

ALTERNATE CONTRACT SOURCE NO. 93131607-15-ACS

Food Delivery Prime Vendor Services

Cheney Brothers, Inc.

Florida Department of Corrections

Food Products and Supplies

ALTERNATE CONTRACT SOURCE AGREEMENT For Use by all Eligible Users

BACKGROUND AND AUTHORITY

The Department of Management Services (DMS) is authorized by subsection 287.042 (16), Florida Statutes, to evaluate contracts let by the Federal Government, another state, or a political subdivision and, when determined in writing to be cost-effective and in the best interest of the State, to enter into agreements authorizing agencies as defined by subsection 287.012 (1), Florida Statutes, to make purchases under such contracts.

Section 287.056, Florida Statutes, provides that agencies and eligible users, as defined in Rule 60A-1, Florida Administrative Code, may purchase commodities and contractual services from purchasing agreements established by DMS.

Contract #C2808 for the provision and delivery of food and non-food products (Contract) was competitively procured and awarded by the Department of Corrections. DMS has evaluated the Contract and acknowledges that it is cost-effective and in the best interest of the State.

Therefore, DMS enters into this alternate contract source agreement (Agreement) with Cheney Brothers, Inc. (Vendor) for the purpose of authorizing and guiding the use of the Contract by state agencies and other eligible users.

The terms of the Agreement, including attachments A, B, and C, and the terms of the Contract will apply to all transactions between the Vendor and the agency or other eligible user, as defined by Rule 60A-1, Florida Administrative Code.

A. Scope

State agencies and other eligible users (Customers) may make purchases from this Agreement pursuant to the terms and conditions of the Contract as modified and supplemented herein.

B. Terms and Conditions

1. This Agreement will become effective on October 1, 2014 and will have a term that is coterminous with the Contract, including any extensions or renewals by the Department of Corrections, unless terminated earlier pursuant to the Contract, this Agreement, or Florida law. The Department of Management Services reserves the right to cancel this Agreement at any time by giving 30 days written notice to the Vendor.

2. In order to procure commodities or services from the Contract, Customers shall issue purchase orders or other end user agreements (contracts), referencing this Agreement. Customers are responsible for reviewing the terms and conditions of this Agreement including the Contract attached and incorporated as Attachment B. The Department of Corrections is neither a party to this Agreement nor is it a party to any contracts issued pursuant to this Agreement.
3. The State of Florida, through the DMS, has instituted the statewide eProcurement system, MyFloridaMarketPlace pursuant to subsection 287.057(23), Florida Statutes. In order to complete any transaction authorized by this Agreement, the Vendor must be registered in MyFloridaMarketPlace in accordance with Rule 60A-1.30 Florida Administrative Code which is incorporated into this Agreement by reference. Pursuant to Rule 60A-1.031 Florida Administrative Code, all payments shall be assessed a Transaction Fee of one percent (1.0%), which Vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, Vendor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), Florida Administrative Code. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. Vendor shall receive a credit for any Transaction Fee paid by Vendor for the purchase of any item(s) if such item(s) are returned to Vendor through no fault, act, or omission of Vendor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to Vendor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring Vendor in default. DELINQUENT TRANSACTION FEES SHALL EXCLUDE VENDOR FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.

4. Transaction Fee Report: Vendor is required to submit monthly Transaction Fee Reports in electronic format. Transaction Fee Reports shall be submitted in accordance with the detailed fee reporting instructions and vendor training presentations available online at the Transaction Fee Reporting and Vendor Training subsections under Vendors on the MyFloridaMarketPlace website located at http://dms.myflorida.com/business_operations/state_purchasing/myflorida_marketplace/mfmp_vendors/vendor_toolkit/mfmp_transaction_fee_and_reporting.
5. The provisions of subsections 287.058 (1) (a), and (c), and Florida Statutes, are hereby incorporated into this Agreement by reference. If the transaction involves contractual services, the provisions of subsections 287.058 (1) (b), and (g), Florida Statutes, are also incorporated by reference.
6. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. The Vendor shall comply with sections 11.062, and 216.347, Florida Statutes, prohibiting use of funds to lobby the Legislature, Judiciary, or State agencies.
7. The Vendor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, the Vendor shall comply with section 247A 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.

8. Interest penalties for late payment are available subject to the provisions of section 215.422, Florida Statutes. A Vendor Ombudsman, whose duties include acting as an advocate for Vendors who may be experiencing problems in obtaining timely payment(s) from a state agency may contact the Department of Financial Services at 1- 850-413-5516 or by calling the Florida Department of Financial Services Consumer Helpline, at 1-877-693-5236.
9. The exclusive venue of any legal or equitable action that arises out of or relates to this Agreement or the Contract shall be a state court of competent jurisdiction in Leon County, Florida; in any such action, Florida law shall apply, but not its choice of law provisions, and the Vendor waives any right to jury trial that it may have.
10. The Department, at its sole discretion, may unilaterally revise the Contract Administrator name and contact information during the term of this Agreement.
11. Terms and conditions, inconsistent with or contrary to the terms and conditions of this Agreement and the Contract, shall not be added to or incorporated into this Agreement or the Contract by any subsequent purchase orders or contracts or otherwise; any such attempts to add or incorporate such terms and conditions shall be null and void.
12. The Vendor shall submit a quarterly sales report to the Department of Management Services Contract Administrator noted below. Quarterly sales report form will be provided by the Contract Administrator. Quarterly reports are due by the 15th of the month following the end of the quarter. Fiscal years run from July 1 – June 30 of each year. Fiscal quarters are as follows:
 - Quarter 1 – July 1 – September 30 (due October 15)
 - Quarter 2 – October 1 – December 31 (due January 15)
 - Quarter 3 – January 1 – March 31 (due April 15)
 - Quarter 4 – April 1 – June 30 (due July 15)
13. The Department reserves the right to require additional reports or information pertaining to this Agreement and any resulting purchase orders or contracts with Customers. The Vendor shall submit the report or information within five business days after receipt of the request, unless otherwise approved by the Department's Contract Administrator.
14. The Vendor shall provide the Department the specific link to the Contract's Master Product List and pricing on Cheney Brothers Order Guide. The Vendor shall, within fifteen (15) days of Agreement award, make available the online order guide that contains the items that are in the scope of the awarded Agreement.
15. Each Customer utilizing this Agreement may establish and maintain with the Vendor a specific Master Product List for their entity. The Customer may add and delete products from the Master Product List as necessary without approval from DMS, the Department of Corrections, other Customers, or the Vendor, as long as that product is carried by the Vendor, and Vendor is in agreement. A Customer's decision to add or delete a product from their specific Master Product List shall not impact the Department of Corrections' Master Product List or any other Customer's Master Product List. The Vendor shall work with the Customer to ensure there is no impact to the Department of Corrections' Master Product List. The Vendor shall make available, upon Customer's request, samples of any products that the Customer may want to include on their Master Product List.

