



FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

state purchasing

We serve those who serve Florida

**State Term Contract
No. 973-000-14-02
For
Financial and Performance Audits**

Between Florida Department of Management Services and Contractor

This Contract is between the State of Florida, Department of Management Services (Department), Division of State Purchasing (Division), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, FL 32399-0950, and Thomas Howell Ferguson, P.A.

The Contractor submitted a reply to the Department's Invitation to Negotiate (ITN) 02-973-000-A for Financial and Performance Audits. After evaluation of replies and concluding of negotiations, the Department has determined that the Contractor's reply provides the best value to the State of Florida and has decided to enter into this Contract for Financial and Performance Audits.

Accordingly, the Department and Contractor agree as follows:

I. Scope of Services

The services to be timely rendered by the Contractor pursuant to this Contract are defined and described in detail in Exhibit C, Scope of Services.

II. Initial Contract Term

The Initial Contract Term of this Contract for Financial and Performance Audits will be for three (3) years. The Initial Contract Term shall begin on January 15, 2014 or on the last date upon which this Contract is signed by all parties, whichever date is later.

III. Renewal Term(s)

Upon mutual written agreement, the Department and the Contractor may renew this Contract, in whole or in part, for a Renewal Term not to exceed the Initial Contract Term of three (3) years, in accordance with Section 287.057(13), F.S., and if deemed in the best interest of the State.

IV. Contract

This Contract, together with the following attached documents (exhibits), set forth the entire understanding of the parties and supersedes all prior agreements, whether written or oral, with respect to such subject matter.

All exhibits attached to this Contract are incorporated in their entirety into, and form part of, this Contract. The Contract has the following exhibits:

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For
Financial and Performance Audits

- a) Exhibit A: Special Contract Conditions, from Section 4.0 of ITN 02-973-000-A as modified during negotiations
- b) Exhibit B: General Contract Conditions, Form PUR 1000 (10/06)
- c) Exhibit C: Scope of Services, from Section 6.0 (Technical Specifications) of ITN 02-973-000-A
- d) Exhibit D: Contractor Pricing, as provided in the best and final offer submitted on October 30, 2013
- e) Exhibit E: Contract Forms, Forms 1 through 4

In case of conflict, the terms of this Contract shall control. If a conflict exists among any of the attached documents, the documents shall have priority in the order listed:

- a) The Contract
- b) Exhibit A: Special Contract Conditions
- c) Exhibit B: General Contract Conditions
- d) Exhibit C: Scope of Services
- e) Exhibit D: Contractor Pricing
- f) Exhibit E: Contract Forms

V. Amendments

No oral modifications to this Contract are acceptable. All modifications to this Contract must be in writing and signed by both parties. Any future amendments of the Contract which alter the definition of the services shall define the services in the same format as Exhibit C, Scope of Services.

Notwithstanding the order listed in section IV, amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent of them will take precedence over anything else that is part of the Contract.

VI. Contract Notices

In addition to the provisions in section 38 of Form PUR 1000 (10/06), contract notices may be delivered by email to the Contractor's designated contact person as prescribed in section VII.

VII. Contract Management

The Department employee who is primarily responsible for maintaining the Contract administration file shall be as follows:

Corina Chiorescu
Contract Manager
Department of Management Services
4050 Esplanade Way #360
Tallahassee, FL 32399-0950
Telephone: (850) 921-0030
Fax: (850) 414-6122

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E-mail: corina.chiorescu@dms.myflorida.com

The Department may appoint a different Contract Manager, which shall not constitute an amendment to the Contract, by sending written notice to Contractor. Any communication to the Department relating to the Contract shall be addressed to the Contract Manager.

The Contractor shall assign one individual to serve as the designated contact person for this Contract. All questions and customer service issues concerning this Contract shall be directed to the Contractor's designated contact person. It will be the designated contact person's responsibility to coordinate with necessary Customer personnel as required to answer questions and resolve issues. The Contractor must provide written notice to the Department if a new employee is designated as the contact person for this Contract.

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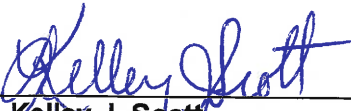
Thomas Howell Ferguson, P.A.


Signature

Jeffrey E. Barbacci
Print Name

12/18/13
Date

STATE OF FLORIDA
Department of Management Services


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

01/13/14
Date



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Contractor

Signature

Print Name

Date

STATE OF FLORIDA
Department of Management Services

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

Date

**EXHIBIT A: SPECIAL CONTRACT CONDITIONS
FOR
STATE TERM CONTRACT
NO. 973-000-14-02
FINANCIAL AND PERFORMANCE AUDITS**

1. BACKGROUND CHECK

If required by the Customer and in accordance with the Customer's instructions, the Contractor shall ensure that background checks, including criminal history checks, are conducted on current and newly-hired employees, including subcontractor employees, prior to the employee or subcontractor providing services under the Contract. Employees and subcontractors of the Contractor providing services per the Contract may be considered persons of special trust and therefore may be required to undergo a Level II background check. The Customer and Contractor may negotiate which party will pay the Florida Department of Law Enforcement and Justice Department fees for the background check. The Contractor shall not allow any employee or subcontractor employee to assist in the providing of services under the Contract if the background checks indicate that the employee fails to meet the qualification standards established for certain State employees pursuant to section 435.04(2), Florida Statutes.

