

State of Florida
Department of Transportation
District Five
Contractual Services M.S.-524
719 South Woodland Boulevard
DeLand, FL 32720-6834

INVITATION TO NEGOTIATE REGISTRATION

**PLEASE COMPLETE AND RETURN THIS FORM ASAP
TO THE ABOVE ADDRESS OR FAX TO (386) 736-5354**

ITN Number: ITN-DOT-08-09-5003-CCC

Title: Central Florida Commuter Rail Transit (CFCRT) BI-LEVEL COACHES AND CAB CARS

Sealed Reply Due Date & Time:

Qualification Questionnaire: March 13, 2009, 4:00PM (see timeline)

Technical and Preliminary Price Proposals: April 17, 2009 4:00PM (see timeline)

Vendors should notify our office by returning this Registration Form as soon as possible after downloading. Complete the information below and fax or email this sheet only to the Florida Department of Transportation Procurement Office at (Fax number, of Procurement Office email address below), or mail to the address noted above.

THE INVITATION TO NEGOTIATE DOCUMENT YOU RECEIVED IS SUBJECT TO CHANGE. Notice of changes (addenda), will be posted on the Florida Vendor Bid System at www.myflorida.com , under this ITN number (click on “BUSINESS”, click on “Doing Business with the State”, under “Everything for Vendors and Customers”, click on “Vendor Bid System (VBS)”, then click on “Search Advertisements”, click on the drop-down arrow beside the box under Advertisement Type, select Competitive Solicitation, click on the drop-down arrow beside the box under Agency, select DEPARTMENT OF TRANSPORTATION, then go to the bottom of the same page and click on Initiate Search). It is the responsibility of all potential Vendors to monitor this site for any changing information prior to submitting your reply. Please read this document in its entirety.

Company Name: _____

Address: _____

City, State, Zip: _____

Telephone: () _____ Fax Number: () _____

Contact Person: _____

Internet E-Mail Address: _____

For further information on this process, you may e-mail or telephone: **Roger Masten**, roger.masten@dot.state.fl.us, **phone: (386) 943-5536.**

QUALIFICATIONS QUESTIONNAIRE

INVITATION TO NEGOTIATE #: ITN-DOT-08-09-5003-CCC

TITLE: Central Florida Commuter Rail Transit (CFCRT) BI-LEVEL COACHES AND CAB CARS

VENDOR: _____ FAX #: _____

SUBMITTED BY: _____ SIGNED: _____ Date: _____

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(Name Printed)

(Signature)

The review/evaluation of the responses to this questionnaire will not be included in decisions beyond determining the initial shortlist of Vendors to proceed in the ITN process.

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Responses to the following questions and work references are limited to a total of five (5) pages (8-1/2 inches by 11 inches), single side, with a minimum font size of 10. Responses not adhering to these limits will be considered "non-responsive" and not considered for this procurement.

Questions:

1. Briefly describe the production capabilities of your business to deliver the initial 2 units by January 30, 2011 and the remaining by June 30, 2011
2. Summarize the proposed delivery schedule for the units requested. (For example, one (1) vehicle per month beginning in January 30 2011.
3. Summarize the contracts completed by your business to provide Bi-Level Coaches and Cab Cars to government agencies in the United States.
4. Describe how low level above top of rail (ATR) boarding requirements will be met (minimum ATR is 15" and maximum of 25" ATR)
5. Describe your design and production capabilities that will support your ability to produce a low floor vehicle, or provide description of a floor plan up to 25" floor heights.
6. Show your production capacity on a work percentage vs. time chart. Include all current orders for cars on the chart.
7. List Proposed Subcontractor/Suppliers for Toilets, Trucks, Controls for Propulsion, HVAC Units, Seats and Auxiliary Power Units.
8. Describe your Quality Assurance Process.
9. Describe your firm's history with design and production of FRA compliant passenger vehicle design (CFR 49 238).
10. Describe your firm's history of delivery of vehicles per contract procurement schedules.

11. Describe your firm's experience with bi-level design.
12. Provide email addresses of contacts along with phone numbers for references from agencies for which you have provided vehicles.

INVITATION TO NEGOTIATE #: ITN-DOT-08-09-5003-CCC

WORK REFERENCES

List a minimum of three (3) similar projects with the following information. This information is included in the five (5) page limit cited above.

- a. Project name and location,
- b. Owner's contract number,
- c. Scope of work performed,
- d. Name of owner and address,
- e. Name, address and telephone number of owner's Project Manager or a responsible individual who is knowledgeable about and available to discuss the project,
- f. Contract starting date, Initial (original) contract completion date and final contract completion date,
- g. Provide, in narrative form, a technical description of the work,
- h. Provide owner performance evaluation, if available,
- i. Identify whether the business was defaulted or terminated in full or in part for the contract. Give a brief description of the circumstances, and
- j. List any and all litigation for the contracts listed. Indicate the details of the dispute, amount of the dispute, court where filed, court action case number, and details of the results if concluded.

DBE PARTICIPATION STATEMENT

Note: The Proposer is encouraged to complete the following information and submit this form with the Technical Proposal. However, submission of this form is not mandatory and at the discretion of the Proposer.

Project Description: Central Florida Commuter Rail Transit (CFCRT) BI-LEVEL COACHES AND CAB CARS

Proposer Name: _____

This Vendor (is____) (is not____) a Department of Transportation certified Disadvantaged Business Enterprise (DBE).

Expected percentage of contract fees to be subcontracted to DBE(s): _____ %

If the intention is to subcontract a portion of the contract fees to DBE(s), the proposed DBE subcontractors are as follows:

<u>DBE Sub-Contractor</u>	<u>Type of Work/Commodity</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

By: _____

Title: _____

Date: _____

Vendor Data Sheet

Bid Number: ITN-DOT-08-09-5003-CCC

Bid Title: Central Florida Commuter Rail Transit (CFCRT) BI-LEVEL COACHES AND CAB CARS

NOTE: In submitting a response, the proposer acknowledges they have read and agree to the solicitation terms and conditions and their submission is made in conformance with those terms and conditions.

ACKNOWLEDGEMENT: I certify that I have read and agree to abide by all terms and conditions of this solicitation and that I am authorized to sign for the proposer. I certify that the response submitted is made in conformance with all requirements of the solicitation.

Vendor _____

FEID # _____

Address: _____

City, State, Zip _____

Phone No. _____

E-Mail Address _____

Authorized Signature: _____

Printed / Typed: _____

Title: _____

Date: _____

DRUG-FREE WORKPLACE PROGRAM CERTIFICATION

Procurement (ITB/RFP/ITN) No.: ITN-DOT-08-09-5003-CCC

Title/Description: Central Florida Commuter Rail Transit (CFCRT) BI-LEVEL COACHES AND CAB CARS

I, _____,

(name)

(title)

of _____, hereby certify that this firm has implemented

(name of firm)

a drug-free workplace program in accordance with the provision of Section 287.087, Florida Statutes.

±

(Signature)

(Date)

287.087 Preference to businesses with drug-free workplace programs.--Whenever two or more bids, proposals, or replies that are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid, proposal, or reply received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

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

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

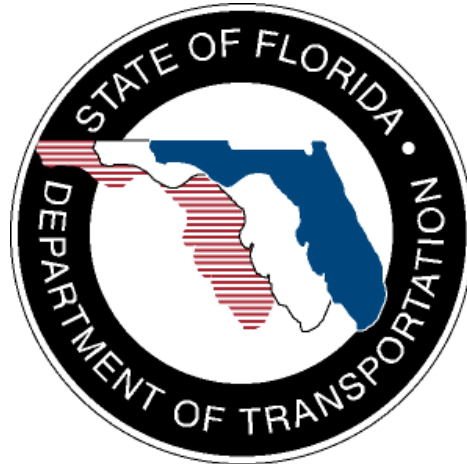
(3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).

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

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

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

**State of Florida
Department of Transportation**



INVITATION TO NEGOTIATE
Central Florida Commuter Rail Transit (CFCRT)
BI-LEVEL COACHES AND CAB CARS

ITN-DOT-08-09-5003-CCC

CONTACT FOR ADMINISTRATIVE QUESTIONS:

Roger Masten

Roger.Masten@dot.state.fl.us

Fax: (386) 736-5354

Phone: (386) 943-5536

Florida Department of Transportation
District Five Contractual Services M.S.# 524
719 South Woodland Boulevard.
DeLand, FL 32720-6834

INTRODUCTION SECTION

1) INVITATION

The State of Florida Department of Transportation (hereinafter referred to as the "Department") is soliciting interested Vendors for a term contract to provide Three (3) Bi-Level Coaches and Seven (7) Bi-Level Cab Cars. Interested Vendors must register as set forth in special conditions. Interested Vendors must then complete the Qualifications Questionnaire and submit their response by the date and time to the location cited in Section 2 below. Vendors that best respond to the Qualifications Questionnaire will be shortlisted and requested to provide Technical and Preliminary Price Proposals for the vehicles.

