

**STATE OF FLORIDA  
DEPARTMENT OF MANAGEMENT SERVICES  
CONSTRUCTION AND INDUSTRIAL EQUIPMENT**

**THIS CONTRACT** is entered into between the State of Florida, **DEPARTMENT OF MANAGEMENT SERVICES**, hereinafter referred to as the "Department", whose address is 4050 Esplanade Way, Tallahassee, Florida 32329, and **National Lift Truck Service Inc.**, hereinafter referred to as the "Contractor", whose address is **2110 N. Andrews Ave Ext, Pompano, FL 33069**.

**THE PARTIES HEREBY AGREE:**

**A. The solicitation (ITB NO 12-22101000-N) and the Contractor's bid, and attachments are hereby incorporated by reference.**

**B. General Provisions:**

1. Contract Formation: The Contractor shall provide goods and services according to the terms and conditions set forth in this Contract, the Solicitation, and all other attachments named herein which are attached hereto and incorporated by reference.
2. Vendor: To perform as an independent vendor and not as an agent, representative, or employee of the Department.
3. Taxes: To recognize that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Contract.
4. Applicable Law, Severability, and Venue: The contract resulting from this solicitation shall be delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of the resulting contract shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision shall be found ineffective, then to the extent of such prohibition or invalidity, that provision shall be severed without invalidating the remainder of such provision or the remaining provisions of the resulting contract. Any action hereon or in connection herewith shall be brought in Circuit Court, Leon County, Florida.
5. Contract Term: This Contract shall begin upon execution by both parties or **July 1, 2015**, (whichever is later) and end **June 30, 2018**, inclusive.
6. Renewal: Upon mutual agreement, the Department 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 bid, response, reply, or best and final offer. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.
7. Contract Amount: The agreed Contract amount is set forth in **Attachment A, Price Sheet**. The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.
8. 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 Department designee identified in the original solicitation or Contract, or as otherwise

identified by the Department. 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.

**C. Applicable Laws and Regulations:**

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

**D. Audits/Monitoring:**

1. The Department may conduct, or have conducted, performance and/or compliance reviews, reviews of specific records or other data as determined by the Department. The Department may conduct a review of a sample for analyses performed by the selected Contractor to verify the quality. Reasonable notice shall be provided for reviews conducted at the successful Contractor's place of business.
2. Reviews may include, but shall not be limited to, reviews of procedures, computer systems, Customer records, accounting records, and internal quality control reviews. The selected Contractor shall work with any reviewing entity selected by the Department.

**E. Inspection of Records and Work Performed:**

1. The state and its authorized representatives shall, at all reasonable times, have the right to enter the selected Contractor's premises, or other places where duties under the resulting contract are performed. All inspections and evaluations shall be performed in such a manner as not to unduly delay work.
2. The selected Contractor shall retain all financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to performance under the resulting contract for a period of five (5) years after termination of the resulting contract, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings. If records need to be sent to the Department, the Contractor shall bear the expense of delivery.
3. Refusal by the selected vendor to allow access to all records, documents, papers, letters, other materials or on-site activities related to resulting contract performance shall constitute a breach of the contract. The right of the state and its authorized representatives to perform inspections shall continue for as long as the selected vendor is required to maintain records. The selected Contractor will be responsible for all storage fees associated with the records maintained under the resulting contract. The selected Contractor is also responsible for the shredding of records that meet the retention schedule noted above.

4. Failure to retain records as required may result in cancellation of the contract. The Department shall give the selected vendor advance notice of cancellation pursuant to this provision and shall pay the selected vendor only those amounts that are earned prior to the date of cancellation in accordance with the terms and conditions of the resulting contract. Performance by the Department of any of its obligations under a contract awarded pursuant to this solicitation shall be subject to the selected vendor's compliance with this provision.

**F. Indemnification:**

1. 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, the Department, 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, the Department, or a Customer.
2. Further, the Contractor shall fully indemnify, defend, and hold harmless the State, the Department, 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 Department and 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 and Department the right to continue using the product, the Contractor shall remove the product and refund the Customer and Department the amounts paid in excess of a reasonable rental for past use. The Department and Customer shall not be liable for any royalties.
3. The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the Department or 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 Department or State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

**G. 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 or the Department reject a product or services, Contractor shall remove the product from the premises within ten days after notification or rejection and the risk of loss shall remain with the Contractor. Product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer or the Department shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer or the Department for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

**H. Assignments:**

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 Department. In the event of any assignment, the Contractor remains secondarily liable for performance of the Contract, unless the Department expressly waives such secondary liability. The Department may assign the Contract with prior written notice to Contractor of its intent to do so.

**I. Return of Funds**

Contractor will return to the Department any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Contract that were disbursed to the Contractor by the Department or Customer. The Contractor shall return any overpayment to the Department within forty (40) calendar days after either discovery by the Contractor its independent auditor, or notification by the Department, of the overpayment.

**J. State Project Plan:**

Within thirty (30) calendar days following award of the Contract, the successful Contractor shall submit a plan addressing each of the five (5) objectives listed below, to the extent applicable to the services covered by this Contract. **The State reserves the right to negotiate mutually acceptable changes in regard to the below objectives, prior to execution of the resulting contract.**

1. Environmental Considerations: The State supports and encourages initiatives to protect and preserve our environment. The respondent shall submit a plan to support the procurement of products and materials with recycled content, and the intent of s. 287.045, F.S.. The Contractor shall also provide a plan for reducing and/or handling of any hazardous waste generated by the Contractor's company. Reference Rule 62-730.160, F.A.C.. 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 the Contractor's explanation of its company's hazardous waste plan and shall explain in detail its handling and disposal of waste.
2. 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, the resulting 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>.

3. 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, the resulting contract shall be purchased from the corporation identified under Chapter 946, Florida Statutes, in the same manner and under the same procedures set forth in s. 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.pride-enterprises.org/>.

#### **K. Civil Rights Requirements/Vendor Assurance**

The Contractor assures that it will comply with:

1. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin.
2. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap.
3. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex.
4. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age.
5. Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs.
6. The Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
7. All regulations, guidelines, and standards as are now or may be lawfully adopted under the above statutes.

The Contractor agrees that compliance with this assurance constitutes a condition of continued receipt of or benefit from funds provided through this Contract, and that it is binding upon the Contractor, its successors, transferees, and assignees for the period during which services are provided. The Contractor further assures that all contractors, subcontractors, sub grantees, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of the above statutes, regulations, guidelines, and standards.

#### **L. Media**

1. **Advertising:** Subject to chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Department, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer, the Department 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 Department 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.
2. **Literature:** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

#### **M. Employment**

1. **Florida Substitute Form W-9 Process:** State of Florida vendors must register and complete an electronic Substitute Form W-9. The Internal Revenue Service (IRS) receives and validates the information vendors provide on the Form W-9. For instructions on how to complete the Florida Substitute Form W-9, please visit:  
<http://www.myfloridacfo.com/Division/AA/StateAgencies/W-9Instructions022212.pdf>
2. **E-Verify:** Pursuant to State of Florida Executive Order Number 11-116, the Contractor is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility 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 Contract utilize the E-Verify system to verify employment eligibility of all new employees hired by the subcontractor during the Contract term.
3. **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.

## **N. Vendor Performance**

### **1. Performance Qualifications:**

- a. The Department reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by Contractor meet the Contract requirements. Contractor shall at all times during the contract term remain responsive and responsible. In determining Contractor's responsibility as a vendor, the Department shall consider all information or evidence which is gathered or comes to the attention of the Department which demonstrates the Contractor's capability to fully satisfy the requirements of the solicitation and the contract.
- b. Contractor must be prepared, if requested by the Department, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the Contractor for the production, distribution, and servicing of the product to be furnished. If the Department determines that the conditions of the solicitation documents are not complied with, or that the product 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 Department may terminate the contract.

### **2. Default:**

When a Contractor is failing to fulfill its duties specified in any contract with the Department, or when a Department becomes aware that the Contractor has failed to remain qualified to perform the contract requirements, the Department may take the following actions:

- a. The Department will provide written notice to the vendor which identifies the nature of the failure and the necessary corrective action by the Contractor, which must be completed in no more than ten (10) business days, unless the Department determines a different time span based on the Department's sole discretion and in the best interests of the State. The notice will also state that should the Contractor fail to perform within the time provided, the Contractor will be found in default.
- b. Unless the Contractor corrects the failure within the time provided, or unless the Department determines that the vendor's failure is legally excusable, the Department shall find the vendor in default and shall issue a second notice stating: (i) the reasons the Contractor is considered in default; (ii) that the Department will reprocure or has reprocured the commodities or services; and (iii) and the amount of the reprocurement costs if known.
- c. A Contractor found in default will not be eligible for award of a contract by the State until such time as the Department is reimbursed by the Contractor for all reprocurement costs. Reprocurement costs may include both

administrative costs and cost or price increases incurred or to be incurred as a result of the reprocurement, as well as all legal costs encumbered by the State. At the Department's discretion, reprocurement of substitute commodities or contractual services may be accomplished by first attempting to contract with the next eligible awardee under the original solicitation, when applicable. If the Department fails to contract with the next eligible awardee, it may continue in this manner sequentially through all eligible awardees until a vendor willing to perform at acceptable pricing under the solicitation's terms and conditions is found. Alternatively, the Department may elect to reprocure the commodity or contractual service pursuant to all applicable requirements of chapter 287, F.S.

- d. Until such time as it reimburses the Department for all reprocurement costs and the Department is satisfied that further instances of default will not occur, a Contractor found in default shall not be eligible for award of a contract by the Department. To satisfy the Department that further instances will not occur, the Contractor shall provide a written corrective action plan addressing the default.
- e. The foregoing provisions do not limit, waive or exclude the State's legal or equitable remedies against a defaulting Contractor.

3. Dispute Resolution:

Any dispute concerning performance of the Contract shall be decided by the Department's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate Circuit Court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

**O. Termination**

1. Termination for Convenience:

The Department, by written notice to the Contractor, may terminate the Contract in whole or in part when the Department determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product or service 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.