The Contractor shall require its employees and subcontractor employees to report to the Department any criminal matter that the employee has been involved in, whether it is an arrest, charge, indictment, information, conviction, plea of guilty or plea of no contest, regardless of whether adjudication is withheld, as soon as reasonably possible, and in no event later than two business days of such incident.

The Department shall have the right to audit compliance with this section at any time, and the Contractor and its subcontractors shall cooperate with this audit process.

2. SUBCONTRACTING

The Contractor shall be fully responsible for all work performed under the Contract, including, but not limited to, planning, managing, implementing, operation, supporting, and warranties if applicable. The Contractor is solely responsible for ensuring that their subcontractor performs as specified in the Contract. The Contractor shall submit a copy of Form 1: Subcontracting (Exhibit E) to the Department for all subcontractors the Contractor wishes to partner with to provide services under the Contract. During the term of the Contract, subcontractors may be substituted or added by submitting Form 1 to the Department. Before any work is performed under a Statement of Work, the Customer must approve all subcontractors in writing.

Upon reasonable notice to the Contractor, the Department reserves the right to adjust and revise the fields and information collected in Form 1: Subcontracting (Exhibit E) at any time during the Contract.

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3. DEFAULT

Failure to adhere to Contract terms and conditions may be handled in accordance with Rule 60A-1.006, Florida Administrative Code. The Department may take any other actions deemed necessary and appropriate to make the State whole in the event of such default.

4. DATA SANITIZATION

At termination of the Contract, regardless of the reason for termination, the Contractor will return all data owned by the Customer in a standard electronic format of the Customer's choosing. This shall be done no later than 30 days after termination of the Contract. Once all data has been returned and accepted by the Customer, the Contractor shall erase, destroy, and render unrecoverable all Customer-owned data and certify in writing that these actions have been completed and that destruction has been performed according to National Institute of Standards and Technology, Special Publication 800-88, "Guidelines for Media Sanitization" (2006). This shall be done within 14 days of acceptance of the data by the Customer.

Notwithstanding the foregoing and Section 7, H. and I. (Security Acknowledgement), Contractor shall be permitted to maintain one archival copy of Customer-owned data for the period designated by the Customer's retention records schedule, http://dlis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm.

5. COMPLIANCE WITH LAWS

The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287, Florida Statutes, and Chapter 60A-1, of the Florida Administrative Code, govern the Contract. By way of further non-exhaustive example, the Contractor shall comply with section 274a of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of any applicable laws or rules shall be grounds for Contract termination.

6. INTELLECTUAL PROPERTY

Any intellectual property created as a result of the Contract is subject to following provisions:

- A.** Anything by whatsoever designation it may be known, that is produced by, or developed in connection with, the Contract shall become the exclusive property of the of the Customer and may be copyrighted, patented, or otherwise restricted as provided by Florida or Federal law. Neither the Contractor nor any individual employed under the Contract shall have any proprietary interest in the product.
- B.** With respect to each deliverable that constitutes a work of authorship within the subject matter and scope of U.S. Copyright Law, 17 U.S.C. sections 102-105,

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such work shall be a "work for hire" as defined in 17 U.S.C. Section 101 and all copyrights subsisting in such work for hire shall be owned exclusively by the Customer.

- C. The foregoing shall not apply to any preexisting software or other work of authorship used by the Contractor to create a deliverable that exists as a work independently of the deliverable, unless the preexisting software or work was developed by the Contractor pursuant to a previous Contract with the Customer or a purchase by the Customer under a State Term Contract.
- D. The Customer shall have full and complete ownership of all software developed pursuant to the Contract including without limitation:
 - The written source code;
 - The source code files;
 - The executable code;
 - The executable code files;
 - The data dictionary;
 - The data flow diagram;
 - The work flow diagram;
 - The entity relationship diagram; and
 - All other documentation needed to enable the Customer to support, recreate, revise, repair, or otherwise make use of the software.

This ownership interest will continue after the expiration or termination of the Contract.

Notwithstanding the foregoing language, the Contractor's workpapers prepared or developed under this contract are the exclusive property of the Contractor, but Contractor shall permit customer access and review of workpapers upon customer's request. Section 6 (Intellectual Property) survives the expiration and termination of the Contract.