The contract for the production of the initial Three (3) Bi-Level Coaches and Seven (7) Bi-Level Cab Cars will cover the period from May 2009 through June 2011. The contract will include the option for the purchase of up to an additional Thirty Five (35) Coaches and or Fifteen (15) Cab Cars to be exercised within five years. The Vendor will be required to coordinate with the CFCRT Design/Build Firm, who is responsible for building the Vehicle Storage and Maintenance Facility for storage and security of the Bi-Level Coaches and Cab Cars, regarding schedule and method of delivery for the Cars. The CFCRT Chief Operating Officer (COO) will assist in the coordination between the Vendor and the Design/Build Firm. The CFCRT Design/Build Firm will have completed the required storage track in the Vehicle Storage and Maintenance Facility for the receipt of the Bi-Level Coaches and Cab Cars no sooner than January 30, 2011; therefore, delivery of vehicles cannot occur prior to this date. The Vendor will also be required to coordinate with the CFCRT Operations and Maintenance Contractor and the Chief Operating Officer regarding testing and acceptance of all Bi-Level Coaches and Cab Cars delivered to the CFCRT project.

Subject to the terms of this Invitation to Negotiate ("ITN") the Department intends to execute a contract with a responsive and responsible Vendor whose negotiation is determined by the Selection Committee to be the Best Value to the Department. After the contract has been executed, said Vendor will be referred to as the "Selected Vendor".

2) TIMELINE

Provided below is a list of expected dates and actions. These dates are subject to change by addenda hereto that may be issued from time to time. Addenda will be posted on the Florida Vendor Bid System at www.myflorida.com (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements") under this ITN number. It is the responsibility of all potential Vendors to continually monitor this site for any Addenda.

<u>ACTION / LOCATION</u>	<u>DATE</u>	<u>TIME</u>
ADVERTISE VBS -	February 18, 2009	
DEADLINE FOR TECHNICAL QUESTIONS RELATED TO QUALIFICATIONS QUESTIONNAIRE - There is no deadline for (see section 2 of Special Conditions) Administrative questions	February 25, 2009	4:00PM
ANSWERS TO TECHNICAL QUESTIONS POSTED ON THE VENDOR BID SYSTEM	March 4, 2009	4:00PM

QUALIFICATION QUESTIONNAIRE DUE TO: Roger Masten Florida Department of Transportation, District Five 719 South Woodland Boulevard DeLand, Florida 32720-6834(386) 943-5536 (see section 8, 17, and 23 of Special Conditions)	March 13, 2009	4:00PM
PUBLIC OPENING OF QUALIFICATION QUESTIONNAIRE at: Volusia County Conference Room, fourth floor Florida Department of Transportation, District Five 719 South Woodland Boulevard DeLand, Florida 32720-6834 (see section 8, 17, and 23 of Special Conditions)	March 13, 2009	4:30PM
PUBLIC MEETING OF TECHNICAL COMMITTEE TO EVALUATE QUALIFICATIONS QUESTIONNAIRES Live Oak Conference Room, first floor Florida Department of Transportation, District Five 719 South Woodland Boulevard DeLand, FL 32720-6834	March 18, 2009	9:00AM
PUBLIC MEETING OF SELECTION COMMITTEE TO SHORTLIST at: Secretary's Conference Room, fourth floor Florida Department of Transportation, District Five 719 South Woodland Boulevard DeLand, Florida 32720-6834 (see section 20 of Special Conditions)	March 23, 2009	8:15AM
*POSTING OF SHORTLIST ON VBS (see section 25 of Special Conditions)	March 23, 2009	12:00 Noon
PRE-REPLY CONFERENCE at: Volusia County Conference Room, fourth fourth floor Florida Department of Transportation, District Five 719 South Woodland Boulevard DeLand, Florida 32720-6834 (see section 7 of Special Conditions)	March 31, 2009	3:00PM
DEADLINE FOR TECHNICAL QUESTIONS FROM SHORTLISTED FIRMS. (see section 2 of Special Conditions)	April 3, 2009	4:00 PM
ANSWERS TO TECHNICAL QUESTIONS FROM SHORTLISTED FIRMS POSTED ON VENDOR BID SYSTEM	April 10, 2009	4:00PM
TECHNICAL AND PRELIMINARY PRICE PROPOSALS DUE to: Roger Masten Florida Department of Transportation, District Five District Five, M.S.#524 719 South Woodland Boulevard DeLand, FL 32720-6834 (see section 17 through 21 of Special Conditions)	April 17, 2009	4:00PM

TECHNICAL AND PRELIMINARY PRICE PROPOSAL OPENING at:	April 17, 2009	4:30PM
Volusia Conference Room, fourth floor Florida Department of Transportation, District Five 719 South Woodland Boulevard DeLand, FL 32720-6834 (see section 19 of Special Conditions)		
PUBLIC MEETING FOR QUESTION & ANSWER SESSION at:	April 30, 2009	9:00 AM
Volusia Conference Room, fourth floor Florida Department of Transportation, District Five 719 South Woodland Boulevard DeLand, FL 32720-6834 (see section 22 of Special Conditions)		
SELECTION COMMITTEE FINAL RANKING AND DECISION ON NEGOTIATIONS	May 11, 2009	8:15 AM
Secretary's Conference Room, fourth floor Florida Department of Transportation, District Five 719 South Woodland Boulevard DeLand, FL 32720-6834		
*POSTING OF RANKING ON VBS (see section 25 of Special Conditions)	May 11, 2009	12:00 Noon
BEGIN NEGOTIATIONS at:	May 14, 2009	1:00 PM
Live Oak Conference Room, first floor Florida Department of Transportation, District Five 719 South Woodland Boulevard DeLand, FL 32720-6834 (see section 23 of Special Conditions)		
SELECTION COMMITTEE FINAL SELECTION MEETING	June 8, 2009	8:15 AM
Secretary's Conference Room, fourth floor Florida Department of Transportation, District Five 719 South Woodland Boulevard DeLand, FL 32720-6834		
POSTING OF INTENDED AWARD	June 8, 2009	10:00 AM
ANTICIPATED AWARD	June 11, 2009	10:00 AM
ANTICIPATED EXECUTION	June 25, 2009	10:00 AM

(*All 72 hour postings do not t count Holidays and weekends)

3) SPECIAL ACCOMMODATIONS

Any person with a qualified disability requiring special accommodations at a pre-reply conference, public meeting, oral presentation and/or opening shall contact the contact person at the phone number, e-mail address or fax number provided on the title page at least five (5) working days prior to the event. If you are hearing or speech impaired, please contact this office by using the Florida Relay Services which can be reached at 1 (800) 955-8771 (TDD).

SPECIAL CONDITIONS

1) MyFloridaMarketPlace

Since July 1, 2003, the Department has been using the State of Florida's web-based electronic procurement system, MyFloridaMarketPlace. VENDORS MUST BE REGISTERED IN THE STATE OF FLORIDA'S MYFLORIDAMARKETPLACE SYSTEM BY THE TIME AND DATE THE TECHNICAL PROPOSALS ARE DUE OR THEY WILL BE CONSIDERED NON-RESPONSIVE (see Special Condition 13). All prospective Vendors that are not registered, should go to <https://vendor.myfloridamarketplace.com/> to complete on-line registration, or call 1-866-352-3776 for assisted registration.

2) QUESTIONS & ANSWERS

In accordance with section 287.057(24), Florida Statutes, respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

Except for the Pre-Reply Conference, all technical questions arising from this Invitation to Negotiate must be submitted in writing as described below. Questions must be received no later than the applicable time and date reflected on the Timeline. Vendors shall direct all questions to the Department by posting them to the Department's website at the following URL address: <http://www2.dot.state.fl.us/construction/d5/bidquestions.asp>. Responses to questions will be posted to this website. Questions posted after the applicable deadline stated in the Timeline will not be answered. When, in the sole judgment of the Department, responses to questions require revisions to any procurement related document an appropriate addendum will be posted on the VBS System.

The Department's written response to Technical Questions submitted timely by Vendors will also be posted on the Florida Vendor Bid System at www.myflorida.com (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements"), and to the Department's website at the following URL address: <http://www2.dot.state.fl.us/construction/d5/bidquestions.asp> under this ITN number. **It is the responsibility of all potential Vendors to continually monitor this site for any changing information.**

WRITTEN ADMINISTRATIVE QUESTIONS All questions regarding administrative aspects of the procurement process should be in writing and directed to the Purchasing Agent listed below. These questions and any answers will not be posted on the VBS but will be responded to directly, as appropriate.

