensor files a bankruptcy petition. Licensor's failure to perform its continuing obligations shall constitute a material breach of the Contract excusing performance by the licensee. Royalty payments for use of intellectual property shall be separate from and independent of payments for performance of all other obligations under the Contract (e.g., continuing development obligations, maintenance and support obligations, obligations to provide updates, indemnity obligations, etc.). Upon request, the licensor shall furnish licensee any intellectual property, as defined in the Code, and any embodiment of that intellectual property held by the licensor. If licensee must hire third-parties to perform support, maintenance, or development tasks previously performed by licensor, the licensee may provide intellectual property to such third-parties without violating non-disclosure or exclusivity provisions.

6.6 Environmental Standards

Florida Governor Charlie Crist signed Executive Order 07-126, titled “Leadership by Example: Immediate Actions to Reduce Greenhouse Gas Emissions from Florida State Government”; Executive Order 07-127, “Immediate Actions to Reduce Greenhouse Gas Emissions within Florida”; and Executive Order 07-128, “Florida Governor’s Action Team on Energy and Climate Change.”

The State supports and encourages initiatives to protect and preserve our environment. The Respondent shall submit as part of any response the Respondent’s plan to support the procurement of products and materials with recycled content, and the intent of Section 287.045, Florida Statutes. The Respondent shall also provide a plan for reducing and or handling of any hazardous waste generated by Respondent’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 Respondent’s explanation of its company’s hazardous waste plan and shall explain in detail its handling and disposal of this waste.

Describe what efforts your company (as Contractor) will take to encourage the participation and support of these and other environmental programs.

6.6.1 Florida Climate Friendly Products

Contractors are encouraged to propose products that meet the Florida approved green product labels/standards.

Under the leadership of Florida Governor Charlie Crist, the Department of Management Services (DMS) encourages the purchase of environmentally preferable products (EPPs) by Florida governmental entities where possible. Upon award, Contractors will be encouraged to submit a list of their qualifying products for review and posting to the Florida Climate Friendly Products List. The current list can be viewed at the following DMS website link:

http://dms.myflorida.com/business_operations/state_purchasing/vendor_information/state_contracts_agreements_and_price_lists/florida_climate_friendly_products_list

The Florida Climate Friendly Products List includes state contract approved products that have received one or more of the following certifications, labels, and standards:

California Energy Commission (CEC) Appliance Efficiency Regulations

California Environmentally Preferred Products Guide
California State Agency Buy Recycled Program (SABRC)
Electronic Product Environmental Assessment Tool (EPEAT)
Energy Star
EPA Comprehensive Procurement Guidelines (CPG)
EPA SmartWay and SmartWay Elite
EPA WaterSense
Forest Stewardship Council (FSC)
Green Seal
Greenguard
MDBC's Cradle to Cradle Silver Certification (or higher)
Minnesota Green Guardian EPP Guide
NEMA Premium
RoHS
SCS (Scientific Cert. Sys.) / NSF International
Terra Choice / Ecologo
US Federal Energy Management Program (FEMP)
USDA Organic Label

SECTION 7.0

FORMS, ATTACHMENTS, AND WORKSHEETS

**THE FORMS, ATTACHMENTS, AND WORKSHEETS ARE LOCATED IN AND ARE
DOWNLOADABLE FROM THE MYFLORIDAMARKETPLACE SOURCING TOOL.**

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- 7.7 PRODUCT UPDATE FORM
- 7.8 CONTRACT
- 7.9 STATE OF FLORIDA VENDOR RESPONSIBILITY QUESTIONNAIRE
- 7.10 PUNCH-OUT CAPABILITY QUESTIONNAIRE
- 7.11 MYFLORIDAMARKETPLACE ELECTRONIC INVOICING REQUIREMENTS
- 7.12 EMERGENCY SITUATIONS FORM
- 7.13 VENDOR CHECKLIST
- 7.14 MICROSOFT MASTER BUSINESS AGREEMENT (INCLUDING SELECT – STATE & LOCAL,
ENTERPRISE, AND ACADEMIC AGREEMENTS)
- 7.15 CONTRACT REPORTING FORM
- 7.16 SAMPLE LINE ITEM TEMPLATE

Microsoft Software

Ordering Instructions Form

BIDDER: SHI International Corp

VENDOR TAX ID NUMBER: 22-3009648

Ordering Information:

Please provide the following information about where Customers should direct orders. You **must** provide a regular mailing address and email address. If equipped to receive purchase orders electronically, you may also provide an Internet address. **NOTE: Duplicate as necessary for multiple ordering locations.**

Name: Florida Sales Team

Title: Inside Sales Team

Street Address or P.O. Box: 33 Knightsbridge Rd.

City, State, Zip: Piscataway, NJ 08854

Email Address: floridateam@shi.com

Phone Number: 800-543-0432

Toll Free Number: 800-543-0432

Ordering Fax Number: 732-868-6055

Internet Address: _____

Federal ID Number: 22-3009648

Remit Address: PO Box 8500-41155

City, State, Zip: Philadelphia, PA 19178

Please identify the person who will be responsible for administering the Contract on your behalf if award is made, and include an emergency contact phone number:

Name: Michael Bench

Title: Account Executive

Street Address: 11270 Warm Wind Way, Weeki Wachee, FL 34613

E-mail Address: Michael_Bench@shi.com

Phone Number(s): 352-597-2880 (office)/352-250-2101 (mobile)

Fax Number: 352-597-2899

Please identify the person who will be responsible for maintaining your electronic catalog information through MyFloridaMarketPlace.

Name: Michael Bench

Title: Account Executive

Street Address: 11270 Warm Wind Way, Weeki Wachee, FL 34613

E-mail Address: Michael_Bench@shi.com

Phone Number(s): 352-597-2880 (office)/352-250-2101 (mobile)

Fax Number: 352-597-2899

Please be advised that vendors are responsible for verifying and maintaining the correct contact and address information within their MyFloridaMarketPlace vendor registration account. Failure to do so may result in the vendor being deemed ineligible to conduct business with the State of Florida.