7. SECURITY ACKNOWLEDGEMENT

The prospective Contract will include security provisions addressing the following:

- A. Designating a primary point of contact that the Contractor will coordinate with relative to information security issues that may arise in any resulting Contract;
- B. Prohibiting the exposure of any Customer data without prior approval from the Customer's primary contact;
- C. Prohibiting the access of any Customer data without the prior approval from the Customer's primary contact;
- D. Granting the Customer the ability to conduct or use a third party to conduct security assessments to verify compliance with security requirements;
- E. Stating that ownership of Customer data will remain with the Customer;

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- F.** Stating that the Respondent will not use or redistribute any Customer information processed, stored, or transmitted by the Contractor except as specified in the Contract;
- G.** Stating that at no time will Customer data be processed on or transferred to any portable or laptop computing device or any portable storage medium by the Contractor unless that device or storage medium is in use as part of the Contractor's designated backup and recovery processes;
- H.** Stating that at Contract termination, all Customer data will be returned to the Customer in a usable format to be agreed upon by the Customer and the Contractor; and
- I.** Stating that at Contract termination, after all termination requirements have been met, the Contractor shall erase, destroy, and render unrecoverable all Customer data and certify in writing that these actions have been completed within specified Contract timeframes and that destruction will be performed according to National Institute of Standards and Technology, Special Publication 800-88, "Guidelines for Media Sanitization" (2006). See <http://csrc.nist.gov/>.
- J.** Section 7 (Security Acknowledgement) survives the termination of this contract.

8. TRANSACTION FEE

All payments made under the Contract will be assessed a transaction fee as provided in Section 14 of the PUR 1000. Please review this section for more information regarding the Transaction Fee.

9. MFMP ORDERING INSTRUCTIONS

- A.** The Contractor agrees to meet the following requirements:
 - 1. Provide appropriate contact information for customers to use for product and /or service inquiries and purchases, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the statewide contract; and
 - 2. If orders are to be sent to resellers or distributors for fulfillment then the Contractor is responsible for providing this list of authorized resellers or distributors for use
 - 3. The accuracy of this information must be maintained by Contractor throughout the duration of the statewide contract; and
- B.** Contractor agrees that DMS controls which statewide contracts appear in MFMP and that DMS may elect at any time to remove any Contractor's offering from MFMP.
- C.** Contractor must be able to accept Purchase Orders via fax, e-mail, cXML or EDI INT AS 12.

10. ELECTRONIC INVOICE

The Contractor shall supply electronic invoices in lieu of paper-based invoices for those transactions processed through the MFMP. Contractor agrees, upon Department's request, to establish electronic invoicing within ninety (90) days of written request. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of three mechanisms as listed below.

SECTION 1. cXML (commerce eXtensible Markup Language)

This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the ASN for catalog and non-catalog goods and services. The cXML format is the Ariba preferred method for eInvoicing.

SECTION 2. EDI (Electronic Data Interchange)

This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the ASN for catalog and non-catalog goods and services.

SECTION 3. PO Flip via ASN

The online process allows suppliers to submit invoices via the ASN for catalog and non-catalog goods and services. Contractors have the ability to create an invoice directly from their Inbox in their ASN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third party provider of MFMP, a State Contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

The Contractor will work with the MFMP management team to obtain specific requirements for the Electronic Invoicing upon contract award.

11. PURCHASING CARD PROGRAM

Acceptance of Universal card format Purchasing Cards (e.g., American Express, MasterCard, and Visa) is encouraged, but is not the exclusive method of payment (e.g., Purchase Order). The method of ordering and payment (e.g., Purchase Order, Purchasing Card) shall be selected by the Customer.

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12. PRICING

The Contractor shall adhere to the negotiated ceiling prices, which are incorporated by reference into the Contract. Negotiated prices are “not to exceed” prices and lower pricing may be negotiated by the Customer under this Contract.

13. PROJECT-BASED PRICING

A project-based pricing model may be used by the Customer instead of an hourly rate model to accomplish goals and tasks that include more complex requirements. Customers who choose to use a project-based pricing model shall adhere to the RFQ requirement in Section 18 and shall negotiate all pricing, fees, and related expenses associated with the completion of each task and deliverable with the selected Contractor. Project-based pricing should be fully detailed in the Customer’s Statement of Work.

14. DETAIL OF BILLS

Contractor shall submit bills for fees or other compensation for services or expenses in detail sufficient enough for a proper pre-audit and post-audit. The Department reserves the right to request additional documentation.

15. BILLS FOR TRAVEL

The Customer is not responsible for travel expenses unless he/she authorizes it in writing at the time of issuing the purchase order. If authorized by the Customer, bills for any travel expenses shall be submitted in accordance with s. 112.061, F.S.

16. PUBLIC RECORDS

A. The Contract 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 section 24(a) of Article I of the State 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.

In the event of a public records or other disclosure request pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, to which documents that are marked “Confidential” are responsive, the Department will provide the Contractor redacted copies to the requestor. If a requestor asserts a right to the Confidential Information, the Department will notify the Contractor such an assertion has been made. It is the Contractor’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 Contractor under legal process, the Department shall give the Contractor prompt notice of the demand prior to releasing the information labeled “confidential” (unless otherwise prohibited by applicable law). The Contractor also agrees, at no expense of the Department, to cooperate with the Department in seeking reasonable arrangements to protect the confidential and proprietary nature of the information labeled “Confidential.”