Roger Masten, Purchasing Agent
Florida Department of Transportation
District 5, Procurement Services M.S.#524
719 South Woodland Boulevard.
DeLand, FL 32720-6834
Fax: (386) 736-5354
Roger.Masten@dot.state.fl.us

3) CHANGES TO THE INVITATION TO NEGOTIATE (ADDENDA)

Addenda will be posted on the Florida Vendor Bid System at www.myflorida.com (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements") under this ITN number. It is the responsibility of all potential Vendors to continuously monitor this site for any changing information. Each Vendor must acknowledge the receipt of all

addenda by signature and subsequent submission of the signed addenda via fax to the Department.

4) BEST VALUE SELECTION & PUBLIC MEETINGS

Subject to the terms of this Invitation to Negotiate, the Department intends to contract with the responsive and responsible Vendor whose proposal is determined by the Selection Committee to provide the best value to the Department. "Best value", as defined in Section 287.012(4), F.S., means the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship.

5) TECHNICAL REVIEW AND SELECTION COMMITTEE

The Technical Review Committee will be composed of three (3) persons who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program area for which the commodities and/or contractual services are sought. The committee will be involved in the reviews/evaluations, oral presentations, negotiations, and recommendation for award. The Technical Review Committee shall be assisted by a team of technical advisors with specific expertise required to review the Technical Proposals. The purchasing agent will ensure consistent evaluation and documentation to facilitate and support a consensus decision for the intended award. A Selection Committee will be established and will make all final procurement decisions. A statement will be placed in the procurement file that explains the basis for Vendor selection and how the Vendor's deliverables and price will provide the best value to the state.

6) SCOPE OF SERVICES

Details of the desired commodity/services, information and items to be furnished by the Vendor are described in Exhibit "A", Scope of Services and Exhibit "D" Vehicle Criteria for Bi-Level Commuter Coaches and Cab Cars attached hereto and made a part hereof. Documentation of any revisions that may occur during the competitive negotiation process will be retained in the procurement file. Negotiated revisions will be incorporated into the contract scope of services to be executed by the successful Vendor.

The Department has a an estimated budget of **\$32,517,100.00** for the procurement of the initial purchase estimated to be Three (3) Coaches and Seven (7) Cab Cars for this project. Vendors should be cognizant of that limitation in replies submitted for this solicitation. After start-up, additional funds may be added by amendment to the contract for the purchase of up to an additional Thirty Five (35) Coaches and Fifteen (15) Cab Cars.

7) PRE-REPLY CONFERENCE

The Department will convene a non-mandatory meeting to provide an open forum for the Department to review the Scope of Services for this ITN and respond to questions from potential Vendors regarding the scope of services, ITN requirements, contractual requirements, method of compensation, and other conditions or requirements that may, in any manner, affect the work to be performed. The Pre-Reply Conference will be held at the date, time and location in the Timeline. In the event that any discussions or questions at the pre-reply conference require, in the Department's opinion, official additions, deletions, or clarifications of any procurement document, the Department will issue a written summary of questions and answers or an addendum as the Department determines is appropriate. No oral representations or discussions which take place at the pre-reply conference will be binding on the Department.

8) QUALIFICATIONS

8.1 Qualifications Questionnaire

Interested Vendors must complete and submit the Qualifications Questionnaire by the date and time specified in Introduction Section 2 to show that they have the necessary qualifications, experience, and capabilities to meet the requirements of the Department in providing BI-LEVEL COACHES AND CAB CARS, as specified in the Scope of Services in Exhibit A and the BI-LEVEL COACHES AND CAB CARS Design Criteria in Exhibit "D". The replies to the Qualifications Questionnaire will be reviewed and evaluated to determine the shortlist of Vendors that

are best able to meet the requirements of the Department.

8.2 Authorized To Do Business in the State of Florida

In accordance with sections 607.1501, 608.501, and 620.169, Florida Statutes, foreign corporations, foreign limited liability companies, and foreign limited partnerships must be authorized to do business in the State of Florida. Such authorization must be obtained prior to posting of the intended award of the contract. Failure to obtain the required authorization by the deadline will result in the Vendor being declared non-responsive and negotiations may be resumed with other short-listed Vendors. For authorization, contact:

Florida Department of State
Tallahassee, Florida 32399
(850) 245-6051

8.3 Licensed to Conduct Business in the State of Florida

If the business being provided requires that individuals be licensed by the Department of Business and Professional Regulation, such licenses must be obtained prior to posting of the intended award of the contract. Failure to obtain the required authorization by the deadline will result in the Vendor being declared non-responsive and negotiations may be resumed with other short-listed Vendors. For licensing, contact:

Florida Department of Business and Professional Regulation
Tallahassee, Florida 32399-0797
(850) 487-1395

8.4 Review of Vendor's Facilities

After the Qualifications Questionnaire due date and prior to contract execution, the Department reserves the right to perform or have performed an on-site review of the Vendor's facilities and qualifications. This review will serve to verify data and representations submitted by the Vendor and may be used to determine whether the Vendor has an adequate, qualified, and experienced staff, and can provide overall management and facilities to produce and test the vehicles required for the CFCRT system. The review may also serve to verify whether the Vendor has financial capability adequate to meet the contract requirements.

8.5 Disqualification

Should the Department determine that the Qualifications Questionnaire or the Technical Proposal have material misrepresentations or that the size or nature of the Vendor's facilities or the number of experienced personnel (including technical staff) are not adequate to ensure satisfactory contract performance, the Department has the right to reject the Vendor and no longer consider it for this procurement.

9) DIVERSITY ACHIEVEMENT

DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The Department encourages DBE firms to compete for Department contractual services projects, and also encourages non-DBE and other minority contractors to use DBE firms as sub-contractors. The Department, its contractors, suppliers, and consultants shall take all necessary and reasonable steps to ensure that disadvantaged businesses have an opportunity to compete for and perform contract work for the Department in a nondiscriminatory environment. The Department shall require its contractors, suppliers, and consultants to not discriminate on the basis of race, color, national origin, religion, gender, age, or disability in the award and performance of its contracts.

Vendors are requested to indicate their intention regarding DBE participation on the **Anticipated DBE Participation Statement** and to submit that Statement with their Technical Proposal.

Federal law requires states to maintain a database of all firms that are participating or attempting to participate in DOT-assisted contracts. To assist the Department in this endeavor, Vendors are requested to submit **Bidder's Opportunity List** with their Technical Proposal. The list should include yourself as well as any prospective sub-contractor that you contacted or who has contacted you regarding the project.

To request certification or to locate DBEs, call the Department of Transportation's Equal Opportunity Office at (850) 414-4747, or access an application or listing of DBEs on the Internet at www.dot.state.fl.us/equalopportunityoffice.

10) CONTRACT DOCUMENT

The Department's "Standard Written Agreement", as filled in, attached hereto and by this reference made a part hereof will be the required contract form for this procurement.

The Federal Transit Administration clauses contained as Exhibit E of this solicitation will be attached to and thereby made a part of the contract for this procurement.

11) PROTEST OF INVITATION TO NEGOTIATE SPECIFICATIONS

Any person who is adversely affected by the contents of this Invitation to Negotiate must file the following with the Department of Transportation, Clerk of Agency Proceedings, Haydon Burns Building, 650 Suwannee Street, Room #550, Mail Station #58 Tallahassee, FL 32399-0450.

1. A written notice of protest within seventy-two (72) hours after the posting of the solicitation, and
2. A formal written protest in compliance with Section 120.57(3), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed.

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

12) UNAUTHORIZED ALIENS

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

13) RESPONSIVENESS REPLIES

13.1 Timeliness of Replies

Replies will not be considered if not received by the Department on or before the date and time specified

13.2 Other Conditions

Other conditions which may cause rejection of replies include, but are not limited to, evidence of collusion among Vendors, obvious lack of experience or expertise to perform the required work, failure to perform or meet financial obligations on previous contracts, being on the United States Comptroller General's List of Ineligible Contractors for Federally Financed or Assisted Projects, or failure to comply with any of the requirements contained in this ITN.

13.3 Determination of Responsiveness

All replies will be reviewed by the Department's Procurement Office for responsiveness. The final determination of responsiveness is reserved to the Selection Committee.

13.4 Waiver of Irregularities

The Department may waive minor informalities or irregularities in documents received where such is merely a matter of form and not substance, and the correction or waiver of which is not prejudicial to other proposers. Minor irregularities are defined as those that will not have an adverse effect on the Department's interest and will not affect the price of the proposals by giving a proposer an advantage or benefit not enjoyed by other proposers.