2. Termination Due To Lack of Funds

- a. In the event funds to finance this Contract become unavailable, the Department may terminate the Contract upon no less than twenty-four (24) hours written notice to the Vendor. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The Department shall be the final authority as to the availability of funds.



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

3. Suspension of Work:

The Department 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 Department 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. Within ninety days, or any longer period agreed to by the Contractor, the Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

4. Termination for Breach:

- a. The Department 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. 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 Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under the Contract.
- b. Unless the Contractor's breach is waived by the Department in writing, the Department may, by written notice to the Contractor, terminate this Contract upon no less than twenty-four (24) hours written notice. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. If applicable, the Department may, at its sole discretion employ the default provisions in rule 60A-1.006(4), F.A.C.
- c. Waiver of breach of any provisions of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract. The provisions herein do not limit the Department's right to remedies at law or to damages.
- d. Pursuant to subsection 287.135(3)(b), Florida Statutes, Department may immediately terminate any contract for cause if the Contractor is found to have submitted a false certification under subsection 287.135(5), Florida Statutes, 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.

**P. Contract Managers**

1. The Department's Contract Manager's name, address and telephone number for this Contract is as follows:

**Stephanie Wyland  
Department of Management Services  
4050 Esplanade Way, Tallahassee, FL 32399  
850-410-2426**

2. The Vendor's Contract Manager's name, address and telephone number for this Contract is as follows:

**Robert Siano  
National Lift Truck Service Inc.  
2110 N. Andrews Ave Ext, Pompano FL 33069  
954-553-8944**

**Q. Renegotiation or Modification**

The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Department and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Department and the Contractor. No oral agreements or representations shall be valid or binding upon the Department or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the department. 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 Department's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

**R. Name, Mailing and Street Address of Payee**

1. The name (Vendor name as shown on Page 1 of this Contract) and mailing address of the official payee to whom the payment shall be made:

**National Lift Truck Service Inc.  
2110 N. Andrews Ave Ext  
Pompano FL 33069**

2. The name of the contact person and street address where financial and administrative records are maintained:

**Robert Siano  
National Lift Truck Service Inc.  
2110 N. Andrews Ave Ext  
Pompano FL 33069**

**S. All Terms and Conditions**

This Contract, the solicitation, and its attachments as referenced herein contain all the terms and conditions agreed upon by the parties.

List of attachments included as part of this Contract:

| <u>Type</u> | <u>Number</u> | <u>Description</u>                     |
|-------------|---------------|--|
| Attachment  | I             | ITN/RFP/ITB 12-22101000-N and Addenda  |
| Attachment  | II            | Completed Attachment A, Price Sheet    |
| Attachment  | III           | Solicitation Attachments C, D, E, F, J |
| Attachment  | IV            | PUR 1000                               |

**IN WITNESS THEREOF**, the parties hereto have caused this Contract, which includes any referenced attachments, to be executed by their undersigned officials as duly authorized. This Contract is not valid until signed and dated by both parties.

**VENDOR:**     **National Lift Truck Service Inc.**

**STATE OF FLORIDA, DEPARTMENT OF  
MANAGEMENT SERVICES**

**SIGNED  
BY:** \_\_\_\_\_

**SIGNED  
BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**S. All Terms and Conditions**

This Contract, the solicitation, and its attachments as referenced herein contain all the terms and conditions agreed upon by the parties.

List of attachments included as part of this Contract:

| Type       | Number | Description                            |
|------------|--------|--|
| Attachment | I      | ITN/RFP/ITB 12-22101000-N and Addenda  |
| Attachment | II     | Completed Attachment A, Price Sheet    |
| Attachment | III    | Solicitation Attachments C, D, E, F, J |
| Attachment | IV     | PUR 1000                               |

**IN WITNESS THEREOF**, the parties hereto have caused this Contract, which includes any referenced attachments, to be executed by their undersigned officials as duly authorized. This Contract is not valid until signed and dated by both parties.

**VENDOR:** National Lift Truck Service Inc.

**STATE OF FLORIDA, DEPARTMENT OF  
MANAGEMENT SERVICES**

**SIGNED  
BY:**

Robert Siano

**SIGNED  
BY:**

[Signature]

**NAME:**

Robert Siano

**NAME:**

Chad Pappell

**TITLE:**

Pur

**TITLE:**

Secretary

**DATE:**

6-10-2015

**DATE:**

6/30/15



FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

**state purchasing**

We serve those who serve Florida

**The State of Florida**

**Department of Management Services**

**INVITATION TO BID**

**ITB No: 12-22101000-N**

**CONSTRUCTION & INDUSTRIAL EQUIPMENT**

## TABLE OF CONTENTS

|   |  |           |
|---|--|-----------|
| <b>Section 1</b>                                      | <b>Introduction .....</b>                                    | <b>5</b>  |
| 1.1   | Bid .....  | 5         |
| 1.2   | Solicitation Objective .....                                 | 5         |
| 1.3   | Definitions .....  | 5         |
| 1.4   | Term .....   | 7         |
| 1.5   | Contract Formation .....                                     | 7         |
| 1.6   | Timeline of Events .....                                     | 7         |
| 1.7   | Order of Precedence for Solicitation .....                   | 7         |
| 1.8   | Procurement Officer.....                                     | 8         |
| 1.9   | Limitation on Contact with Government Personnel.....         | 8         |
| 1.10  | Special Accommodations.....                                  | 8         |
| 1.11  | Lobbying Disclosure .....                                    | 8         |
| 1.12  | ITB Process .....  | 8         |
| 1.12.1  | Question Submission .....                                    | 9         |
| 1.12.2  | Solicitation Addenda .....                                   | 9         |
| 1.12.3  | Protest of Terms, Conditions, and Specifications .....       | 9         |
| 1.12.4  | Public Opening .....   | 9         |
| 1.12.5  | Electronic Posting of Notice of Intended Award.....          | 10        |
| 1.12.6  | Protest of Notice of Intended Award.....                     | 10        |
| 1.12.7  | Firm Response .....  | 10        |
| 1.12.8  | Modification or Withdrawal of Bid .....                      | 10        |
| 1.12.9  | Cost of Response Preparation & Independent Preparation ..... | 10        |
| 1.12.10   | Taxes.....   | 10        |
| 1.12.11   | Disclosure of Bid Contents.....                              | 11        |
| 1.13  | Contract Formation .....                                     | 11        |
| <b>Section 2</b>                                      | <b>Instructions to Bidders .....</b>                         | <b>12</b> |
| 2.1   | General Instructions.....                                    | 12        |
| 2.2   | Special Instructions.....                                    | 12        |
| 2.2.1   | MFMP Registration .....                                      | 12        |
| <b>MyFloridaMarketPlace Vendor Registration .....</b> | <b>12</b>  |           |
| 2.2.2   | How to Submit a Bid .....                                    | 12        |
| 2.2.3   | Sourcing Tips and Training .....                             | 12        |
| 2.2.4   | Who May Respond .....  | 13        |
| 2.2.5   | Manufacturer's Name and Approved Equivalents .....           | 13        |
| 2.2.6   | Mandatory Requirements or Conditions .....                   | 14        |
| 2.2.7   | Bidder Qualification Questions .....                         | 14        |
| 2.3   | Contents of Bid .....  | 15        |
| 2.3.1   | Part 1 - Company Information .....                           | 15        |
| 2.3.2   | Part 2- Relevant Past Performance.....                       | 15        |
| 2.3.3   | Part 3 - Price Sheet Submission (Attachment A).....          | 15        |
| 2.3.4   | Part 4 – Other information.....                              | 16        |
| 2.4   | Alternate Responses .....                                    | 16        |
| 2.5   | Full-Service Repair Facilities .....                         | 16        |
| 2.6   | Supporting Documents .....                                   | 17        |
| 2.7   | Evaluation Criteria .....                                    | 17        |
| 2.8   | Basis of Award.....  | 17        |
| 2.9   | Preference to Florida Vendors .....                          | 18        |
| 2.10  | Tie Bids .....   | 18        |

|                  |   |           |
|------------------|---|-----------|
| 2.11             | Rejection of Bids.....  | 18        |
| 2.12             | Minor Irregularities/Right to Reject.....                                       | 18        |
| 2.13             | Redacted Submissions.....   | 18        |
| 2.14             | Additional Information.....   | 19        |
| <b>Section 3</b> | <b>Description of Scope.....</b>  | <b>20</b> |
| 3.1              | Scope.....  | 20        |
| 3.2              | Commodity Specifications and Standards.....                                     | 20        |
| 3.3              | Federal and State Standards.....  | 21        |
| 3.4              | Testing.....  | 22        |
| 3.5              | Warranty.....   | 22        |
| 3.6              | Commodities Recall.....   | 22        |
| 3.7              | Commodity Compliance and Compatibility.....                                     | 22        |
| 3.8              | Commodities Title and Registration.....   | 23        |
| 3.9              | Transportation and Delivery.....  | 24        |
| 3.10             | Acknowledgement of Order (Attachment I).....                                    | 25        |
| 3.11             | Acceptance.....   | 26        |
| 3.12             | Installation.....   | 27        |
| <b>Section 4</b> | <b>Contract Conditions.....</b>   | <b>28</b> |
| 4.1              | General Contract Requirements.....  | 28        |
| 4.2              | Special Contract Requirements.....  | 28        |
| 4.3              | Pricing.....  | 28        |
| 4.4              | Financial Consequences for Nonperformance.....                                  | 28        |
| 4.5              | Contract Overlap.....   | 28        |
| 4.6              | Commodity, Group, and Manufacturer or Brand Name Additions and Deletions.....   | 28        |
| 4.7              | Price Adjustment.....   | 29        |
| 4.8              | Ceiling Prices.....   | 30        |
| 4.9              | Compliance with Laws, Rules, Codes, Ordinances, and Licensing Requirements..... | 30        |
| 4.10             | Insurance Requirements.....   | 30        |
| 4.11             | Notice of Legal Actions.....  | 31        |
| 4.12             | Records Retention.....  | 31        |
| 4.13             | Public Records.....   | 31        |
| 4.13.1           | Access to Public Records.....   | 31        |
| 4.13.2           | Protection of Trade Secrets or Other Confidential Information.....              | 31        |
| 4.13.3           | Retention of Records.....   | 32        |
| 4.14             | Annual Appropriations.....  | 32        |
| 4.15             | Renewal.....  | 32        |
| 4.16             | Cancellation.....   | 32        |
| 4.17             | Intellectual Property.....  | 32        |
| 4.18             | Gifts.....  | 33        |
| 4.19             | Vendor Ombudsman.....   | 33        |
| 4.20             | Monitoring by the Department.....   | 33        |
| 4.21             | Scrutinized Company List.....   | 33        |
| 4.22             | Business Review Meetings.....   | 33        |
| 4.23             | E-Verify.....   | 33        |
| 4.24             | Subcontracting.....   | 33        |
| 4.25             | Performance Qualifications.....   | 34        |
| 4.26             | MyFloridaMarketPlace Transaction Fee.....                                       | 34        |
| 4.27             | Contract Reporting.....   | 35        |
| 4.27.1           | Contract Quarterly Sales Report.....  | 35        |
| 4.27.2           | Savings / Price Reductions (Attachment E).....                                  | 35        |