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- B. If, under this contract, the Contractor is providing services and is acting on behalf of the Department as provided under section 119.011(2), Florida Statutes, the Contractor, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:
1. Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the service.
 2. Provide the public with access to public records on the same terms and conditions that the Department 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.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 4. Meet all requirements for retaining public records and transfer, at no cost, to the Department 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 Department in a format that is compatible with the information technology systems of the Department.

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 s. 24(a) of Art. I of the State Constitution and section [119.07](#)(1), Florida Statutes.

17. FINANCIAL CONSEQUENCES FOR NON-PERFORMANCE

The State reserves the right to withhold payment or implement other appropriate remedies when the Contractor has failed to perform/comply with provisions of this Contract. These consequences for non-performance shall not be considered penalties.

18. RFQ REQUIREMENT

Before issuing a Statement of Work under this Contract, the Customer shall issue Requests for Quote (RFQs) to all Contractors. When drafting an RFQ, the Customer must include the following information, but may also include additional information:

1. Statement of Purpose / Need
2. Scope of Work
3. Project Tasks and Deliverables
4. Project Timeline
5. List of Contractor Responsibilities
6. Qualifications / Certifications of the Consultant(s)
7. Method of Compensation

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- 8. Financial Consequences for Non-Performance
- 9. Special Terms and Conditions

19. STATEMENT OF WORK

A. Statement of Work Overview

A Customer shall order services by issuing a Statement of Work. Statements of Work should establish the specific deliverables, costs, payment schedules, start/completion dates, etc. for specific projects. It is the responsibility of the Customer to determine the appropriate scope for a Statement of Work.

B. In creating Statements of Work, Customers are permitted to negotiate terms and conditions which supplement those contained in this Contract. Such additional terms shall not conflict with the terms and conditions established by this Contract (and any such conflicting terms shall be resolved in favor of terms most favorable to the Customer, as determined by the Department). Specific terms and conditions within a Statement of Work are only applicable to that specific Statement of Work and shall not be construed as an amendment to this Contract.

C. Statement of Work Requirements

The following items should be included in every Statement of Work issued by a Customer. All parties to a transaction are responsible for ensuring compliance with this section.

1. Contract Manager

Every Statement of Work should name a Customer Contract Manager, who will be the main Customer point of contact for all issues related to the Services performed under that Statement of Work. The Customer's Contract Manager is the person authorized to make or approve any changes in the requirements of a Statement of Work. In the event the Contractor(s) makes any changes at the direction of any person other than the Contract Manager, the change will be considered to have been without authority and no adjustment will be made in the Statement of Work price to cover any increase in costs occurred as a result thereof. The Customer's Contract Manager is a single point of contact for the Contractor, and has the authority to obtain decisions on behalf of the Customer. The Contract Manager may be responsible for, but not limited to, the performance of the following functions, some of which may be delegated to other Customer staff:

- a. Provide a liaison between the Customer and the Contractor
- b. Review, verify, and approve invoices from the Contractor
- c. Resolve any contractual problems
- d. Ensure the timely review by the Customer of all planning documents
- e. Report on project progress to Customer management
- f. Meet with the Contractor to convey information about schedule, timing, and content of upcoming Deliverables, as well as raising problems and issues
- g. Meet with the Contractor and inform Customer management on the Contractor's problems and issues
- h. Facilitate resolution of problems
- i. Functions as the source of all material sent to the Contractor

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- j. Receive all Deliverables from the Contractor
- k. Archive all Deliverables received from the Contractor
- l. Review all Change Requests looking for communications issues during the problem's lifecycle and follow-up on unresolved issues regarding reproducibility, significance, etc.
- m. Review and approve all subcontractors that the Contractor intends to use

2. Project Completion Dates

Costs to the Customer for each Deliverable and the completion date must be agreed upon in the Statement of Work. The completion date shall be based on the Contractor's project plan and the Customer's needs. The Contractor shall complete each project within the agreed cost and by the estimated completion date, unless the completion date is properly modified.

3. Statement of Work Termination for Cause

In addition to those reasons given in the Contract, the Customer may outline any additional actions or non-actions that may result in a "for cause" termination of the relevant Statement of Work.

4. Statement of Work Changes

Customer is responsible for ensuring that Statements of Work specify the process for change order requests.

5. Statement of Work Recommendations

Customers should consider the following items when creating a Statement of Work. The items here are not mandatory, but the Department strongly suggests that Customers (and Contractors) consider addressing these issues when relevant. This list is not intended to be an exhaustive list; other sections of this Contract contain Statement of Work-level permissions.

a. Inspection and Acceptance

Customers may add specific information related to inspection and acceptance of services, if they so desire.

b. Liability Insurance

If, in the sole discretion of the Customer, liability insurance greater than that required by this Contract is necessary to insure the project, scope of work, or other Deliverables, the additional required insurance amounts should be detailed in the Statement of Work.

c. Minority Participation

Certain State of Florida subdivisions, as well as other Customers, may choose to include participation measures at the time that they conduct Statement of Work RFQs. Therefore, Statements of Work awarded hereunder may include provisions for participation by certified minority and women-owned Contractors or subcontractors, pursuant to processes established by such Customers with respect to such measures.