14) COPYRIGHTED MATERIAL

Copyrighted material will be accepted as part of a reply only if accompanied by a waiver that will allow the Department to make paper and electronic copies necessary for the use of Department staff and agents. It is noted that copyrighted material is not exempt from the Public Records Law, Chapter 119, Florida Statutes. Therefore, such material will be subject to viewing by the public, but copies of the material will not be provided to the public.

15) TRADE SECRETS

The Vendor must include any materials it asserts to be trade secrets under Florida law in a separate bound document labeled "Attachment to Invitation to Negotiate, Number ITN-DOT- 08-09-5003-CCC - Trade Secrets". Any claim of confidentiality on materials placed elsewhere in the reply will be considered waived by the Vendor upon submission of the documents.

16) COSTS INCURRED IN RESPONDING

This ITN does not commit the Department or any other public agency to pay any costs incurred by an individual firm, partnership, or corporation in the submission of a reply or subsequent negotiations or to make necessary studies or designs for the preparation thereof, nor to procure or contract for any articles or services.

17) MAIL OR DELIVER REPLIES TO: (DO NOT FAX or E-MAIL)

Roger Masten, Purchasing Agent
Florida Department of Transportation
District Five Procurement Services M.S.#524
719 South Woodland Boulevard.
DeLand, FL 32720-6834

Qualifications Questionnaire:

Submit Two signed (2) originals, and one (1) electronic copy (on a CD in .pdf format) of your Qualifications Questionnaire. The Qualifications Questionnaire replies must be submitted in sealed envelope/package and labeled as the Qualifications Questionnaire with the ITN number and the opening date and time. It is the Vendor's responsibility to assure that the Qualifications Questionnaire is delivered to the proper place on or before the Qualifications Questionnaire due date and time (See Introduction Section 2 Timeline).

Technical and Preliminary Price Proposals:

Submit Two signed (2) originals, Five (5) Hard Copies and one (1) electronic copy (on a CD in .pdf format) of your Technical Proposal and your Preliminary Price Proposal. The proposals must be submitted in one sealed envelope/package and labeled with the ITN number and the opening date and time.

It is the Vendor's responsibility to assure that the Technical and Preliminary Price Proposals are delivered to the proper place on or before the due date and time (See Introduction Section 2 Timeline).

18) MODIFICATIONS, RESUBMITTAL AND WITHDRAWAL

Vendors may modify replies at any time prior to the reply due date. Modifications must be submitted in the same format and manner as the original reply.

19) OPENING OF REPLIES

All reply openings are open to the public. Replies will be opened by the Department at the date, time and location in the Timeline (See Introduction Section 2 Timeline). The public may attend the opening but may not review any replies submitted until they become public records in accordance with Section 119.07, Florida Statutes.

20) QUALIFICATIONS QUESTIONNAIRE/SHORTLIST CRITERIA

The responses to the Qualifications Questionnaire will be evaluated qualitatively for each of the criteria addressed in the Qualifications Questionnaire. The review/evaluation of the responses by the Technical Committee to this questionnaire will not be included in decisions beyond determining the initial short-list of Vendors to proceed in the ITN process.

21) TECHNICAL AND PRELIMINARY PRICE PROPOSALS

The Vendors selected for the shortlist will each be required to submit to the Department a Technical Proposal and a Preliminary Price Proposal.

Technical Proposal:

The Technical Proposal shall be on 8-1/2" x 11" with a minimum font size of 10 point and minimum margins of 1" on all sides. The Technical Proposal shall be a maximum of 50 single sided pages (or 25 double sided pages), including graphics, except as noted for drawings. No oversized pages (larger than 8-1/2" x 11") are permitted in the Technical Proposal, except as noted for drawings. The following elements must be addressed in the Technical Proposal:

Technical Approach -

- a. Provide a detailed organization chart (with names) of the project staff including management, engineering, systems integration, and industrial design.
- b. Indicate your experience with the design and manufacture of stainless steel, painted carbon steel, or aluminum carbodies. To do this, provide a matrix that includes: the transit property; number of carbodies; date of contract; and carbody manufacturer (in-house or sub-contractor).
- c. The design for station platforms is 15" ATR. Proposers should submit designs with Vehicle (cab car or coach) lower level floor elevations of 15" to 25" ATR. Proposers should identify in their proposal the means whereby boarding in compliance with 49CFR38.91 is achieved. This may be accomplished by level boarding from 15" to 18" ATR lower level floor height, with carborne mechanical lifts or by other means. If by accomplished by lifts or "other means", the proposer should provide description and/or drawings of the mechanism for accomplishing a level change.
- d. Identify the potential subcontractor(s) for the HVAC system, door controls, lighting, lavatory/bathroom, seats, and brake systems. Identify the type of equipment being considered and where and in what quantities this type of equipment is in use. Indicate where this equipment will be manufactured and assembled. Provide the dimensions, cooling capacity and type of HVAC system.
- e. Describe the proposed trucks for this contract. Include such information as, but not limited to, structural material description, suspension (primary or secondary) description, allowable static and dynamic movement, and fully assembled weight. Provide a listing of the past experience of the basic design of the proposed trucks. Indicate where the major truck structural components will be manufactured (cast or fabricated) and where the trucks will be assembled.

- f. Coordination and interface with the CFCRT Design/Build Firm, the CFCRT Operations and Maintenance Contractor and the Chief Operating Officer (COO).
- g. Approach to develop and implementation of a migration plan to maintain an aggressive delivery schedule.
- h. Ability to coordinate interfaces with a provider of diesel electric passenger locomotives under a separate contract.
- i. Provide one (1) print each of the following conceptual designs, B Size drawings or larger as necessary to show clarity, (Note: drawings are not included in the total page count for the proposal):
 - Car General Arrangement Drawings (Exterior and Interior) 1/4" = 1' or 1:50
 - Bathroom/Lavatory and Fixtures As required
 - Floor Plans 1/4" = 1' or 1:50
 - Equipment Arrangement 1/4" = 1' or 1:50
 - Carbody Structural Diagram 1/4" = 1' or 1:50
 - Truck General Arrangement Drawing As required

Manufacturing Plan –

- a. List the work to be performed by the prime contractor and the location(s) at which this work will be performed. If major carbody manufacture is to be performed by subcontractors, identify by name and work locations.
- b. Provide a schedule for delivery of the base and option Bi-Level Coaches and Cab Cars. It should include testing of trainsets before revenue service startup of September 2011.
- c. List the final assembly contractor and location. Include sample assembly procedures and controls and sample material control program. Describe the group responsible for preparation of workflow plans, schedules, procedures, quality control, material control, etc., at the final assembly location.
- d. List all other work at the separate locations indicated in a. and b. during the period of this contract detailing the customer, the quantity and type of vehicle, and delivery dates for same. Describe plant capacity and indicate the capacity available for work under this contract while satisfying other commitments. This includes the final assembly contractor. Provide a statement that the contractor has the capacity, personnel and other resources to build the cars specified in this document within the time proposed.
- e. Indicate how you will provide on-site and warranty support in Orlando, Florida.

Past Performance –

List (in a matrix format) all rail transit car and commuter rail passenger coach contracts for the past five (5) years*, including customer, type, quantity, major vendors, brief description of the vehicle (dimensions, capacities, features, etc.), contractual delivery schedule, and actual delivery schedule. List a contact person for each customer, including name, title, address and telephone number. Also describe whether the vehicles delivered were of an existing design or an entirely new design; indicate the extent of the contractor's design responsibility (i.e., total vehicle including carbody and all systems, carbody only, systems only, etc.). Note which car design/projects are for 49CFR238 FRA compliant cars.

*Past five (5) years shall include all existing active contracts inclusive of warranty stage as well as any executed contracts during this period.

Quality Assurance Plan

Provide a plan outline of the Quality Assurance Plan. The outline should include details of approach, organization, sample procedures, sample documentation, and feedback mechanisms. Include quality control/quality assurance role at the final assembly site.

Acceptance and Testing – Plan

Describe acceptance and testing plan/process for vehicles (including detailed outline of the testing proposed, schedule, and mitigation or float for when test results are not acceptable).

Preliminary Price Proposal:

The Preliminary Price Proposal shall be submitted on the form provided with this ITN (in Exhibit “C”).

Evaluation

If the Department ranks the Vendors as described in Section 23 below, the Technical and Preliminary Price Proposals will be evaluated by the Technical Review Committee to determine which Vendor's deliverables and price will provide the best value to the state considering price and the quality of the mandatory Technical Proposal content set forth above. Those evaluations will be submitted to the Selection Committee for a final determination of a ranking.