|                  |  |           |
|------------------|--|-----------|
| 4.27.3           | Transaction Fee Reports .....  | 35        |
| 4.27.4           | Diversity Reporting.....   | 35        |
| 4.27.5           | Preferred Pricing Affidavit Requirement .....                              | 36        |
| 4.28             | Contract Termination .....   | 36        |
| 4.29             | Force Majeure .....  | 36        |
| 4.30             | Additional Provisions .....  | 36        |
| 4.31             | Alternate Responses .....  | 36        |
| <b>Section 5</b> | <b>Attachments .....</b>   | <b>37</b> |
| Attachment A     | Price Sheet (section 2.3.3) .....  | 37        |
| Attachment B     | Quarterly Sales Report (section 4.28.1).....                               | 37        |
| Attachment C     | State of Florida Drug-Free Workplace Certification (section 2.3.4.3) ..... | 37        |
| Attachment D     | Preferred Pricing Affidavit (section 2.3.4.4).....                         | 37        |
| Attachment E     | Savings/Price Reduction Form (section 2.3.4.5) .....                       | 37        |
| Attachment F     | Vendor Information Form (section 2.3.1) .....                              | 37        |
| Attachment G     | Timeline (Section 1.5) .....   | 39        |
| Attachment H     | Sample Price Update Form (Section 4.7) .....                               | 39        |
| Attachment I     | Acknowledgement of Order Form (Section 3.10).....                          | 39        |
| Attachment J     | MSRP Certification (Section 2.6) .....                                     | 39        |



## **Section 1 Introduction**

### **1.1 Bid**

The State of Florida Department of Management Services, Division of State Purchasing (Department) is issuing this Invitation to Bid (ITB) to replace the current state term contract (STC) for the purchase of Construction and Industrial Equipment which also included agriculture and lawn equipment.

The Department intends to solicit for, and enter into contracts with, responsive and responsible Contractors according to the criteria defined herein, for the provision of Commodities and contractual services described within this solicitation under the authority and criteria established by section 287.057, Florida Statutes.

Rule 60A-1.044(1), Florida Administrative Code, defines an STC as “indefinite quantity contracts competitively procured by the Department pursuant to s. 287.057, F.S., available for use by Eligible Users.”

This solicitation shall be administered using the MyFloridaMarketPlace (MFMP) Sourcing Tool. Vendors interested in submitting a response or bid shall comply with all of the terms and conditions described in this ITB. Information about submitting a response or bid can be found in Instructions to Bidders, section 2 of this solicitation.

### **1.2 Solicitation Objective**

The current STC for Construction and Industrial Equipment has an estimated average annual spending volume of approximately \$3 million dollars. Estimated spending volume is for informational purposes only and must not be construed as representing actual, guaranteed, or minimum purposes under any new contract. Customers include state agencies and other Eligible Users.

### **1.3 Definitions**

Definitions contained in section 287.012, Florida Statutes, Rule 60A-1.001, Florida Administrative Code, Form PUR 1000 and Form PUR 1001 are incorporated by reference, and apply to this solicitation. These definitions apply in both their singular and plural sense.

#### **1.3.1 Base Equipment**

A Department specified Commodity, which meets the requirements, specifications, terms, and conditions herein.

#### **1.3.2 Bidder**

One who submits a response to this Invitation to Bid (ITB).

#### **1.3.3 Commodity**

A tangible good, which may or may not meet the specifications herein. Commodities under this contract are Construction & Industrial Equipment which includes the Base Equipment, associated OEM Options, Accessories and Implements and Replacement Parts classified under seventeen (17) Groups, listed in section 3.1.

#### **1.3.4 Confidential Information**

Any portion of a bidder's documents, data, or records disclosed relating to its response that the bidder claims is confidential and not subject to disclosure pursuant to chapter

119, Florida statutes, the Florida Constitution, or any other authority that is clearly marked “Confidential”.

### **1.3.5 Contract**

The agreement that results from this competitive procurement, if any, between the Department and the Contractor identified as providing the best value to the State. (This definition replaces the definition in the PUR 1000).

### **1.3.6 Contractor**

The Vendor that has been awarded and contracts to provide Construction and Industrial equipment, which meet the requirements, specifications, terms, and conditions herein, to state agencies and other Eligible Users.

### **1.3.7 Dealer**

A Manufacturer’s certified representative authorized by the Manufacturer to market, sell, provide, and service the Commodities and services of the Manufacturer responsive this solicitation. Dealers may be Contractor owned and controlled, in whole or in part or independently owned and controlled.

### **1.3.8 Eligible User**

As defined in Rule 60A-1.005, Florida Administrative Code.

### **1.3.9 Group**

A series of commodities with applicable commodity codes which are described in Attachment A under Price Sheet.

### **1.3.10 MSRP**

An acronym for the Manufacturer’s Suggested Retail Price. It represents the Manufacturer’s recommended retail selling price, list price, published price, or other usual and customary price that would be paid by the purchaser for specific commodities and contractual services without benefit of a contract resulting from the solicitation, if awarded.

MSRPs shall be formally published by the manufacturer, publicly listed and available, and verifiable by the Department.

### **1.3.11 MSRP List**

The Manufacturer’s Suggested Retail Price List, a collection of MSRPs and related information.

In the priority listed below, only the following are acceptable sources of current MSRPs and MSRP Lists for use under the solicitation and resulting Contract, if awarded:

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

### **1.3.12 Manufacturer**

The original producer or provider of Construction and Industrial Equipment responsive to this solicitation.

### **1.3.13 OEM Option, OEM Accessory, OEM Implement, Option, Accessory, and Implement**

The Manufacturer's Base Equipment related optional component, feature, or configuration, which meets the requirements, specifications, terms, and conditions herein, and may be installed to, uninstalled from, or provided with or separately from the Base Equipment by the Manufacturer or Dealer, as is specified, ordered, legal, customary, reasonable, and prudent in the industry.

### **1.3.14 Vendor**

The entity that is in the business of providing a Commodity or service similar to those within the solicitation.

## **1.4 Term**

The initial term of the Contract shall be three years with up to three renewal years. The contract may be renewed in whole or in part for a period that shall not exceed the renewal years.

## **1.5 Contract Formation**

The Department intends to enter into a contract with the awarded Bidder(s) pursuant to Section 2.5 Basis of Award. The Contract shall be composed of the following: This solicitation, General Contract Conditions ([PUR 1000](#)), Special Contract Conditions, Description of Scope, Price Sheet (format approved by the Department) submitted by the Contractor after award and additional documentation (as required).

## **1.6 Timeline of Events**

The table (Attachment G) contains the Timeline of Events for this solicitation. Bidders should become familiar with the Timeline of Events. The dates and times within the Timeline of Events may be subject to change. It is the responsibility of the Bidder to check for any changes. All changes to the Timeline of Events shall be made through an addenda to the solicitation and noticed on the Vendor Bid System and within the MFMP Sourcing Tool.

**DO NOT RELY ON THE MYFLORIDAMARKETPLACE SOURCING TOOL'S TIME REMAINING CLOCK. THE OFFICIAL SOLICITATION CLOSING TIME AND RESPONSE DEADLINES SHALL BE AS REFLECTED IN THE TIMELINE.** The MyFloridaMarketPlace Sourcing Tool's time remaining clock is not the official submission date and time deadline, it is intended only to approximate the solicitation closing and may require periodic adjustments.

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

## **1.7 Order of Precedence for Solicitation**

In the event of conflict, the conflict may be resolved in the following order of priority (highest to lowest):

1. Addenda to Solicitation, if issued
2. Introduction
3. Description of Scope
4. Special Instructions
5. General Instructions
6. Special Contract Requirements
7. General Contract Requirements

## 8. Attachments

### 1.8 Procurement Officer

The Procurement Officer is the sole point of contact from the date of release of this ITB until 72 hours after the contract award is made.

Procurement Officer for this ITB is:

Leslie Gallegos  
Contract Manager  
Florida Department of Management Services  
Division of State Purchasing  
4050 Esplanade Way, Suite 360  
Tallahassee, FL 32399-0950  
Phone: (850) 410-2426  
Email: [Leslie.Gallegos@dms.myflorida.com](mailto:Leslie.Gallegos@dms.myflorida.com)

**\*\*\*\* ALL EMAILS TO PROCUREMENT OFFICE SHALL CONTAIN THE SOLICITATION NUMBER IN THE SUBJECT LINE OF THE EMAIL \*\*\*\***

### 1.9 Limitation on Contact with Government Personnel (section 287.057(23), Florida Statutes)

Bidders to this solicitation or persons acting on their behalf may not contact, between the release of this solicitation and the end of the 72-hour period following the agency posting the Notice of Intended Award, excluding Saturdays, Sundays, and State holidays (section 110.117, Florida Statutes), 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.

### 1.10 Special Accommodations

Any person requiring a special accommodation due to a disability should contact the Department's Americans with Disabilities Act (ADA) Coordinator at (850) 922-7535. Accommodation requests for meetings shall be made at least five workdays prior to the meeting. A person who is hearing or speech impaired can contact the ADA Coordinator by using the Florida Relay Service at (800) 955-8771 (TDD). These telephone numbers are supplied for notice purposes only.