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d. Performance Bond

The Customer, in its sole discretion, may require the Contractor to furnish without additional cost a performance bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of work under a particular Statement of Work. The appropriateness of this bond requirement and the amount of such bond, if deemed necessary, is the sole responsibility of the Customer.

e. Performance Management System

The Department recommends that the Customer require Contractor to have a performance management system to track project cost, schedule, deviations, and status.

20. CONTRACTOR RESPONSIBILITIES

In accepting a Statement of Work, the Contractor recognizes its responsibility for all tasks and Deliverables contained therein, warrants that it has fully informed itself of all relevant factors affecting accomplishment of the tasks and Deliverables and agrees to be fully accountable for the performance thereof. In addition, the Contractor assumes full responsibility for the acts of all subcontractors.

The Contractor shall provide all management, administrative, clerical, and supervisory functions required for the effective and efficient performance of all Statements of Work it accepts, and shall have sole responsibility for the supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), worker's compensation, disability benefits and the like for its personnel. The Contractor is accountable to the Customer for the actions of its personnel. Each Statement of Work should name a Customer Contract Manager; however, these Contract Managers may be working members of teams and should not be expected to perform supervisory functions.

Contractor's management responsibilities include, but are not limited to, the following:

1. Ensuring personnel understand the work to be performed on Statements of Work to which they are assigned
2. Ensuring personnel know their management chain and adhere to Contractor policies and exhibit professional conduct to perform in the best interest of the Customer
3. Ensuring personnel adhere to applicable laws, regulations, and Contract conditions governing Contractor performance and relationships with the Customer
4. Regularly assessing personnel performance and providing feedback to improve overall task performance
5. Ensuring high quality results are achieved through task performance

The Contractor shall not perform any inherently governmental actions under this Contract.

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21. OTHER CONTRACTORS

A. Other Work

The Customer may undertake or award other contracts, Statements of Work, or other arrangements for additional or related work, and the Contractor shall reasonably cooperate with such other Contractors and pertinent Customer personnel. The Contractor shall not commit or permit any act that shall interfere with the performance of work by any other Contractors or by Customer personnel.

B. Transition of Work

The Contractor agrees to exercise its best efforts and cooperation to effect an orderly and efficient transition of any Statement of Work or other contract, project, or other agreement, if necessary.

When appropriate, Statement of Work management personnel shall meet with a successor Contractor to coordinate Statement of Work transition. Discussions may include personnel transition to the successor Contractor or the transition of Statement of Work-specific items such as Customer or Contractor furnished supplies, materials, equipment, and services.

22. TREATMENT OF CUSTOMER ASSETS

Title to all property furnished by the Customer under this Contract or any Statement of Work shall remain with the Customer, and Contractor shall surrender to the Customer all property of the Customer prior to settlement upon completion, termination, or cancellation of any Statement of Work.

Any property of the Customer furnished to the Contractor shall, unless otherwise provided herein or approved by the Customer, be used only for the performance of the Services.

23. CONTRACTOR WARRANTIES

The Contractor agrees to the following representations and warranties:

1. **Repair of Damaged Data Warranty.** The Contractor represents that, should any defect or deficiency in any Deliverable, or the remedy of such defect or deficiency, cause incorrect data to be introduced into any Customer's database or cause data to be lost, the Contractor shall be required to correct and reconstruct, within the timeframe established by the Customer's Contracting Officer, all production, test, acceptance and training files or databases affected which are used in the provision of services, at no additional cost to the Customer.
2. **Quality Assurance Warranty.** The Contractor represents that it will at all times use a formal Software development process when the Services or Deliverables involve software modification or development.

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3. Limitation of Warranty for Customer-Furnished Software. In lieu of any other warranty expressed or implied herein, the Customer warrants that any programming aids and software packages supplied for Contractor use as Customer-furnished property shall be suitable for their intended use on the system(s) for which designed. In the case of programming aids and software packages acquired by the Customer from a commercial source, such warranty is limited to that set forth in the contractual document covering the product(s). Should Customer-furnished programming aids or software packages not be suitable for their intended use on the system(s) for which designed, except where such property is furnished "as is," the Contractor shall notify the Customer's Contracting Officer and supply documentation regarding any defects and their effect on progress on the Statement of Work. The Customer's Contracting Officer will consider equitably adjusting the delivery performance dates or Statement of Work price, or both, and any other contractual provision affected by the Customer-furnished property in accordance with the procedures provided for in the clause of this contract entitled "Changes".

24. STATEMENT OF WORK TERMINATION

Upon the termination of any Statement of Work or a portion thereof, the Customer may require the Contractor to deliver to the Customer any Deliverables specifically produced or acquired for the performance of such part of any Statement of Work. Customer shall pay the Contractor for Deliverables received and accepted by the Customer, however, in no event shall the Customer pay to the Contractor an amount greater than the Contractor would have been entitled to if the Statement of Work were not terminated.