22) QUESTION AND ANSWER SESSION

The Department shall meet with each shortlisted Vendor for a formal 60-minute Question and Answer session. The purpose of the Question and Answer session is for the Technical Review Committee to seek clarification and ask questions, related to the Technical Proposal and Preliminary Price Proposal of the Vendor. The Question and Answer sessions will occur a minimum of one (1) week after the date the Proposals are due, and be part of the overall evaluation process. The Department will terminate the Question and Answer session promptly at the end of the allotted time. The Department may tape record or videotape all or part of the Question and Answer sessions. The Question and Answer session will not constitute discussions or negotiations. The short listed Vendors will not be permitted to ask questions of the Department except to ask for clarification of a question posed by the Department so that a proper response can be formulated. No additional time will be allowed to research answers. The Department will not make any decisions at the Question and Answer session.

23) NEGOTIATION PROCESS

The Department reserves the right to negotiate separately or concurrently with competing Vendors, as set out below. The participating Vendors should be cognizant of the fact that the Department, upon completion of each step, reserves the right to finalize the negotiation process at any time in the proposed process that the Department determines such selection would be in the best interest of the State.

Step 1) Interested Vendors submit the Qualifications Questionnaire

Step 2) A public meeting of the Technical Review Committee will be held for the purpose of evaluating the Qualification Questionnaires received. The Technical Review Committee will complete a written

summary evaluation of each Vendor's response to the criteria addressed in the Qualifications Questionnaire

- Step 3) A public meeting of the Selection Committee will be held to determine the shortlist of Vendors. The shortlist selection of Vendors that best meet the requirements of the Department will be posted in accordance with law and rule.
- Step 4) A pre-reply conference will be held.
- Step 5) The Vendors selected for the shortlist will prepare and submit Technical and Preliminary Price Proposals. The Technical Review Committee will review each Technical Proposal and Preliminary Price Proposal.

Following the review of the Technical Proposals and Preliminary Price Proposals, a Question and Answer session will be held with each shortlisted Vendor. After the Question and Answer session, each individual on the Technical Review Committee will complete a written summary evaluation of each Vendor's Technical Proposal and Preliminary Price Proposal. The Questions and Answer sessions will be followed by a public meeting of the Selection Committee for the purpose of either ranking the Vendors or electing to conduct concurrent negotiations with all shortlisted Vendors. The decision of the Selection Committee will be posted. If the Department ranks the Vendors, the single negotiation process (Method "A") would be followed. Go to Step A1.

If the Department does not rank the Vendors and elects to conduct concurrent negotiations with all shortlisted Vendors, the concurrent negotiation process (Method "B") would be followed from that point on. Go to Step B1.

- Step A1 Once the posting period has ended, the Negotiations Team will undertake negotiations with the first-ranked Vendor until an acceptable contract is agreed upon, or it is determined that an acceptable agreement cannot be reached with such Vendor. If negotiations fail with the first-ranked Vendor, negotiations may begin with the second-ranked Vendor, and so on until there is an agreement on an acceptable contract. The Department reserves the option to resume negotiations that were previously suspended. Negotiation sessions are not open to the public and all negotiation sessions will be recorded by the Department.
- Step A2 Once the Negotiations Team has completed negotiations, the proposed result will be submitted to the Selection Committee for a determination of whether to enter into a contract based on the negotiations, restart negotiations, or otherwise proceed as is in the best interest of the State. The decision of the Selection Committee will be posted.
- Step A3 A short plain statement will be placed in the procurement file that explains the basis for Vendor selection and how the Vendor's deliverables and price will provide the best value to the state.
- Step A4 The intended award will be posted in accordance with the law.
- Step A5 The Department will contract with the successful Vendor.
- Step B1 Following the review of the Technical Proposals and Preliminary Price Proposals, the Department's Project Manager may revise the Scope of Services, as necessary, to eliminate unnecessary requirements and incorporate innovative ideas and approaches that the Project Manager believes would benefit the Department. Documentation of changes/revisions to the Scope of Services, etc., will be retained in the procurement file. All participating Vendors will be sent a revised Scope of Services and will be asked to submit a written summary of their capabilities, a revised Technical Proposal responsive to the revised Scope of Services and a Revised Preliminary Price Proposal.
- Step B2 Each participating Vendor will be scheduled to meet with the Negotiations Team to review and negotiate both the Vendor's Technical and Preliminary Price Proposals (or revisions as submitted in Step B1

above) and discuss any issues or problems. Negotiation sessions are not open to the public and all negotiation sessions will be recorded by the Department.

Step B3 Each individual on the Negotiations Team will complete a written summary evaluation of each Vendor's technical approach, capabilities, and Price Proposal.

Step B4 There will be a public meeting of the Selection Committee at a date, time and location to be publicly posted and announced to review the individual summary evaluations to either rank the Vendors in order of preference and make a final selection, or make a determination to repeat Steps B1 through B3, if necessary. Recorded documentation of subsequent rounds will be retained in the procurement file.

Step B5 A short plain statement will be placed in the procurement file that explains the basis for Vendor selection and how the Vendor's deliverables and price will provide the best value to the Department.

Step B6 The intended award will be posted in accordance with law.

Step B7 The Department will contract with the selected Vendor.

24) POSTING OF DECISIONS

24.1 Decisions to be posted will be posted on the Florida Vendor Bid System, at www.myflorida.com, (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", on date and time in the Timeline, and will remain posted for a period of seventy-two (72) hours. Any Vendor who is adversely affected by the Department's recommended award or intended decision must file the following with the Department of Transportation, Clerk of Agency Proceedings, Haydon Burns Building, 650 Suwannee Street, Room #550, Mail Station #58 Tallahassee, FL 32399-0450:

1. A written notice of protest within seventy-two (72) hours after posting of the Intended Award, and
2. A formal written protest and protest bond in compliance with Section 120.57(3), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed. At the time of filing the formal written protest, a bond (a cashier's check or money order may be accepted) payable to the Department must also be submitted in an amount equal to one percent (1%) of the estimated contract amount based on the contract price submitted by the protestor.

Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes

24.2 - Inability to Post:

If the Department is unable to post as defined above, the Department will notify all Vendors by electronic notification on the Florida Vendor Bid System or by mail, fax, and/or telephone. The Department will provide further notification of any future posting.

25) AWARD OF THE CONTRACT

The Department reserves the right to accept or reject any or all Technical and Preliminary Price Proposals received, either before or after negotiations, and reserves the right, after ranking the Vendors, to make an award without further discussion of the Proposals submitted. The Department is not obligated to negotiate a contract and may terminate this solicitation at any time.

Services will be authorized to begin when the Vendor receives a Standard Written Agreement executed by both parties and a written Notice to Proceed issued by the Department.

26) ATTACHED FORMS

- DBE Planned Utilization (Form 375-040-24)
- Bid Opportunity List (Form 375-040-62)
- Drug Free Workplace
- Exempt Documents / Security System Plan Distribution (Form 050-020-26)

27) ATTACHED TERMS AND CONDITIONS

- Standard Written Agreement pages 1 –7, as filled in
- Exhibit A Scope of Services page A-1 – A-3
- Exhibit B, Method of Compensation page B1
- General Contract Conditions (PUR 1000)
- Exhibit C, Preliminary Price Proposal Form pages C1-C4
- Exhibit D, Bi-Level Cab Car and Coach Design Criteria pages D1- D3
- Exhibit E, Federal Transit Administration Requirements for Rolling Stock Contracts pages E1 – E11
- Instructions to Respondents (PUR 1001)

28) ATTACHED FORM PUR 1001 GENERAL INSTRUCTIONS TO REPENDENTS

This is a standard form (PUR 1001) from the Department of Management Services that the Department is required to include in all formal solicitations. The following paragraphs do not apply to this Invitation to Negotiate:

- Paragraph 3, Electronic Submission
- Paragraph 4, Terms and Conditions
- Paragraph 5, Questions
- Paragraph 12, Public Opening
- Paragraph 13, Electronic Posting
- Paragraph 14, Firm Response
- Paragraph 19, Public Records
- Paragraph 20, Protests
- Paragraph 21, Limitation on Vendor Contact

29) PERFORMANCE BOND

The Vendor must submit, with their Technical Proposal, a current letter from a surety company or bonding agent authorized to do business in the state of Florida and written on company letterhead, to document the Vendor's present ability to obtain a Performance Bond in the amount of \$9,000,000.00. Failure by the Vendor to provide this letter with its Technical Proposal shall constitute a non-responsiveness and result in a determination that the Vendor's Technical Proposal is non-responsive.