### 1.11 Lobbying Disclosure

The successful vendor shall comply with applicable federal requirements for the disclosure of information regarding lobbying activities of the successful vendor, subcontractors or any authorized agent. Certification forms shall be filed by the successful vendor and all subcontractors, certifying that no federal funds have been or shall be used in federal lobbying activities and the disclosure forms shall be used by the successful vendor and all subcontractors to disclose lobbying activities. The successful vendor shall comply with the provisions of Section 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature or a state agency.

### 1.12 ITB Process

The ITB is a method of competitively soliciting a commodity or contractual service pursuant to section 287.057(1) (a), Florida Statutes. The Department posts an ITB on the Vendor Bid System (VBS) to initiate the process and also posts the solicitation in the MFMP Sourcing Tool.

Bidders must submit questions in writing to the Procurement Officer via the MFMP Sourcing Tool by the date listed in Attachment G; Timeline of Events. Bids shall be submitted by the deadline listed in the Timeline of Events. The Department shall open the bids in a public meeting. Once the Department has evaluated the bids, the Department shall post a Notice of Intended Award on the VBS.

#### **1.12.1 Question Submission**

The Department shall entertain written questions regarding the solicitation or the procurement process submitted through the MFMP Sourcing Tool for a limited period of time as specified in the Timeline of Events. The purpose of this question period is to promote the bidder's full understanding of the solicitation requirements by providing written binding answers to questions about the solicitation.

In order to submit a question, bidders Vendor's shall be registered in MFMP Sourcing and have access to the "Messages" tab in the solicitation dashboard. For information about registering with MFMP Sourcing, please see section 2.2; Special Instructions. The Department shall not respond to questions submitted through any other format or medium (telephone calls, emails, letters, etc.).

Questions submitted via the "Messages" tab within the MFMP Sourcing Tool shall be RECEIVED NO LATER THAN the time and date reflected on the Timeline of Events. Questions shall be officially answered via addenda as stated in the Timeline of Events. The Department 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 Department's contracting personnel.

#### **1.12.2 Solicitation Addenda**

If the Department finds it necessary to supplement, modify, or interpret any portion of the solicitation package during the solicitation period, a written addenda shall be posted on the VBS and the MFMP Sourcing Tool as Addenda to this solicitation. It is the bidder's responsibility to check VBS and MFMP Sourcing Tool periodically for any information or updates to this solicitation. The Department bears no responsibility for any resulting impacts associated with a prospective bidder's failure to obtain the information made available through the VBS and MFMP Sourcing Tool.

#### **1.12.3 Protest of Terms, Conditions, and Specifications**

With respect to a protest of the terms, conditions, specifications contained in this solicitation, including any provisions governing the methods for scoring or ranking responses, awarding contracts, or modifying or amending any contract, a notice of intent to protest shall be filed in writing within 72 hours after the posting of the solicitation. For purposes of this provision, the term "the ITB" includes this solicitation document, any addenda, response to written questions, clarification or other document concerning the terms, conditions, and specifications of the solicitation.

#### **1.12.4 Public Opening**

In accordance with PUR 1001, responses shall be opened on the date and at the location indicated on the Timeline of Events (Attachment G). Bidders should, but are not required to, attend. The Department may choose not to announce prices or release other materials pursuant to s. 119.071(1) (b), Florida Statutes.

#### **1.12.5 Electronic Posting of Notice of Intended Award**

Based on the evaluation, on the date indicated in the Timeline of Events the Department shall electronically post a Notice of Intended Award on the VBS and the MFMP Sourcing website for review by interested parties at the time and location specified in the Timeline of Events. The Notice of Intended Award shall remain posted for a period of seventy-two (72) hours, not including weekends or State observed holidays. If the notice of award is delayed, in lieu of posting the notice of intended award the Department may post a notice of the delay and a revised date for posting the notice of intended award.

#### **1.12.6 Protest of Notice of Intended Award**

Any Bidder desiring to protest the Notice of Intended to Award shall file any notice of protest and any subsequent formal written protest with Agency Clerk, Department for Management Services, 4050 Esplanade Way, Tallahassee, FL 32399, within the time prescribed in Section 120.57(3) Florida Statutes and Chapter 28-110, Florida Administrative Code. Please copy the Procurement Officer on such filings. Failure to file a notice of protest and a formal protest within the time prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

#### **1.12.7 Firm Response**

The Department should 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 Department awards the Contract or the Department receives from the bidder written notice that the response is withdrawn. Any response that expresses a shorter duration should, in the Department's sole discretion, be accepted or rejected.

#### **1.12.8 Modification or Withdrawal of Bid**

Bidders are responsible for the content and accuracy of their bid. Bidders should modify or withdraw their bid at any time **prior** to the bid due date in accordance with the Timeline of Events. For instructions on how to modify or withdraw bids refer to the link: [MFMP Vendor Toolkit](#) or for technical assistance please select this link: [MFMP Vendor Help](#) or call (866) 352-3776.

#### **1.12.9 Cost of Response Preparation & Independent Preparation**

The costs related to the development and submission of a response to this ITB is the full responsibility of the bidder and is not chargeable to the Department. A Bidder shall not, directly or indirectly, collude, consult, communicate or agree with any other Vendor or Bidder as to any matter related to the response each is submitting. Additionally, a Bidder shall not induce any other Bidder to modify, withdraw, submit or not submit a response.

#### **1.12.10 Taxes**

The State does not pay Federal excise or sales taxes on purchases of equipment. The State shall 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 Department in the Contract.

**1.12.11 Disclosure of Bid Contents**

Pursuant to the Public Records Act, all documentation provided to the Department as part of the ITB shall become the property of the Department and shall not be returned to the Bidder unless it is withdrawn prior to the response opening.

**1.13 Contract Formation**

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

The Department intends to enter into a contract with the awarded Bidder(s) pursuant to section 2.8; Basis of Award. No additional documents submitted by a Bidder should be incorporated in the contract unless it is specifically identified and incorporated by reference in the attached contract document.

**Balance of page intentionally left blank**

## Section 2 Instructions to Bidders

This section contains instructions to Bidders on how to submit a Bid. The instructions come in two parts; General Instructions and Special Instructions.

### 2.1 General Instructions

The [PUR 1001](#), The General Instructions to Bidders, is incorporated by reference and provided via the link below:

<http://www.dms.myflorida.com/content/download/2934/11780/1001.pdf>

In the event any conflict exists between the Special Instructions and General Instructions to Bidders, the Special Instructions shall prevail.

### 2.2 Special Instructions

#### 2.2.1 MFMP Registration

In order to bid, Bidders shall have a current Vendor registration and be active for “Sourcing Events” within the link: [MFMP Vendor Information Portal Website](#).

#### MyFloridaMarketPlace Vendor Registration

Each Bidder doing business with the State of Florida for the sale of commodities or contractual services as defined in Section 287.012, Florida Statutes, shall register in MyFloridaMarketPlace, in compliance with Rule 60A-1.030, Florida Administrative Code, unless exempt under Rule 60A-1.030(3) Florida Administrative Code.

#### 2.2.2 How to Submit a Bid

Submit responses to this solicitation via the MyFloridaMarketPlace Sourcing Tool by selecting this link: [MFMP Sourcing 3.0 Login](#). Bidders shall have a current Vendor registration and be active for “Sourcing Events” within the link [MFMP Vendor Information Portal](#). Download the MFMP Participation Instructions to Bidder, for detailed instructions on how to participate within the MFMP Sourcing Tool 3.0.

Include all appropriate pricing, discounts, documents, forms, files, question responses, and information responses located within the MFMP Sourcing Tool for the solicitation in Bids. All required or requested pricing, discounts, documents, forms, files, question responses, and information responses are to be entered electronically in the MFMP Sourcing Tool during this solicitation as indicated.

#### 2.2.3 Sourcing Tips and Training

After logging into MFMP Sourcing 3.0, “My Events” lists all events the Bidder already chose to “Join” (i.e., you intend to submit a formal response). “Public Events” lists those events associated with the Bidder’s registered UNSPSC listed in their Bidder Information Portal (VIP) accounts, but the Bidders have not yet “Joined.” Joining an event moves the event from “Public Events” to “My Events,” allows the Bidder to submit questions about the event (solicitation), and alerts Bidders to any associated updates (e.g., addenda, event edits, etc.).

To respond to a solicitation, bidders shall review and accept the electronic agreement on the “Review and Accept Agreement” page. Click the radio button next to, “I accept the



terms of this agreement.”

When responding, save work frequently – at intervals less than 20 minutes. Sourcing 3.0 automatically times out after 20 minutes of inactivity. Any unsaved information may be lost when the system times out. Clicking the “Save” button within Sourcing 3.0 only saves your solicitation responses.

To transmit responses to the State, Bidders shall click “Submit Entire Response.” After clicking the “Submit Entire Response” button, Bidders are responsible to verify and validate any submitted response in Sourcing 3.0 to ensure their responses are accurate and complete prior to the bid closing time.

Bidders should allow sufficient time, prior to the Solicitation event period closing, to address any errors and resubmit revised responses.

To validate responses, please do the following before the Solicitation period ends:

Click the “Response History” link to confirm that your “submitted” response is visible, and, therefore, formally submitted.

Confirm that a status of “Accepted” displays next to your submitted response.

Click on the Reference number of your submitted bid response to review the submission.

Please check the following:

- Text boxes – Is your entire answer viewable?
- Yes/No questions – Are the displayed answers correct?

For technical assistance, contact the MFMP Customer Service Desk (CSD) at (866) 352-3776 or by email at [VendorHelp@MyFloridaMarketPlace.com](mailto:VendorHelp@MyFloridaMarketPlace.com). For additional information regarding Vendor online training or to view MFMP Sourcing training documents select the hyperlink, [MFMP Vendor Toolkit](#).

#### **2.2.4 Who May Respond**

Any equipment Manufacturer or Dealer may respond. Eligible bidders must satisfy the requirements, specifications, terms and conditions of the solicitation, and demonstrate their capability to perform a statewide contract in the State of Florida including service locations statewide.