After receipt of a notice of termination, and except as otherwise directed by the Customer, the Contractor shall stop performing services on the date, and to the extent specified, in the notice.

The Contractor shall accept no further Statements of Work for additional or other services related to the affected Statement of Work, and shall, as soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate any orders and/or subcontracts related to the terminated Statement of Work and settle all outstanding liabilities and all claims arising out of such termination of orders and/or subcontracts, with the approval or ratification of the Customer to the extent required, which approval or ratification shall be final for the purpose of this section.

The parties shall also settle any transfers of property which may have been required to be furnished to Customer or which otherwise belongs to the Customer; and Contractor shall provide written certification to the Customer that the Contractor has surrendered to the Customer all said property.

The termination of a Statement of Work shall not affect the performance or quality of any other unrelated Statement of Work being performed by the Contractor for the same Customer or any other Customer.

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25. INSURANCE REQUIREMENTS

Insurance Coverage

Commencing no later than five calendar days after execution of this Contract, the Contractor shall, at its own expense, secure and maintain the insurance coverage required by law and explicitly required by this section and shall provide proof to the Department for approval. Performance may not commence on this Contract until such time as insurance is secured by the Contractor and approved by the Department.

Commercial General Liability

The Contractor shall secure and maintain commercial general liability insurance in a face amount of \$5,000,000. The Department shall be named as an additional insured in the general liability coverage policy. Each policy shall include thirty (30) calendar days prior written notice to the Department of cancellation for any coverage.

Workers' Compensation Insurance

The Contractor shall secure and maintain workers' compensation insurance as required for the State under the relevant workers' compensation law. The workers' compensation insurance shall cover all employees connected with the Services provided under this Contract. In case any work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all of the subcontractor's employees unless such employees are covered by the protection afforded by the Contractor. Such insurance shall comply fully with the Federal and Florida workers' compensation law. In case any class of employees engaged in hazardous work under this Contract at the site of the project is not protected under the workers' compensation statute, the Contractor shall provide, and cause each subcontractor to provide, adequate insurance, satisfactory to the Department, for the protection of employees not otherwise protected.

Professional Indemnity Insurance

The Contractor shall secure and maintain professional indemnity insurance that shall cover Professional Liability and Error and Omissions in the face amount of \$5,000,000.

Auto insurance

The Contractor shall secure and maintain liability coverage in minimum limits of \$2,000,000 (with umbrella) on all automobiles used in performing the services under the Contract.

Subcontractor Provider Insurance Coverage

Before providing services to the Customer, any subcontractor of the Contractor shall provide insurance as follows:

General Liability - \$2,500,000;
Workers' Compensation – statutorily required amount; and
Automobile Liability (with umbrella) - \$2,000,000.

The Contractor's major subcontractors shall provide the following additional insurance:
Errors and Omissions -- \$2,500,000.

Proof of Insurance

At the request of the Department, the Contractor shall provide all relevant certificates and endorsements as proof of such insurance or proof of its ability to self-insure, including renewal or replacement evidence of insurance at least 30 days prior to the expiration or termination of any insurance.

Deductible Amounts

The deductible amounts for any peril shall not exceed those determined by the Contractor to be customary in the industry. The Contractor shall be responsible for payment of its deductible.

Self-Insurance

For any required insurance coverage, the Contractor may use a self-insurance program, provided such program has received prior written approval of the Department.

26. REPORTING REQUIREMENTS

Each Contractor shall submit a sales report on a quarterly basis using Form 2: Contract Quarterly Report. Reporting periods coincide with the State Fiscal Year:

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

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

- Contractor's Name and contact information
- Detail of time period covered by included data
- Total sales including detail of list price and contract price
- Transaction detail (See Form 2: Contract Quarterly Report)

Failure to provide quarterly and annual sales reports, including no sales, within thirty (30) calendar days following the end of each quarter (January, April, July and October) and/or contract year may result in the Contractor being found in default and cancellation of the contract by the Department. Upon request, the Contractor shall report to the Department, spend with certified and other minority business enterprises. Reports must include the period covered, the name, minority code and Federal Employer Identification Number of each minority vendor utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority vendor on behalf of each purchasing agency ordering under the terms of this Contract. Initiation and submission of the Contract Sales Summaries are to be the responsibility of the Contractor without prompting or notification by the Contract Manager. The Contractor will submit the completed Contract Sales Summary forms by email to the Contract Manager.

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Upon reasonable notice to the Contractor, the Department reserves the right to adjust and revise the fields and information collected in Form 2: Contract Quarterly Report (Exhibit E) at any time during the Contract.

27. PREFERRED PRICE AFFIDAVIT REQUIREMENT

The Department will provide the Preferred Pricing Affidavit, incorporated by reference, section 216.0113, Florida Statutes, for completion by an authorized representative of the Contractor attesting that the Contractor is in compliance with the best pricing provision in Section 4(b) of the PUR 1000 form. If awarded, the Contractor agrees to submit to the Department, at least annually, the completed signed Preferred Pricing Affidavit.