**State of Florida
PUR 1001
General Instructions to Respondents**

Contents

1. Definitions.
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5. Questions.
6. Conflict of Interest.
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9. Respondent's Representation and Authorization.
10. Manufacturer's Name and Approved Equivalents.
11. Performance Qualifications.
12. Public Opening.
13. Electronic Posting of Notice of Intended Award.
14. Firm Response.
15. Clarifications/Revisions.
16. Minor Irregularities/Right to Reject.
17. Contract Formation.
18. Contract Overlap.
19. Public Records.
20. Protests.
21. Limitation on Vendor Contact with Agency During Solicitation Period

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

- (a) "Buyer" means the entity that has released the solicitation. The "Buyer" may also be the "Customer" as defined in the PUR 1000 if that entity meets the definition of both terms.
- (b) "Procurement Officer" means the Buyer's contracting personnel, as identified in the Introductory Materials.
- (c) "Respondent" means the entity that submits materials to the Buyer in accordance with these Instructions.
- (d) "Response" means the material submitted by the respondent in answering the solicitation.
- (e) "Timeline" means the list of critical dates and actions included in the Introductory Materials.

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

3. Electronic Submission of Responses. Respondents are required to submit responses electronically. For this purpose, all references herein to signatures, signing requirements, or other required acknowledgments hereby include electronic signature by means of clicking the "Submit Response" button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within MyFloridaMarketPlace. The respondent agrees that the action of electronically submitting its response constitutes:

- an electronic signature on the response, generally,
- an electronic signature on any form or section specifically calling for a signature, and
- an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.

4. Terms and Conditions. All responses are subject to the terms of the following sections of this solicitation, which, in case of conflict, shall have the order of precedence listed:

- Special Conditions and Instructions,
- Instructions to Respondents (PUR 1001),
- General Conditions (PUR 1000), and Introductory Materials.

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

5. Questions. Respondents shall address all questions regarding this solicitation to the Procurement Officer. Questions must be submitted via the Q&A Board within MyFloridaMarketPlace and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline. Questions shall be answered in accordance with the Timeline. All questions submitted shall be published and answered in a manner that all respondents will be able to view. Respondents shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the MyFloridaMarketPlace site for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained within the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 19 of these Instructions.

6. Conflict of Interest. This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.

7. Convicted Vendors. A person or affiliate placed on the convicted Vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted Vendor list:

- submitting a bid on a contract to provide any goods or services to a public entity;
- submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submitting bids on leases of real property to a public entity;
- being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and
- transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.

8. Discriminatory Vendors. An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:

- submit a bid on a contract to provide any goods or services to a public entity;
- submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submit bids on leases of real property to a public entity;
- be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or
- transact business with any public entity.

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

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
 - To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
-
- Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
 - The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
 - The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
 - The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
 - Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
 - Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
 - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
 - The product offered by the respondent will conform to the specifications without exception.
 - The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
 - If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
 - The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
 - The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
 - All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the

bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

10. Manufacturer's Name and Approved Equivalents. Unless otherwise specified, any manufacturers' names, trade names, brand names, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Buyer's prior approval, the Contractor may provide any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Buyer shall determine in its sole discretion whether a product is acceptable as an equivalent.

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

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

12. Public Opening. Responses shall be opened on the date and at the location indicated on the Timeline. Respondents may, but are not required to, attend. The Buyer may choose not to announce prices or release other materials pursuant to s. 119.071(1)(b), Florida Statutes. Any person requiring a special accommodation because of a disability should contact the Procurement Officer at least five (5) workdays prior to the solicitation opening. If you are hearing or speech impaired, please contact the Buyer by using the Florida Relay Service at (800) 955-8771 (TDD).

13. Electronic Posting of Notice of Intended Award. Based on the evaluation, on the date indicated on the Timeline the Buyer shall electronically post a notice of intended award at http://fcn.state.fl.us/owa_vbs/owa/vbs_www.main_menu. If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected by the decision shall file with the Buyer a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone.

14. Firm Response. The Buyer may make an award within sixty (60) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, the response shall remain firm until either the Buyer awards the Contract or the Buyer receives from the respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected.

15. Clarifications/Revisions. Before award, the Buyer reserves the right to seek clarifications or request any information deemed necessary for proper evaluation of replies from all respondents deemed eligible for Contract award. Failure to provide requested information may result in rejection of the response.

16. Minor Irregularities/Right to Reject. The Buyer reserves the right to accept or reject any and all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Buyer determines that doing so will serve the State's best interests. The Buyer may reject any response not submitted in the manner specified by the solicitation documents.

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

18. Contract Overlap. Respondents shall identify any products covered by this solicitation that they are currently authorized to furnish under any state term contract. By entering into the Contract, a Contractor authorizes the Buyer to eliminate duplication between agreements in the manner the Buyer deems to be in its best interest.

19. Public Records. Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any respondent claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption.

20. Protests. Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and 287.042(2) of the Florida Statutes and chapter 28-110 of the Florida Administrative Code. Questions to the Procurement Officer shall not constitute formal notice of a protest. It is the Buyer's intent to ensure that specifications are written to obtain the best value for the State and that specifications are written to ensure competitiveness, fairness, necessity and reasonableness in the solicitation process.

Section 120.57(3)(b), F.S. and Section 28-110.003, Fla. Admin. Code require that a notice of protest of the solicitation documents shall be made within seventy-two hours after the posting of the solicitation.

Section 120.57(3)(a), F.S. requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

Section 28-110.005, Fla. Admin. Code requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

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

INVITATION TO NEGOTIATE

ITN Number: ITN-DOT-08-09-5003-CCC

Title: Central Florida Commuter Rail Transit (CFCRT) BI-LEVEL COACHES AND CAB CAR VEHICLES

Exhibit A

SCOPE OF SERVICES

The State of Florida Department of Transportation (hereinafter referred to as the "Department") is soliciting Technical and Price Proposals from shortlisted Vendors interested in participating in competitive negotiations to establish a term contract to provide up to Twenty Two (22) Cab cars and or Thirty Eight (38) Coaches. The contract for the production of the initial Three (3) B-Level Coaches and Seven (7) B-Level Cab Cars is estimated to cover the period from May 2009 through September 2011. The negotiated schedule for delivery of the vehicles is attached to this Scope of Services and by this reference made a part hereof. The contract will include the option for the purchase of up to an additional Thirty Five (35) Coaches and or Fifteen (15) Cab Cars to be exercised within five years

Two types of vehicles shall be supplied under this procurement. The services to be performed under this contract involve the design, production, testing and warranty of low-floor bi-level Cab Cars and Coaches. Each Cab Car shall be single ended, four-axle units, capable of bi-directional operation as married-pair or longer consist with a Diesel Electric Passenger Locomotive and other Coaches. All Cab Cars shall be able to operate and be fully functional in a consist (Train Set) of up to six (6) cars and Passenger Locomotives made up in push-pull trainsets. One end of the Cab Car shall have a fully-equipped operating cab. Operating controls and performance shall be equal in both directions.

Walk-through provision between two coupled cars shall be provided. The cars must be designed for boarding from low-level floor 15 to 25 inches above the top of rail. Each vehicle shall be equipped with four or more doors, two or more per side.

The cars shall be compatible with the existing powered South Florida Rail Transit Authority (SFRTA) DMU vehicles that have an operator cab at one end only, and capable of controlling the DMU when coupled. Within these procurement documents, the terms "vehicle" and "car" are used interchangeably, referring to a four axle power car as described above. The design and performance criteria required for the Bi-Level Coaches and Cab Cars to be provided under this procurement are specified in Exhibit D –Vehicle Criteria.

The Vendor will be required to coordinate closely with the CFCRT Design/Build Firm, who is responsible for building the Vehicle Storage and Maintenance Facility for storage and security of the Cars, regarding schedule and method of delivery for the Cars. The CFCRT Chief Operating Officer (COO) will assist in the coordination between the Vendor and the Design/Build Firm. Delivery of vehicles cannot occur prior to January 30, 2011. The Vendor will also be required to coordinate with the CFCRT Operations and Maintenance Contractor and the Chief Operating Officer regarding testing and acceptance of all Cars delivered to the CFCRT project. Testing and acceptance is specified in Exhibit D- Vehicle Criteria. Testing and acceptance are the responsibility of the Vendor not the Design/Build Firm. The on-site testing will require coordination with the Operations and Maintenance Contractor as well as the Design/Build Firm. The Operations and Maintenance Contractor will provide the train crews for testing and acceptance. The Vendor is responsible for providing training of the train crews on the vehicles.

The attached Department of Management Services firm PUR 1000 is hereby incorporated into this Scope of Services by this reference, except that the following paragraphs do not apply: 5, 11, 19, 20, 22, 23, 25, 26, 27, 29, 31, 35, 40, 41, and 42. Deletion of these paragraphs shall not be deemed to be deletion of content contained elsewhere and the substance of these excepted paragraphs may be addressed in other locations in the Contract. That substance located elsewhere continues to apply regardless of this exception paragraph.