**NOTE:** Pursuant to section 607.1501, Florida Statutes, out-of-state corporations where required, must obtain a Florida Certificate of Authorization pursuant to section 607.1503, Florida Statutes, from the Florida Department of State, Division of Corporations, to transact business in the State of Florida. The Respondent out-of-state corporations agree to attain such authorization within seven business days of notice of award, should the Respondent be awarded. Website: [www.sunbiz.org](http://www.sunbiz.org)

#### **2.2.5 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 must provide any equipment 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 equipment is acceptable as an equivalent.

### **2.2.6 Mandatory Requirements or Conditions**

The State has established certain requirements with respect to responses submitted to competitive solicitations. The use of “shall”, “must”, or “will” (except to indicate futurity) in this solicitation, indicates a requirement or condition that may be mandatory. A deviation from a mandatory requirement or condition is material if, in the State’s sole discretion, the deficient response is not in substantial accord with the solicitation requirements, provides an advantage to one bidder over another, or has a potentially significant effect on the quality of the response or on the cost to the State. The words “should” or “may” in this solicitation indicate desirable attributes or conditions, but are permissive in nature.

### **2.2.7 Bidder Qualification Questions**

Bidders must submit a Yes/No response to the following Qualification Questions within the MFMP Sourcing Tool. Bidders are to meet and respond to the qualifications identified in the following Qualification Questions in order to be considered responsive. The Department may not evaluate bids from Bidders who answer “No” to any of the Qualification Questions.

**2.2.7.1** Does the Bidder certify that the person submitting the bid is authorized to respond to this ITB on Bidder’s behalf?

**2.2.7.2** Does the Bidder certify that it is not a Convicted Vendor as defined in Section 7 of the PUR 1001?

**2.2.7.3** Does the Bidder certify that it is not a Discriminatory Vendor as defined in Section 8 of the PUR 1001?

**2.2.7.4** Does the Bidder certify compliance with Section 9 of the PUR 1001?

**2.2.7.5** Does the Bidder certify that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List?

**2.2.7.6** Does the Bidder certify that it shall, if awarded, submit to the Department, at least annually, the completed signed Preferred Pricing Affidavit as required in Section 4.27.5 of this solicitation?

**2.2.7.7** Does the Bidder certify that it shall, if awarded, submit quarterly to the Department a Contract Sales report, as required in Section 4.28.1 of this solicitation?

**2.2.7.8** Does the Bidder certify that they have carefully and thoroughly reviewed their bids or prices on the Price Sheet (Attachment A) for accuracy and completeness?

**2.2.7.9** Does the Bidder certify that they have read and understand the requirements stated in sections 2.6 Supporting Documents?

**2.2.7.10** Does the Bidder certify that they shall, if awarded, have at least one full service repair facility as required in section 2.5 of this solicitation?

**2.2.7.11** Does the Bidder certify that they have submitted the MSRP Certification (Attachment J) from each Manufacturer as required in Section 2.6?

### **2.3 Contents of Bid**

Organize Bids in parts as directed below. Submit all the information requested in each part below through the [MFMP Sourcing Tool](#). Failure to submit all of the requested information in sections 2.3.1 through 2.3.4 (Part 1 through Part 4) below, in the format required under this ITB may result in a determination of Bidder non-responsiveness. Label each response with the appropriate section number (and part number) below:

#### **2.3.1 Part 1 - Company Information**

Complete the Vendor Information Form (Attachment F) to include all of the below:

**2.3.1.1** Company name and address.

**2.3.1.2** Name, title, phone number and email of person within the company responsible for administering the contract.

**2.3.1.3** Federal ID Number

**2.3.1.4** Internet website address

#### **2.3.2 Part 2- Relevant Past Performance**

Provide a synopsis of the five most recent large volume equipment contracts (which are similar to this ITB) in which your organization provided equipment. Include the following information:

**2.3.2.1** Contract number;

**2.3.2.2** Term of the contract;

**2.3.2.3** The name and telephone number of the customer's contact person;

**2.3.2.4** Number of items sold by your organization under the contract;

**2.3.2.5** Average number of your organization's personnel assigned to contract; and

**2.3.2.6** The final overall sales received by your organization under the contract.

#### **2.3.3 Part 3 - Price Sheet Submission (Attachment A)**

Download the Price Sheet (Attachment A-Price Sheet), complete and upload it within the MFMP Sourcing Tool, per Section 2.2.2 of the solicitation. Bidders are not required to bid on all Groups or all Manufacturers or Brand Names within a Group.

## **2.3.4 Part 4 – Other information**

### **2.3.4.1 Current Department of State Registration Form**

Submit a current copy of the Bidder's registration with the Florida Department of State, which authorizes the company to do business in the State of Florida ([www.sunbiz.org](http://www.sunbiz.org)). See section 2.2.4

### **2.3.4.2 Out-of State Preference Letter from Attorney (if applicable)**

Any Bidder who states that its "principal place of business" is outside of this state shall submit with its bid a written opinion of an attorney at law, licensed to practice law in that foreign state, that contains information explaining the preferences, any or none, granted by the law of that state to its own business entities whose principal place(s) of business are in that foreign state in the letting of any or all public contracts. For the purpose of this ITB, "principal place of business" means the state in which the Bidder's high level officers direct, control, and coordinate the Bidder's activities.

### **2.3.4.3 Certification of Drug-Free Workplace (Attachment C)**

Bidder must download and complete the Certification of Drug-Free Workplace found in Section 5 (Attachment C).

### **2.3.4.4 Preferred Pricing Affidavit (Attachment D)**

Bidders must download and complete the Preferred Pricing Affidavit found in Section 5 (Attachment D).

### **2.3.4.5 Savings/Price Reduction (Attachment E)**

The Bidder is required to furnish the percent (%) savings in prices offered compared to retail, list, published or other usual or customary prices that would be paid by the purchaser without the benefit of a contract resulting from this bid. Attachment E (PUR 7064), Savings/Price Reductions is provided to facilitate the Bidders response to this requirement. The Bidder is required to submit this form with its bid, and at the time of any renewals or extensions. Savings/Price Reduction Form found in Section 5 (Attachment E).

### **2.3.4.6 MSRP Certification (Attachment J)**

Bidder must download and complete the MSRP Certification (Attachment J) found in Section 5.

### **2.3.4.7 MSRP Lists**

Bidder must submit the MSRP List(s) consistent with Section 2.6 Supporting Documents and Certification (Attachment J).

## **2.4 Alternate Responses**

Bidder may not submit more than one bid for each listed Manufacturer or Brand Name per Group. The Department seeks each Bidder's single-best response by Manufacturer or Brand Name per Group.

## **2.5 Full-Service Repair Facilities**

The Contractor agrees to maintain at least one factory-authorized service station or servicing dealer within the State of Florida to perform warranty repairs and adjustments throughout the

contract term. Contractors must complete the Vendor Information form (Attachment F) included in the Forms section of this ITB, and must maintain that document throughout the contract term. The Contractor shall promptly notify the Department of any changes thereto. The Contractor shall be responsible for all service performed, regardless of whether the Contractor or their approved dealer actually performed the service.

The Contractor may offer eligible Customers “after warranty” service agreements for the maintenance and repair of goods after the initial warranty expires. The Contractor shall list this additional service as a separate item on the invoice.

## **2.6 Supporting Documents**

Bidder shall submit the following Supporting Documents with their Bid, as noted:

**MSRP List:** With the bid, Bidder shall provide one (1) applicable, current, complete, and separate MSRP List (as defined under Section 1.3.11) for each Group and Manufacturer or Brand Name bid under Attachment A, Price Sheet. Therefore, multiple MSRP Lists may be required (e.g., by Group and Manufacturer or Brand Name).

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

Bidder shall complete MSRP Certification (Attachment J) from each Manufacturer. Bidder shall not alter, adjust, or modify a Manufacturer’s MSRP when submitting Supporting Documents. MSRPs shall be formally published by the Manufacturer, publicly listed and available, and verifiable by the Department. The Department shall be the final arbitrator of MSRPs should the pricing differ from the published MSRPs.

The Supporting Documents shall be uploaded to the Department per Section 2.2.2 of the solicitation. **Failure to provide accurate and compliant Supporting Documents with the Response may result in the Bidder being deemed non-responsive.**

## **2.7 Evaluation Criteria**

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

## **2.8 Basis of Award**

Awards shall be made to one (1) responsive, responsible Bidder that offers the highest Base Equipment MSRP discount per Manufacturer or Brand Name in each Group line number.

The Department reserves the right to award to a single contractor or award to multiple contractors by Manufacturer or Brand Name, within each Group line number or any other separable portion if deemed to be in the best interest of the State.

Bidders are not required to bid every Group or every Manufacturer or Brand Name within a Group. If the Bidder wishes to be considered for an award, they must submit a bid for the Base Equipment MSRP discount for a Manufacturer or Brand Name within a Group and the MSRP discounts for the OEM Options, Accessories, & Implements and associated OEM & Replacement Parts for the Manufacturer or Brand Name bid. However, awards for each Manufacturer or Brand Name within a Group shall be based upon the greatest Base Equipment MSRP discount bid by a responsive and responsible Bidder.

## **2.9 Preference to Florida Vendors**

If the lowest bid is submitted by a Bidder whose principal place of business is located outside the State of Florida, preference shall be applied consistent with section 287.084, Florida Statutes.

## **2.10 Tie Bids**

In the event that the Department's evaluation results in identical evaluations of replies for the lowest Group price or three bidders with the lowest Group price, the Department shall select Bidder(s) based on the criteria identified in Rule 60A-1.011, Florida Administrative Code.

## **2.11 Rejection of Bids**

The Department shall review bidder responses using the criteria listed in section 2.2.7 Bidder Qualification Questions to determine responsiveness. Bids that do not meet all requirements, specifications, terms, and conditions of the solicitation or fail to provide all required information, documents, or materials may be rejected as non-responsive. Bidders whose bids, past performance, or current status do not reflect the capability, integrity, or reliability to fully and in good faith perform the requirements of a contract may be rejected as not responsible. The Department reserves the right to determine which bids meet the requirements of this solicitation, and which bidders are responsive and responsible.