28. E-VERIFY

Pursuant to State of Florida Executive Order No.: 11-116, the 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, the Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the State Term Contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the Contract term.

29. SCRUTINIZED COMPANIES LIST

The 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, the Contractor agrees the Department may immediately terminate the Contract for cause if the Contractor is found to have submitted a false certification or if the 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.

EXHIBIT B: GENERAL CONTRACT CONDITIONS

**State of Florida
PUR 1000
General Contract Conditions**

Contents

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

(a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.

(c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

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

3. Product Version. Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

4. Price Changes Applicable only to Term Contracts. If this is a term contract for commodities or services, the following provisions apply.

(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on

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quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

(b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.

(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

(d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

(e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

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

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

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

8. Safety Standards. All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner

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

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

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

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

12. Installation. Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

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

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Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

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

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

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

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

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

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

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

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

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

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

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

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

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product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.

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

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

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

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

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

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

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

25. Changes. The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within

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the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39. Leases and Installment Purchases. Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any

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lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

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

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

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

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

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

44. Waiver. The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to

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enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

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

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

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

**EXHIBIT C: SCOPE OF SERVICES
FOR
STATE TERM CONTRACT
NO. 973-000-14-02
FINANCIAL AND PERFORMANCE AUDITS**

1. OVERVIEW

This exhibit contains Job Title and service descriptions. The Job Title descriptions contain the functional responsibilities of the personnel provided by the Contractor to provide services under the Contract. Section 3 contains a list of the types of services the Contractor will be required to provide under the Contract.

2. JOB TITLES

A. Principal

Functional Responsibilities:

- Providing executive level consultation services to the Customer
- Providing senior-level interface with the Customer and manages daily operations
- Ensuring the timely performance and completion of all contractual obligations
- Organizing and directing the overall performance of the contract
- Possessing the authority to make binding decisions on behalf of the Contractor
- Formulating organizational strategy and directing major strategic initiatives
- Ensuring that goals and objectives are accomplished within budgetary parameters
- Developing and maintaining Customer relationships
- Assisting on large, complex or multi-discipline engagements
- Allocating financial and human resources, and material assets
- Formulating and enforcing work standards
- Participating in the design phase of tasks and ensuring their successful execution

B. Senior Consultant

Functional Responsibilities:

- Managing the day-to-day operations
- Ensuring the quality and timely completion of projects
- Providing technical and subject matter expertise in fulfillment of Statements of Work
- Participating as a senior team member providing high-level consulting services
- Planning, organizing, and executing project tasks in successful delivery of services
- Developing and defining strategic visions
- Planning, directing, controlling, scheduling, coordinating, and organizing management of tasks
- Providing Customer interface in fulfillment of Statements of Work
- Possessing authority and responsibility for the execution of Statements of Work

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- Planning, organizing, and overseeing all subordinate work efforts
- Ensuring quality standards and work performance on all Statements of Work and projects
- Organizing, directing, and managing support services

C. Consultant

Functional Responsibilities:

- Applying administrative, consultative, and technical expertise in fulfillment of Statements of Work
- Planning, organizing, executing, and controlling project tasks in successful delivery of services
- Interfacing with client on a day-to-day basis to ensure delivery of project status
- Applying a broad set of management skills and technical expertise as a project leader
- Providing solutions through analysis
- Directing subordinates in the completion of tasks orders
- Organizing, directing, and managing support services
- Assigning tasks and overseeing projects
- Directing project activities in fulfillment of contract deliverables and Statements of Work
- Training Customer personnel through formal classroom courses

D. Junior Consultant

Functional Responsibilities:

- Applying a broad set of subject matter and technical expertise
- Directing the completion of projects within estimated timeframes and budget constraints
- Organizing, directing, and managing support services
- Serving as a member of a team performing mid-level assignments
- Providing solutions through analysis
- Conducting Customer training through formal classroom courses, workshops, and seminars

E. Program and Administrative Support

Functional Responsibilities:

- Coordinating and providing administrative support services to project staff
- Supporting the production of project deliverables and performing administrative functions required to complete work related to the project
- Providing graphics and editorial support services and desktop publishing services
- Maintaining version control of project documents
- Providing direct support to consulting staff, including supporting the development of all Contract deliverables

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3. FINANCIAL AND PERFORMANCE AUDITS

The Contractor shall provide financial auditing services, giving an attestation of whether the financial statements of an audited entity present fairly the financial position, results of operations, and cash flows in conformity with generally accepted accounting principles.