16. All transactions are subject to the terms of the following documents, which, in case of conflict, shall have the order of precedence listed:
- a) This Agreement
 - b) Attachment A, and C, and
 - c) Attachment B, the Contract
 - d) Any purchase order or contract pursuant to this Agreement
17. Attached is the preferred pricing affidavit Attachment C regarding the above-reference Agreement. During the 2010 Session, the Florida Legislature passed a bill with a provision that directs each state agency to identify contracts with a preferred pricing provision. The bill directs agencies to require vendors with such provision in a contract to submit an affidavit attesting that the vendor is in compliance with the preferred pricing provision. The bill was approved by the Governor and can now be found in Chapter No. 2010-151, Laws of Florida. Section 48 of the Law reads as follows:
- a) Each state agency, as defined in s. 216.011, Florida Statutes, shall review its contracts and, for any contract with a preferred-pricing clause, the agency shall ensure that the contractor complies with such clause.
 - b) Each contract executed, renewed, extended, or modified on or after July 1, 2010, which includes a preferred-pricing clause, must require an affidavit from an authorized representative of the contractor attesting that the contract is in compliance with the preferred-pricing clause. Such affidavit must be submitted at least annually. A contractor's failure to comply with a preferred-pricing clause is grounds for terminating the contract at the state agency's sole discretion.
 - c) As used in this section, the term "preferred-pricing clause" means a contractual provision under which the state is offered the most favorable price that the contractor offers to any client.

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The above referenced contract contains a preferred pricing provision. Therefore, the Department is required to obtain an affidavit from an authorized representative of your company attesting compliance with the pricing provision. Attached is a form affidavit ready for signature which will ensure that the Department is in compliance with the new law. Please have an authorized representative execute the affidavit, have it notarized, and return the completed version to the Department. Your cooperation is greatly appreciated.

Approved by:

Division of State Purchasing
Department of Management Services

Cheney Brothers, Inc.

Signature: _____

Signature: _____

Kelley J. Scott, Director of State Purchasing
and Chief Procurement Officer

John Reisigl, General Manager
Cheney Brothers

Date: _____

Date: _____

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The Department may unilaterally cancel this Contract for refusal by the contractor 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 s. 24(a) of Art. I of the State Constitution and Chapter 119, Florida Statutes.

20. Scrutinized Company List. Pursuant to subsection 287.135(5), F.S., by submitting a response to a procurement to which this clause is attached or by signing a contract or renewal of a contract where the value exceeds \$1 million to which this clause is attached, the Respondent or 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, F.S. Pursuant to subsection 287.135(3)(b), F.S., Department may immediately terminate any contract for cause if the Contractor is found to have submitted a false certification under subsection 287.135(5), F.S., 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.

Approved by:

Division of State Purchasing
Department of Management Services

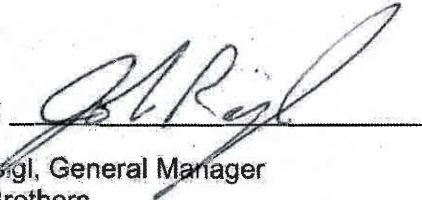
Cheney Brothers, Inc.

Signature: _____



Kelley J. Scott, Director of State Purchasing
and Chief Procurement Officer

Signature: _____



John Reising, General Manager
Cheney Brothers

Date: _____

10/1/14

Date: _____

10-1-14

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Attachment A Special Conditions

The Department will maintain the following information; ordering instructions, and designation of the Department Contract Administrator. Changes to the following information do not require a formal amendment to the Agreement and may be authorized by the Department of Management Services Contract Administrator, or the Administrator's immediate supervisor:

1. PRICE SHEETS:

Please check with the Vendor to see the current Department of Corrections Master Product List and pricing:

2. ORDERING INFORMATION:

Vendor: Cheney Brothers
FEIN: 59-1003104
VENDOR: Cheney Brothers
STREET ADDRESS OR P.O. BOX: One Cheney Way
CITY, STATE, ZIP: Riviera Beach, Florida 33404
CONTACT: John Reisigl
PHONE: (561) 845-4726
FAX: (561) 684-7979
EMAIL: johnr@cheneybrothers.com

3. DEPARTMENT OF MANAGEMENT SERVICES CONTRACT ADMINISTRATOR:

For questions, suggestions, or Vendor issues, please contact:

Frank Miller
Contract Manager
Division of State Purchasing
Florida Department of Management Services
4050 Esplanade Way,
Tallahassee, FL 32399
PHONE: (850) 488-8855
E-MAIL: Frank.Miller@dms.myflorida.com