## **2.12 Minor Irregularities/Right to Reject**

The Department 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 Department determines that doing so shall serve the State's best interests. The Department may reject any response not submitted in the manner specified by the solicitation documents.

## **2.13 Redacted Submissions**

The following section supplements section 19 of the [PUR 1001](#). If Bidder considers any portion of the documents, data or records submitted in response to this solicitation to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, Bidder shall mark the document as "Confidential" and simultaneously provide the Department with a separate redacted copy of its response and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the Department's solicitation name, number, and the Bidder's name on the cover, and shall be clearly titled "Redacted Copy." The Redacted Copy should only redact those portions of material that the Bidder claims is confidential, proprietary, trade secret or otherwise not subject to disclosure.

In the event of a request for public records pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, to which documents that are marked as confidential are responsive, the Department shall provide the Redacted Copy to the requestor. If a requestor asserts a right to the Confidential Information, the Department shall notify the Bidder such an assertion has been

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

By submitting a bid, the Bidder agrees to protect, defend, and indemnify the Department for any and all claims arising from or relating to the Bidder's determination that the redacted portions of its reply are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If Bidder fails to submit a redacted copy of information it claims is confidential, the Department is authorized to produce the entire documents, data, or records submitted to the Department in answer to a public records request for these records.

#### **2.14 Additional Information**

By submitting a bid, Bidder certifies that it agrees to and satisfies all criteria specified in the ITB. The Department may request, and Bidder shall provide, supporting information or documentation. Failure to supply supporting information or documentation as required and requested shall result in disqualification of the bid.

**Balance of page intentionally left blank**

## Section 3 Description of Scope

### 3.1 Scope

The Construction & Industrial Equipment Commodities (including the Base Equipment; associated OEM Options, Accessories, & Implements; and associated OEM & Replacement Parts) offered under the Contract shall be classified under seventeen (17) Groups, which are listed and described as follows:

| GROUP    | UNSPSC CODE(S)        | GROUP DESCRIPTION   |
|----------|-----------------------|---|
| Group 1  | 22101526              | Excavators; Mini/Compact Track Excavators (Less than 70 HP)   |
| Group 2  | 22101526              | Excavators; Track Excavators (Equal to or Greater than 70 HP)   |
| Group 3  | 22101525              | Excavators; Wheel & Truck Mount   |
| Group 4  | 22101502              | Motor Grader & Maintainer   |
| Group 5  | 22101511,<br>22101505 | Compactors/Rollers: Asphalt, Soil and Landfill  |
| Group 6  | 22101522              | Dozers: Crawler   |
| Group 7  | 22101523              | Dozers: Wheel   |
| Group 8  | 22101532              | Compact Track And Multi Terrain Loaders (Less than 15,000 lbs. Operating Weight)                                    |
| Group 9  | 22101532              | Crawler/Track Loader (Greater than 15,000 operating weight)   |
| Group 10 | 22101528              | Wheel Loaders   |
| Group 11 | 22101529              | Skid Steer Loaders: Wheel   |
| Group 12 | 22101509              | Backhoe-Loader: Wheel   |
| Group 13 | 24101500              | Industrial Trucks/Forklifts   |
| Group 14 | 24101600              | Forklift/Telescopic Handler, Riding type (including Rough Terrain)  |
| Group 15 | 26111600              | Power Generators (excludes portable)  |
| Group 16 | 30190000              | Construction Equipment includes; Concrete Saws, Portable Cement Mixer, Portable Lights, other (excludes hand tools) |
| Group 17 | 30191700              | Gooseneck, Lowboy and Heavy Equipment Trailers  |

The Contract is intended to cover only those Construction and Industrial Commodities generally used by the State of Florida as listed and described herein, and does not include all varieties of equipment that are commercially available. The Department in its sole discretion shall determine the eligibility and acceptability of all Commodities available and included under the Contract. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractors MSRP List.

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

### 3.2 Commodity Specifications and Standards

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



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

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

1. All Commodities shall be designed, constructed, equipped, assembled (except as specified in Section 3.9, Transportation and Delivery), and installed (OEM & Replacement Parts do not include installation) to be fully suitable for their intended use, purpose, and service;
2. All Commodities shall be new and unused (except as specified in Section 3.9, Transportation and Delivery), for the current Manufacturer's model year or later, of current or recent production, and of the latest design and construction;
3. All Commodities shall be bio-diesel (B-20), compressed natural gas ("CNG"), diesel, electric, gasoline (E-10 to E-85), liquefied petroleum gas ("LPG"), natural gas, or propane powered;
4. All Commodities shall include all OEM standard features, equipment, and components, Manufacturer or Dealer installed according to the Manufacturer's standard procedures, requirements, and specifications;
5. All Commodities shall be free of damage and / or rust which may affect appearance or serviceability;
6. All Commodities shall comply with current legal, customary, reasonable, and prudent standards of professionalism and care in the industry;
7. All Commodities shall comply with current mandatory and applicable federal and State of Florida motor vehicle, mobile equipment, legal, safety, and environmental standards and requirements; and
8. All Commodities shall meet the requirements, specifications, terms, and conditions herein.

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

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

### **3.3 Federal and State Standards**

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

laws and regulations. If an apparent conflict exists, the Contractor and Dealer shall contact the Contract Manager immediately.

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

### **3.4 Testing**

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

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

### **3.5 Warranty**

The Manufacturer's standard warranty shall cover all Commodities and contractual services of the Contract. The Manufacturer's standard warranty is required to provide coverage against defective material, workmanship, and failure to perform in accordance with the specifications and required performance criteria. The Manufacturer's standard warranty coverage shall be identical to or exceed the most inclusive of those normally provided for the Commodities and contractual services specified herein that are sold to any state or local governments. The Manufacturer's standard warranty shall have a minimum term of one (1) year from the date of Acceptance, Section 3.11, and shall begin only at the time of Acceptance by the Eligible User.

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

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

### **3.6 Commodities Recall**

In the event there is a recall of any of the Commodities, any of its components or any parts incorporating the equipment ("Recalled Equipment"), the contractor shall provide reasonable assistance to the Department in developing a recall strategy and shall cooperate with the Department and the Buyers in monitoring the recall operation and in preparing such reports as may be required. Each Contractor shall, at the request of the Department or any Buyer give the Department and each Buyer all reasonable assistance in locating and recovering any equipment or Recalled Equipment that are not in accordance with the requirements of the Contract. Each Contractor shall immediately notify and provide copies to the Department of any communications, whether relating to recalls or otherwise, with any Buyer. The Contractor, at its own cost, shall ensure defective Recalled Equipment are rectified, replaced or destroyed in compliance with all applicable laws, rules or regulations and the Department's reasonable instructions.

### **3.7 Commodity Compliance and Compatibility**

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

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

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

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

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

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

### **3.8 Commodities Title and Registration**

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

In the event the Eligible User is permitted by statute, law, rule, ordinance, code, policy, and procedure to obtain Title and Registration independent of the Contractor, and chooses to obtain Title and Registration independent of the Contractor, the Eligible User shall notify the Contractor in writing of this decision no later than three (3) business days following receipt of the Acknowledgement of Order form, per Section 3.10, Acknowledgement of Order. However, the Eligible User shall then be obligated to Title and Register the awarded Commodity per applicable statute, law, rule, ordinance, code, policy, and procedure, and the Contractor shall provide any documents necessary for the Eligible User to do so.

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

1. Should an Eligible User elect to transfer an existing license plate, this is the standard default order type and does not require specific notation on the Purchase Order. All related fees, see Section 4.8, Ceiling Prices, are included in the Base Equipment Net Price.
2. Should an Eligible User elect to obtain a new license plate in lieu of transferring their old license plate, or if the awarded Commodity is an addition to their fleet and requires a new license plate, the Purchase Order should include a notation and an additional amount to cover the cost of a new license plate. The Contractor is not required to obtain new license plates for the Eligible User unless there is a notation and a new license plate fee is included on the

Purchase Order. All related charges and fees, see Section 4.8, Ceiling Prices, except the new license plate cost are included in the Base Equipment Net Price.

- a) The Eligible User's Purchase Order notation for a new license plate shall include the request for a new license plate, what type of license plate is required, and a contact person's name, title, and telephone number should there be any questions.
- b) The Contractor may obtain special plates such as "State", "County", or "City" from most county tax offices, but agency plates such as "DOT", "DC", "DNR", etc. shall be obtained from the Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, in Tallahassee, Florida.

### **3.9 Transportation and Delivery**

In conjunction with Section 4.8, Ceiling Prices, Base Equipment Net Prices; OEM Options, Accessories, & Implements Net Prices; and OEM & Replacement Parts Net Prices shall include all charges for packing, handling, freight, distribution, and delivery. Transportation and Delivery of goods shall be FOB Destination to any point statewide as follows:

1. Equipment not in stock or unavailable from manufacturer at time of order must be delivered within one hundred eighty (180) calendar days after receipt of order.
2. Equipment in stock must be delivered within fourteen (14) calendar days after receipt of order or the Commodities from the Manufacturer, with one exception – Commodities requiring post-Manufacturer Dealer installed OEM Options, Accessories, & Implements shall be delivered within thirty (30) calendar days after receipt of the Commodities from the Manufacturer(s).

Delivery of the awarded Commodity is defined as receipt of the Commodity at the Eligible User's place of business or designated location. Delivery does not constitute Acceptance, per Section 3.11 of the Contract. The Contractor shall give the ordering Eligible User a minimum of twenty-four (24) hour notice prior to delivery. Deliveries shall be received as stipulated by the Eligible User.

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

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

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

1. Complete lubrication of operating chassis, engine, and mechanisms with Manufacturer's recommended grades of lubricants;
2. Check / Fill all fluid levels to assure proper fill;
3. Adjust engine(s) to proper operating condition(s);
4. Inflate tires to proper pressure;
5. Check to assure proper operation of all accessories, gauges, lights, and mechanical and hydraulic features;
6. Clean equipment, if necessary, and remove all unnecessary tags, stickers, papers, etc.;

7. Assure that the awarded Commodity is completely assembled (unless otherwise noted in the following sub-section) including Base Equipment and OEM Options, Accessories, & Implements, thoroughly tested, and ready for immediate operation upon delivery; and
8. Where applicable, packaged to insure safe delivery to the destination. Packaging shall comply with the requirements of section 403.7191, Florida Statutes. Each package shall be marked to include the name of the Contractor, the State Term Contract number, Purchase Order number, and brief description of the contents.