Financial and Performance Audit services shall include, but are not limited to, the following:

- **Financial Statement Audits**
Audit of financial statements prepared in conformity with standards of accounting issued by Statement of Federal Financial Accounting Standards (SFFAS) and by the American Institute of Certified Public Accountants (AICPA)
- **Segments of Financial Statements**
Audit financial information, i.e. statement of revenue and expenses, statement of cash receipts and disbursements, statement of fixed assets, budget requests, and variances between estimated and actual financial performance
- **Internal Controls**
 - Audit for compliance with laws and regulations such as those governing the bidding for, accounting for, and reporting on grants and contracts including proposals, amounts billed, and amounts due on termination claims
 - Audit financial reporting and safeguarding assets including the use of computer-based systems
- **Compliance with Laws and Regulations**
- **Economy and Efficiency Audits**
 - Assess business practices
 - Evaluate acquisition of appropriate type, quality and amount of resources at an appropriate cost
 - Assess duplication of effort by employees and work that serves little or no purpose
 - Evaluate the optimum amount of resources (staff, equipment, and facilities) in producing or delivering the appropriate quantity and quality of goods or services in a timely manner
 - Evaluate compliance with requirements of laws and regulations that could significantly affect the acquisition, protection, and use of resources
 - Assess management control systems for measuring, reporting, and monitoring a program's economy and efficiency
 - Evaluate reported measures of economy and efficiency
- **Program Results and Program Fraud Audits**
 - Assess whether the objectives of a new or ongoing program are proper, suitable, or relevant
 - Determine the extent to which a program achieves a desired level of program results

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- Assess the effectiveness of the program and/or individual program components
- Determine whether the program complements, duplicates, overlaps, or conflicts with other related programs
- Assess compliance with laws and regulations applicable to the program

**EXHIBIT D: CONTRACTOR PRICING (EXAMPLE)
FOR
STATE TERM CONTRACT
NO. 973-000-14-02
FINANCIAL AND PERFORMANCE AUDITS**

VENDOR PRICING

Job Title	Principal	Senior Consultant	Consultant	Junior Consultant	Program & Administrative Support
Hourly Rate	\$ ____	\$ ____	\$ ____	\$ ____	\$ ____

Pursuant to Section 12 of Exhibit A: Special Contract Conditions, hourly rates are ceiling prices.
Pursuant to Section 15 of Exhibit A: Special Contract Conditions, hourly rates do not include travel expenses.

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EXHIBIT E: FORMS
STATE TERM CONTACT
NO. 973-000-14-02
FINANCIAL AND PERFORMANCE AUDITS

Forms included in this exhibit:

- FORM 1: Sub contracting
- FORM 2: Contract Quarterly Report (MS Excel File)
- FORM 3: Contact Information and Ordering Instructions
- FORM 4: Savings/Price Reductions

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FORM 1: SUBCONTRACTING

The Contractor should complete and submit to the Department the information below on all subcontractors that will be providing services to the Contractor to meet the requirements of the resultant contract. Submission of this form does not indicate the Department's approval of such subcontractor(s), but provides the Department with information on proposed subcontractors for review.

Complete a separate sheet for each subcontractor.

Service: _____

Company Name: _____

Contact: _____

Address: _____

Telephone: _____

E-mail address: _____

Current Registered as Certified Minority
Business Enterprise (CMBE) or Women-
Owned Business (WBE).

Yes _____

No _____

Occupational License No: _____

Is the Subcontractor's Certificate of
Insurance provided with this form?

Yes _____

No _____

W-9 verification:

Yes _____

No _____

In a job description format, identify the responsibilities and duties of the subcontractor based on the technical specifications or scope of services outlined in this solicitation.

Note: Upon reasonable notice to the Contractor, the Department reserves the right to adjust and revise the fields and information collected in Form 1: Subcontracting at any time during the Contract.

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FORM 2: CONTRACT QUARTERLY REPORT (MS EXCEL FILE)

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FORM 3: CONTACT INFORMATION AND ORDERING INSTRUCTIONS

Contractor's Designated Contact Person

Contact's Name: _____

Contact's Title: _____

Street Address: _____

Phone Number: _____

Fax Number: _____

Email Address: _____

Ordering Instructions

Company Name: _____

Contractor
Representative Name: _____

Contractor
Representative Title: _____

Street Address or P.O.
Box: _____

City, State, Zip: _____

Email Address: _____

Phone Number: _____

Ordering Fax Number: _____

Internet Address: _____

Federal ID Number: _____

Remit Address: _____

City, State, Zip: _____

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Note: Upon reasonable notice to the Contractor, the Department reserves the right to adjust and revise the fields and information collected in Form 3: Contact Information and Ordering Instructions at any time during the Contract.

For

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**STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
DIVISION OF STATE PURCHASING
FORM 4
SAVINGS/PRICE REDUCTIONS**

Contract No. 991-010-14-01, Financial and Performance Audits

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

DATE _____

COMPETITIVE PRICES OFFERED AVERAGE _____ % SAVINGS FROM MSRP.

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

AUTHORIZED SIGNATURE: _____

TELEPHONE NUMBER: _____

BIDDER/RESPONDENT NAME: _____

STATE PURCHASING USE ONLY:

NEW DISCOUNT RATES WERE REQUESTED FROM THE VENDOR, STATE PURCHASING ANALYST/SPECIALIST TOOK THE FOLLOWING STEPS TO VERIFY SAVINGS:

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WHAT WERE THE RESULTS? _____

PURCHASING ANALYST/SPECIALIST: _____

PUR 7064 (Rev 2/04)