Warranty /Substitutions

The Vendor shall warranty the following for all new vehicles:

- a. Elastomers, the structure of the car body, the underframe, and the truck frames for a period of five (5) years from the date each car is conditionally accepted by the Department.
- b. All other pertinent parts, for a period of two (2) years from the date of Conditional Acceptance of each car.
- c. Spare parts for two (2) years from date of installation. In no case shall the warranty period exceed three (3) years from date of delivery of spare parts.

All retrofits for the remainder of the warranty period or for one (1) year from the date of retrofit completion per vehicle, whichever period is greater.

The Vendor shall submit prior to delivery of the first Car, the proposed warranty procedures for Department acceptance.

Vendor shall warranty that the vehicles shall be in accordance with the Contract Documents when accepted and shall warranty against defect due to faulty design, poor workmanship, or poor material during the foregoing respective periods of warranty. If any part or parts thereof proved defective either in design, materials or workmanship during the respective periods of warranty, the Department shall promptly notify the Vendor, and the Vendor shall repair or replace, as mutually agreed by both parties, such part or parts without expense to the Department.

It shall be understood that the Vendor shall be responsible for all costs of labor and material for defect identification and location, and for the removal, repair, or replacement of defective parts, and for alterations, repairs, tests, and adjustments in connection therewith, made to obtain specified car performance. Replaced and/or repaired items shall be warranted for the remainder of the warranty period or for one (1) year, whichever period is the greater.

In the event the Department incurs extra costs, including consultant costs, which are directly attributable to the Vendor's performance, or lack thereof, the total extra costs for the related labor, materials, equipment and/or consultant services will be the sole responsibility of the Vendor, including consultant efforts reviewing drawings, conducting inspections and monitoring FMI procedures.

During the respective period of warranty, all vehicle parts or material caused to be damaged as the result of a defect in design, material, or workmanship in other vehicle parts or material, shall be repaired or replaced at the expense of the Vendor. Failure reports must accompany all repaired parts.

The Vendor shall, within ten (10) days from notification of warranty claim deliver repaired and replacement parts; prior Department authorization is required for return period exceeding ten (10) days. The Vendor shall maintain support material necessary to eliminate any extended removal of vehicle from revenue service. Failure reports must accompany all repaired parts.

In no case shall any correction of defects in design, material, or workmanship take the form of an increase in maintenance requirement beyond that specified in the Contract Documents, described in the original edition of the maintenance instructions, approved in the Baseline design, or submitted by the Vendor at the time of proposal for the Contract.

Where 25 percent of the quantity of a warranted item fails or where 25 percent of vehicles per a fleet type are affected during the warranty period, the Department may classify the total of such items as a failure, including those items for which the warranty period expired before the Department recognized the failure. The Vendor shall be responsible for all costs of labor and material, for defect identification and location, and for removal, repair or replacement of defective parts, and for alterations, repairs, tests and adjustments in connection therewith made to obtain vehicle performance. All such replaced or repaired items shall be warranted for the remainder of the warranty period or for one (1) year, whichever period is greater.

The Vendor shall provide an on-site Warranty Coordinator to handle and coordinate with the Department all warranty issues for the duration of the warranty period. The warranty coordinator shall respond to all issues within one (1) business day of notification.

Any repair or retrofit work required to fulfill these warranties shall be accomplished with minimum disruption to the Department's operation and its maintenance facility; however, as a condition precedent to the Vendor's liability under this Warranty and Warranty of End Product, the Vendor shall have been given notice of the defect(s), reasonable access to the defective part(s), and the defective part(s) shall not have been changed or altered without the Vendor's knowledge, whether by additions, subtractions or otherwise, in any manner whatsoever.

If a vehicle is removed from revenue service for one (1) week or more for warranty/repair/retrofit work, the duration of the time the vehicle is removed from service will extend the warranty period accordingly.

Due to the regular maintenance demands on Department facilities and on the Department's operation personnel, it may be possible to undertake only minimal adjustment, repair, or replacement work on equipment prior to Final Acceptance. The Vendor shall, in such an event, be responsible for securing facilities and personnel to complete all additional work required for the duration of the Contract.

Notwithstanding the foregoing, all implied warranties of merchantability and 'fitness for a particular purpose' are excluded from any obligation contained in this procurement.

RECYCLED MATERIAL

The Department encourages the use of products and materials with recycled content and post consumer recovered materials. If the item(s) specified herein is available with recycled content, we request that you provide product information to help in our search for recycled products. However, this ITN request is for the product as specified herein and does not require prices for recycled product unless specified.

LIQUIDATED DAMAGES

The Vendor acknowledges that failure to timely perform in accordance with the vehicle delivery schedule may cause the Department to incur damages that, at present are, and upon the occurrence of the failure to so timely perform may be, difficult to determine. Therefore, in the event the Vendor fails to timely perform in accordance with the vehicle delivery schedule, and the Department does not terminate this Agreement, the Department may exercise the remedy of liquidated damages against the Vendor, in the amount of \$885.00 per day for each calendar day after the applicable performance date that the Vendor fails to provide each vehicle (includes delivery, testing and final acceptance). The Parties agree that if the Department allows the Vendor to continue to perform after the expiration of the time allowed, that the Department's action shall in no way act as a waiver on the part of the Department of the liquidated damages due under this contract. The Vendor shall pay said sum to the Department not as a penalty, but as liquidated damages. The Department has the right to apply, as payment on such liquidated damages, any money the Department owes the Vendor.

EQUITABLE ADJUSTMENT

At the discretion of the Department, contract price adjustments may be allowed in accordance with General Condition 4(e) of Form PUR 1000, attached hereto. The contract Vendor shall provide written notice to the Department requesting a price adjustment and written approval from the Department's Contract Manager is required prior to commencing with the price adjustment effective the subsequent invoice period. The Contract Vendor must provide documentation to the Department to support the request for pricing adjustment(s). Unit price adjustments due to fuel cost increases or decreases shall utilize the Federal Government's Annual Energy Review to display changes in material costs. The following website can be used as support for the submitted unit price adjustment request: <http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp>. Information from this website will only be used as supporting documentation and must accompany the request for a price adjustment.

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

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

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

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

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

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

- (a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.
- (b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
- (c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a

specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees.
CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO

BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.

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

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

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. Contractors may call (850) 413-5516 Monday through Friday to inquire about the status of payments by State Agencies. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers.

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

17. Governmental Restrictions. If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the

Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

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

Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

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

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

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

20. Limitation of Liability. For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order.

This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement. Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

21. Suspension of Work. The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the

reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

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

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

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

Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer.

The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will

significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33. Security and Confidentiality. The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary

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

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

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

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

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

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

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

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

concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

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

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

43. Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser. State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

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

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

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

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

Exhibit B
Method of Compensation

Central Florida Commuter Rail Transit Bi-Level Coaches and Cab Cars
Financial Project ID No. 412994-6-53-01

1.0 PURPOSE

This exhibit defines the method and limits of compensation to be made to the Vendor for the services described in Exhibit A – Scope of services and the method by which payments will be made.

2.0 COMPENSATION

The Vendor shall be paid the following lump sum amount for each vehicle ordered, delivered in compliance with the terms and conditions of the Contract, and accepted.

Item Description	Lump Sum Price Per Unit	
Bi-Level Cab Car (Each)	\$ _____	for vehicles 1 through 7
Bi-Level Coach (Each)	\$ _____	for vehicles 8, 9 and 10
Bi-Level Cab Car (Each) Option	\$ _____	for up to Fifteen vehicles
Bi-Level Coach (Each) Option Vehicles	\$ _____	for up to Thirty Five

3.0 INVOICING PROCEDURE

The Vendor will be eligible for progress payments under this agreement when individual tasks or milestones defined in the Schedule of Values attached hereto as page B-3 and by this reference made a part hereof are completed or reached.

The Vendor shall provide a certificate at the time of each milestone as indicated in the Schedule of Values, certifying the amount of work completed by the Vendor. Payments shall be achieved and become eligible for payment only in the sequential order listed in Schedule of Values. The Vendor shall certify the cumulative level of effort completed by the Vendor.

4.0 PROJECT CLOSEOUT

If requested, the Vendor will permit the Department to perform or have performed, an audit of the records of the Vendor and any or all subvendors to support the compensation paid the Vendor. The audit will be performed as soon as practical after completion and acceptance of the contracted services. In the event funds paid to the Vendor under this agreement are subsequently properly disallowed by the Department because of accounting errors or changes not in conformity with this Agreement, the Vendor agrees that such disallowed amounts are due to the Department on demand. Further, the Department will have the right to deduct from any payment due the Vendor under any other contract any amount due the Department.