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

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

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

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

### **3.10 Acknowledgement of Order (Attachment I)**

For orders which the Contractor does not have the awarded Commodities in stock and cannot Deliver the Commodities to the ordering Eligible User within fourteen (14) calendar days, the Acknowledgement of Order form shall be fully completed and issued by the Contractor to notify the ordering Eligible User of the receipt of the Purchase Order for Commodities awarded under the Contract, the Manufacturer's order confirmation information, and the estimated delivery date. The Contractor shall mail, email, or fax the fully completed Acknowledgement of Order form to the ordering Eligible User's issuing office within fourteen (14) calendar days from the date the Contractor receives the Purchase Order under the Contract. Failure of the Contractor to provide the ordering Eligible User the Acknowledgement of Order form within fourteen (14) calendar days from the date the Contractor received the Purchase Order shall be considered acceptance of the order by default, which, if necessary, shall require the provision of the next new model of the Commodity, which meets the Prices, Discounts, requirements, specifications, terms, and conditions herein.

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

### **3.11 Acceptance**

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

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

1. Recording any evidence of visible damage on all copies of the delivering carrier's bill of lading;
2. Report any known visible and concealed damage to the carrier and the Contractor;
3. Confirm said reports in writing within fifteen (15) business days of delivery, requesting that the carrier inspect the damaged merchandise; and
4. Provide the Contractor with a copy of the carrier's bill of lading and damage inspection report.

Transportation and Delivery of the Commodity, per Section 3.9 of the Contract, does not constitute Acceptance for the purpose of payment. Final Acceptance and authorization of payment shall be given by the Eligible User only after a thorough inspection indicates that the Commodity is undamaged and meets the Contract requirements, specifications, terms, and conditions. Should the delivered Commodity be damaged or differ in any respect from the Contract requirements, specifications, terms, and conditions, payment shall be withheld until such time as the Contractor completes the required, Eligible User approved, corrective action.

Should the Commodity require service or adjustments as part of the Eligible User approved corrective action(s), the Contractor shall either remedy the defect or be responsible for reimbursing the Manufacturer's local service Dealer or others selected by the Eligible User to remedy the defect. The Contractor shall initiate such required service or adjustments within two (2) business days following notification by the Eligible User. The Commodity shall not be accepted until all service and adjustments are satisfactory and the Commodity is re-delivered in acceptable condition. The costs of any Transportation and Delivery, Section 3.9, required as part of the initial or any re-deliveries due to error or damage are the responsibility of the Contractor.

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

### **3.12 Installation**

Where installation is required, Contractor shall be responsible for placing and installing the equipment or parts in the required locations at no additional charge, unless otherwise specified in the Price Sheets. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the equipment or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the equipment or parts 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.

**Balance of page intentionally left blank**

## Section 4 Contract Conditions

This section contains conditions which shall be complied with during the performance of this contract. The conditions come in two parts, general conditions and special contract requirements.

### 4.1 General Contract Requirements

The General Contract Conditions, [PUR 1000](#) is incorporated by reference and provided via a link below.

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

### 4.2 Special Contract Requirements

The Special Contract Requirements are provisions that relate directly to the performance of this contract.

### 4.3 Pricing

The Contractor shall adhere to the discount applied to the uploaded MSRP List(s) as submitted for in the completed Price Sheets, which are incorporated by reference into the Contract.

$$\text{Pricing} = (100\% - \text{Percent Discount}) \times \text{MSRP List Price(s)}$$

### 4.4 Financial Consequences for Nonperformance

The State reserves the right to withhold payment or implement other appropriate remedies, such as contract termination or nonrenewal, when the Contractor has failed to perform under or comply with the provisions of this contract. When or if the Contractor fails to perform or comply with provisions of this contract, the Contractor has ten (10) calendar days from receipt of Complaint to Vendor Form (PUR 7017) to comply as instructed within the notice. An amount of \$500.00 may be assessed for each day the Contractor is delinquent after the ten (10) day notice period ends, and that amount may be withheld from a Contractor's invoice. The rights and remedies of the State in this paragraph are not considered penalties and are in addition to any other rights and remedies provided by law.

### 4.5 Contract Overlap

Contractors shall identify any equipment or parts 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.

### 4.6 Commodity, Group, and Manufacturer or Brand Name Additions and Deletions

During the Contract Term, Section 1.4, the Department shall have the right to add or delete Commodities, Groups, or Manufacturer or Brand Names to or from this agreement by adding them to or removing them from the Price Sheet, Attachment A. Any new Commodities, Groups, or Manufacturer or Brand Names added shall be at the requirements, specifications, terms, and conditions herein or as later stipulated by the Department, and at mutually agreed pricing and discounts accepted, in writing, by both the Contractor and the Department. Commodities, Groups, or Manufacturer or Brand Names may be removed at the sole discretion of the Department, per the requirements, specifications, terms, and conditions herein or as permitted by Florida Statutes or Florida Administrative Code.



#### 4.7 Price Adjustment

Price may be adjusted annually, beginning 12 months after the contract effective date based on the percent change (up or down) of the Producers Price Index (PPI). All requests must be submitted to the Contract Manager during the months of January or July only. Price adjustments correlate with the PPI for the Series ID's in the table below and as published by the Bureau of Labor Statistics, in the Department of Labor, Washington, DC 20212. These reports are accessible at the following website: <http://www.bls.gov/data/>.

| Group        | Industry Code                            | Industry   | Baseline      |
|--------------|--|--|---------------|
| 1,2,3        | 333120<br>Construction machinery<br>mfg. | PCU33312033312011<br>Power cranes, draglines, & shovels<br>(excavators) (incl. surface mining<br>equip.) (excluding parts) | December 1999 |
| 4,5          |  | PCU33312033312016<br>Graders, rollers & compactors,<br>rough-terrain forklifts, scrapers,<br>trenchers, etc. (excl. parts) | December 2003 |
| 6,7          |  | PCU3331203331201<br>Power cranes, loaders, dozers,<br>tractors, off-highway trucks, mixers,<br>pavers, backhoes, etc.      | December 2003 |
| 8,9,10,11,12 |  | PCU33312033312014<br>Tractor shovel loaders (skid steer,<br>wheel, crawler, and integral design<br>backhoes)               | December 1980 |
| 13,14        |  | PCU333120333120<br>Construction machinery mfg.   | December 1980 |
| 15           | 22111<br>Electric power<br>generation    | PCU22111-22111<br>Electric power generation  | December 2003 |
| 16           | 333120<br>Construction machinery<br>mfg. | PCU3331203331208<br>Other construction machinery and<br>equipment (excluding parts)  | December 2003 |
| 17           | 336212<br>Truck trailer<br>mfg.          | Truck trailer mfg.   | December 1979 |

The Contractor may have up to 60 days after the posting of the month or quarter non-preliminary data at each contract anniversary to request a price increase. When requesting a price increase, the Contractor may submit a justification in writing to the Contract Manager detailing the reasons for the price adjustment request and demonstrating the calculable change in PPI over the last 12 months of the Contract that supports a price adjustment.

The requested adjustment for a price increase may not exceed the percentage change of the PPI the preceding twelve months prior to the adjustment. The contractor must complete Price Update Form (Attachment H) to have the price adjustment processed. The Department reserves the exclusive right to accept or reject any request for price adjustment. Price adjustments may be effective only upon written approval by the Department and may not be applied retroactively.

The Department reserves the right to request price decreases at any time during the term of the Contract if it's found to be in the best interest of the State.

#### **4.8 Ceiling Prices**

The individual Base Equipment Price (after discount); OEM Option, Accessory, & Implement Price (after discount); and OEM Part Price (after discount) contained or referenced in the Attachment A, Price sheets, shall be the not-to-exceed Ceiling Prices under the Contract.

#### **4.9 Compliance with Laws, Rules, Codes, Ordinances, and Licensing Requirements**

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

#### **4.10 Insurance Requirements**

To the extent required by law, the Contractor shall be self-insured against, or shall secure and maintain during the life of the contract, Worker's Compensation Insurance for all its employees connected with the work of this project and, in case any work is subcontracted, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees engaged in work under the resulting contract are covered by the Contractor's self-insurance program. Such self-insurance or insurance coverage shall comply with the Florida Worker's Compensation law. In the event hazardous work is being performed by the Contractor under the resulting contract and any class of employees performing the hazardous work is not protected under Worker's Compensation statutes, the Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of his employees not otherwise protected.

The Contractor shall secure and maintain Commercial General Liability insurance including bodily injury, property damage, personal & advertising injury and products and completed operations. This insurance shall provide coverage for all claims that may arise from the services and/or operations completed under the contract, whether such services or operations are by the Contractor or anyone directly, or indirectly employed by them. Such insurance shall include a Hold Harmless Agreement in favor of the State of Florida and also include the State of Florida as an Additional Named Insured for the entire length of the resulting contract. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the resulting contract.

All insurance policies shall be with insurers licensed or eligible to transact business in the State of Florida. The Contractor's current certificate of insurance shall contain a provision that the insurance shall not be canceled for any reason except after thirty (30) days written notice to the Department's Contract Manager.

The Contractor(s) shall submit insurance certificates evidencing such insurance coverage prior to execution of a contract with the Department.

#### **4.11 Notice of Legal Actions**

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

#### **4.12 Records Retention**

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

#### **4.13 Public Records**

##### **4.13.1 Access to Public Records**

(1) The Contractor shall allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from Article I, Section 24(a), Florida Constitution or section 119.07(1), Florida Statutes. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access as required in this section. If, under this Contract, the Contractor is providing services, the Department may unilaterally cancel the Contract for refusal by the Contractor to allow access to all public records, including documents, papers, letters, or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1), Florida Statutes.

(2) If, under this Contract, the Contractor is providing services and is acting on behalf of a public agency as provided by section 119.0701(1)(b), Florida Statutes, the Contractor shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

##### **4.13.2 Protection of Trade Secrets or Other Confidential Information**

If the Contractor considers any portion of materials made or received in the course of performing the Contract (“contract-related materials”) to be trade secret under section

812.081, Florida Statutes, or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as “confidential” when submitted to the Department.

If the Department receives a public records request for contract-related materials designated by the Contractor as “confidential,” the Department will provide only the portions of the contract-related materials not designated as “confidential.” If the requester asserts a right to examine contract-related materials designated as “confidential,” the Department will notify the Contractor. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated “confidential.”

If the Department is served with a request for discovery of contract-related materials designated “confidential,” the Department will promptly notify the Contractor about the request. The Contractor will be responsible for filing, the appropriate motion or objection in response to the request for discovery. The Department will provide materials designated “confidential” only if the Contractor fails to take appropriate action, within timeframes established by statute and court rule, to protect the materials designated as “confidential” from disclosure.

The Contractor shall protect, defend, and indemnify the Department for claims, costs, fines, and attorney’s fees arising from or relating to its designation of contract-related materials as “confidential.”

#### **4.13.3 Retention of Records**

Contractor shall retain sufficient documentation to substantiate claims for payment under the Contract, and all other records made in relation to the Contract, for five (5) years after expiration or termination of the Contract.

#### **4.14 Annual Appropriations**

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

#### **4.15 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 shall be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

#### **4.16 Cancellation**

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

#### **4.17 Intellectual Property**

The parties do not anticipate that any Intellectual Property shall be developed as a result of this contract. However, any Intellectual Property developed as a result of this contract shall belong to and be the sole property of the state. This provision shall survive the termination or expiration of this contract.

#### **4.18 Gifts**

The Contractor agrees that it shall not offer to give or give any gift to any State of Florida employee. This Contractor shall ensure that its sub-contractors, if any, shall comply with this provision.

#### **4.19 Vendor Ombudsman**

A Vendor Ombudsman, whose duties include acting as an advocate for Bidders who may be experiencing problems in obtaining timely payment(s) from a state agency, may be contacted at (850) 413-5516, or by calling the Department of Financial Services Consumer Hotline at 1-800-342-2762.

#### **4.20 Monitoring by the Department**

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

#### **4.21 Scrutinized Company List**

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), Florida Statutes, 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.

#### **4.22 Business Review Meetings**

The Department reserves the right to schedule business review meetings as frequently as necessary. The Department shall provide the format for the Contractor's agenda. Prior to the meeting, the Contractor shall submit the completed agenda to the Department for review and acceptance. The Contractor shall address the agenda items and any of the Department's additional concerns at the meeting. Failure to comply with this section may result in the Contract being found in default and termination of the Contract by the Department or nonrenewal of the Contract.

#### **4.23 E-Verify**

Pursuant to State of Florida Executive Order Number 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 sub-contractors performing work or providing services pursuant to the Contract utilize the E-Verify system to verify employment of all new employees hired by the sub-contractor during the Contract term.

#### **4.24 Subcontracting**

The Contractor shall not subcontract, assign, or transfer any work identified under this solicitation, *with the exception of those subcontractors identified in the Contractor's bid*, without prior written consent of the Department.

The Contractor is responsible for all work performed under the contract resulting from this solicitation. No subcontract entered into by the Contractor for performance of work required under the contract, shall in any way relieve the Contractor of any responsibility for the performance of duties under the contract. The Contractor shall assure that all tasks related to the subcontract are performed in accordance with the terms of the contract.

The Department supports diversity in its Procurement Program and requests that all subcontracting opportunities afforded by this solicitation enthusiastically embrace diversity. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. Contractor can contact the Office of Supplier Diversity at (850)487-0915 for information on minority bidders who may be considered for subcontracting opportunities.

#### **4.25 Performance Qualifications**

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

Contractor shall be prepared, if requested by the Department, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the Contractor for the production, distribution, and servicing of the equipment bid. If the Department determines that the conditions of the solicitation documents are not complied with, or that the equipment or parts 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 Department may reject the response or terminate the Contract. Contractor may be disqualified from receiving awards if Contractor or anyone in Contractor'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 Department to make an investigation either before or after award of the Contract, but should the Department elect to do so, Contractor is not relieved from fulfilling all Contract requirements.

#### **4.26 MyFloridaMarketPlace Transaction Fee**

The awarded Vendor(s) will be required to pay the required transaction fees as specified in Section 14 of the PUR 1000, unless an exemption has been requested and approved prior to the award of the contract pursuant to rule 60A-1.032 of the Florida Administrative Code.

The Contractor is required to submit monthly Transaction Fee Reports in electronic format. Reports are due ten (10) working days after the end of the reporting period. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online on the MFMP website: [MFMP Transaction Fee and Reporting](#). Assistance is also available with the Transaction Fee Reporting System from the MFMP Customer Service Desk at the email address hyperlink: [MFMP Customer Service Desk Email](#), or telephone 866-FLA-EPRO (866-352-3776) between the hours of 8:00 AM to 5:30 PM Eastern Time

## 4.27 Contract Reporting

### 4.27.1 Contract Quarterly Sales Report (Contract Deliverable)

The Contractor agrees to submit a Quarterly Sales Report (Attachment B) on a quarterly basis to the DMS Contract Manager. Initiation and submission of the Quarterly Report is the responsibility of the Contractor without prompting or notification from the DMS Contract Manager. A quarterly report is required even if Contractor has zero sales to report for that quarter.

Quarterly Reporting periods should coincide with the contract term and should begin the quarter following contract execution. Reports are due ten (10) working days after the end of the reporting period.

### 4.27.2 Savings / Price Reductions (Attachment E)

Contractor shall submit one (1) accurately completed Savings / Price Reductions form (Attachment E) with their Response containing the required savings information for each UNSPSC Code with associated Related Services offered and a method(s) for the Department to verify the savings information provided. The Savings / Price Reductions form shall not be used to determine award, only to verify the Savings / Price Reductions being offered. The Savings / Price Reductions form shall be mailed to the Department per Section 1.7 of the solicitation. **Failure to provide the Savings / Price Reductions form with the Response may result in the Contractor being deemed non-responsive.**

### 4.27.3 Transaction Fee Reports

The Bidder is required to submit monthly Transaction Fee Reports in electronic format. Reports are due ten (10) working days after the end of the reporting period. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Bidder training presentations available online at the Transaction Fee Reporting and Bidder Training subsections under Bidders on the MFMP website: [MFMP Transaction Fee and Reporting](#). Assistance is also available with the Transaction Fee Reporting System from the MFMP Customer Service Desk at the email address hyperlink: [MFMP Customer Service Desk Email](#), or telephone 866-FLA-EPRO (866-352-3776) between the hours of 8:00 AM to 5:30 PM Eastern Time.

### 4.27.4 Diversity Reporting

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

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

#### **4.27.5 Preferred Pricing Affidavit Requirement**

The Department shall provide the Preferred Pricing Affidavit, (Attachment D), for completion by an authorized representative of the Contractor attesting that the Contractor is in compliance with the preferred pricing provision in section 4(b) of the [PUR 1000](#) form. The Contractor agrees to submit to the Department, at least annually, the completed Preferred Pricing Affidavit.

#### **4.28 Contract Termination**

The Department may terminate the Contract if the Contractor: 1.) fails to comply with all terms and conditions of this Contract; 2.) fails to produce each deliverable within the time specified by the Contract; or, 3.) fails to abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), Florida Administrative Code, governs the procedure and consequences for default. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under the Contract. Upon receipt of notice of termination, the Contractor shall, unless the notice directs otherwise, immediately discontinue all activities authorized hereunder. The Contractor shall not be entitled to recover any cancellation charges or lost profits. (Reference section 4.4, Financial Consequences)

#### **4.29 Force Majeure**

Except for the payment of money due, neither party shall be deemed in breach or default of this Contract in the event that either party fails to perform pursuant to the terms and conditions of the Contract and the failure is caused by, or is in connection with, force majeure. The party suspending performance shall give prompt notice to the other party and shall attempt to cure promptly the cause for such suspension. Upon cessation of the cause for suspension, performance shall resume (or commence) as soon as reasonably practicable, unless otherwise agreed to by the parties. Notwithstanding any other provision of this contract the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the particular party involved.

For purposes of this Contract, the term "force majeure" shall mean acts or events beyond the control of the parties, including, but not limited to, acts of God, strikes, lockouts, or other industrial disturbances, riots, epidemics, landslides, floods, fires, washouts, arrests and restraints, civil disturbances, explosions, breakage of or accidents to pipe lines, failure of equipment or, compliance with acts, orders, regulations or requests of any federal, state or local governmental authority, whether or not of the same class or kind, reasonably beyond the control of either party and which, by exercise of due diligence, such party is unable to overcome.

In the event a force majeure condition exists, or the potential exists for such condition, the Contractor shall inform the Department of the problem at the earliest practical time and present a plan for return to normal service.

#### **4.30 Additional Provisions**

The provisions of paragraphs 287.058(1)(a) and (b), Florida Statutes, are hereby incorporated by reference.

#### **4.31 Alternate Responses**

Contractor may not submit more than one bid for each listed Manufacturer or Brand Name per UNSPSC Code (including associated MSRP Discount, Related Services Prices, MSRP Date, etc.). The Department seeks each Contractor's single-best Response by Manufacturer or Brand Name per UNSPSC Code.



## Section 5 Attachments

|              |  |
|--------------|--|
| Attachment A | Price Sheet (section 2.3.3)  |
| Attachment B | Quarterly Sales Report (section 4.28.1)                              |
| Attachment C | State of Florida Drug-Free Workplace Certification (section 2.3.4.3) |
| Attachment D | Preferred Pricing Affidavit (section 2.3.4.4)                        |
| Attachment E | Savings/Price Reduction Form (section 2.3.4.5)                       |
| Attachment F | Vendor Information Form (section 2.3.1)                              |
| Attachment G | Timeline (section 1.6)   |
| Attachment H | Sample Price Update Form (section 4.7)                               |
| Attachment I | Acknowledgement of Order Form (section 3.10)                         |
| Attachment J | MSRP Certification (section 2.6)                                     |