Exhibit C

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PRELIMINARY PRICE PROPOSAL

CONTRACT NO:
ITN-DOT-08-09-5003-CCC

PROJECT DESCRIPTION: Central Florida Commuter Rail Transit (CFCRT) Bi-Level Coaches and Cab Car Vehicles

The Vendor is required to state the proposed per vehicle rate and submit to Roger Masten Procurement Supervisor Florida Department of Transportation, 719 South Woodland Boulevard, DeLand, Florida 32720 as part of their Technical Proposal.

Item Description	Lump Sum Price Per Unit	
Bi-Level Cab Car (Each)	\$ _____	for vehicles 1 through 7
Bi-Level Coach (Each)	\$ _____	for vehicles 8, 9 and 10
Bi-Level Cab Car (Each) Option	\$ _____	for up to Fifteen vehicles
Bi-Level Coach (Each) Option Vehicles	\$ _____	for up to Thirty Five

Recommended Spare Parts Price List: Complete attached pages C-3 and C-4 by listing all proposer recommended spare parts for the vehicles being provide.

Provide a preliminary proposed schedule of values by completing page C-2. An example of a possible schedule of values is included on page C-2. This example is for discussion and negotiation purposes only.

Exhibit “C”

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PRELIMINARY PRICE PROPOSAL

CONTRACT NO:

ITN-DOT-08/09-5003-CCC

PROJECT DESCRIPTION: Central Florida Commuter Rail Transit (CFCRT) Bi-Level Coaches and Cab Car Vehicles

Potential Schedule of Values

Item No.	Description	Percentage
1		
2		
3		
4		
5		
6		
7		
8		
9		
	Total	100.00%

Example of Possible Schedule of Values

- Approval of Master Program Schedule including engineering and production schedules, project management, and quality assurance program. Approval of general arrangement drawings with sections and elevation, clearance diagrams, electrical and pneumatic schematics, car body structure, and underfloor equipment layout.
- Approval of mock-ups and procedures for In-Plant Inspections and Tests.
- Acceptance of engineering and design drawings; plans for Conditional Acceptance testing of the Advance Cars, Preliminary Maintenance Instruction Books, Renewal Parts Books and User Education Program plan.
- Approval of stress analysis reports.
- Completion of First Article Inspections (FAIs) on all major subsystems.
- Conditional Acceptance of first Five Bi-Level Cab Cars and Five Bi-Level Coaches) shall be made upon satisfactory completion of the commissioning period and the delivery of updated draft maintenance and operation manuals.
- Completion of Running Repair Training and acceptance of Running Maintenance Manuals, Parts Manuals and Integrated Schematics.
- Ten percent of the total fleet cost shall be distributed evenly and paid on a per car basis upon Conditional Acceptance and satisfactory completion of the commissioning period of Car Nos. 5 - 10. The sum of payments under this Milestone shall at no time exceed 91 percent of the total vehicle price.
- Completion of Heavy Maintenance Training and Heavy Maintenance Manuals.
- Successful completion of the contract, including receipt of “as-built” drawings, and Vendor’s specification as well as completion of all administrative and technical matters with the exception of the warranty program

Exhibit "C"
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

Central Florida Commuter Rail Transit (CFCRT) Bi-Level Coaches and Cab Car Vehicles

Recommended Consumables Cost Breakdown				
Part Description/Name	Manufacturer	Cost per unit	No Units Proposed	Total Cost
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
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		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
Total Cost		\$		\$

Exhibit "C"
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
Central Florida Commuter Rail Transit (CFCRT) Bi-Level Coaches and Cab Car Vehicles

Recommended Capital Spares Cost Breakdown				
Part Description/Name	Manufacturer	Cost per unit	No Units Proposed	Total Cost
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
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		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
		\$		\$
Total Cost	\$			

Exhibit D

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION Vehicle Criteria

ITN-DOT-08-09-5003-CCC

PROJECT DESCRIPTION: Central Florida Commuter Rail Transit (CFCRT) Bi-Level Coaches and Cab Car Vehicles

Design Criteria for Bi-Level Commuter Bi-Level Coaches and Cab Cars

- Length 85' – 90'
- Height 15' 6" to 17'
- Width: 10' 2" max
- Ceiling Height 6' 5" minimum
- Weight (AW0) 112, 000 lb BTC to 135,000 CTC
- Car body material: Stainless/Aluminum/Corten (painted carbon steel carshell)
- Vertical Curve ability 2,000' with minimum 2.5" clearance
- Horizontal Curve ability 250'
- Identify in proposal the minimum turnouts and track centers coupled cars can negotiate
- Normal Operating Speed of up to 79 mph
- Design Speed 103 mph design
- Two or Three Levels (upper, lower and acceptable to have middle level)
- Lower Level Boarding at 15" to 25" ATR, alternate designs with onboard lifts would be considered
- Minimum Seating of 144 coach, 120 cab car
- Fixed cushion bench seats
- HVAC – Non – Ozone depleting refrigerant
- HVAC – Unitized minimum of 10 - 14 ton x 2 units
- HVAC Capacity for Central FL – ASHRAE Orlando design condition
- Overhead and Floor or underseat Heating
- Two Door Openings on each side on lower level
- Trainline to APTA Recommendations
- Trainline and End of Car Compatible with FDOT DMUs
- Must have emergency lighting, luminous aisle path and emergency signs
- 480 Vac Head End Power, Trainlined from locomotive
- 120 Vac Low Voltage for Lighting
- 64/72 Vdc Trainline and Control Voltage for all subsystems and batteries
- Tightlock Couplers
- Local batteries for Emergency Lighting and PA (interior and exterior)
- Battery charger
- Toilet (water fill and waste water service on both sides of the car)
- Toilets on coaches cars and/or cab cars - proposers to identify if both coach and/or cab car would have toilets
- Type (cast or fabricated – equalized or chevron or other suspension) and manufacture of truck.
- Ability to coordinate user interface with Remanufactured Locomotives advertised under separate ITN Proposers should expect to have joint meetings with the locomotive supplier and coordinate design and hardware.
- Cab car cab arrangement prevents entrance into cab from passenger compartment but provide easy egress for Operator.

- Cab Car controls (to duplicate locomotive controls under separate ITN) Proposers should expect to have joint meetings with the locomotive supplier and coordinate design and hardware.
- Locomotive style operators seat in cab
- Manual Cab car destination signs
- Railroad Light Marker lights
- Rear lights
- Ditch Lights
- Horn
- Hi/Low Horn Switch
- Bell
- Pilot
- Two Year Warranty
- Ride Quality requirements to be identified in the proposal
- Passenger Information Signs interior coordinated with automated audio announcements
- Provide Recommended Capital Spares List
- Provide Recommended Consumables List
- Proposal to include carbody floor plans, interior and exterior elevations, identifying doors, emergency windows, cab layout, equipment rooms, batteries, HVAC units, toilet servicing, air brake valve access, changing HVAC fillers, and access to HVAC unit service valves. Truck general arrangement drawings that show access for inspection and changing brake shoes and disk brake pads (if so equipped), list of major subsystem vendors. Seated and Standee Capacity for AW0, AW1 and AW3.
- Drawing showing exterior paint scheme and logos
- Drawing showing interior color scheme and logos
- Vehicle meets clearance diagram
- On-Site Training Program
- Training schedule
- Horn and bell below 52" ATR
- Directional Horn
- Provisions for the addition of Positive Train Control

Manuals & Training:

- Electrical and Piping Schematics
- Wiring Diagram
- Operator's Manual
- Light and Heavy Maintenance Manuals
- Illustrated Parts Catalog
- Car History books
- WiFi system to include: circuit breaker, wiring, modem(s), antenna(s), power supply and controller to provide and receive signals (being provided by others) to be repeated on cars.

Meets all FRA Requirements:

- 49 CFR 210 Railroad Noise Emission Compliance Regulations
- 49 CFR 213 FRA Track Standards
- 49 CFR 220 Railroad Communications
- 49 CFR 221 Rear End Marking Device

U.S. DOT

- 49 CFR 38 ADA Accessibility for Transportation Vehicles
- 49 CFR 223 Safety Glazing Standards
- 49 CFR 229 Railroad Locomotive Safety
- 49 CFR 238 Passenger Equipment Safety
- 49 CFR 239 Emergency Preparedness Plan

APTA and Other System Safety Requirements:

- Comply with 1999/2004 APTA PRESS Recommendations (or note exceptions in the proposal)
- ISO, MIL Standards as applicable
- System Safety Plans to include:
 - APTA “Manual for the Development of System Safety Program Plans for Commuter Railroads” (2006), and also referenced 49 CFR as contained in Appendices
 - System Safety Program Plan
 - System Safety Analyses
 - System Security Plan
 - System Security Analyses
 - Safety and Security Certification Plan
 - Safety Test and Verification Plan
 - Preliminary Hazard Analysis
- Transportation Regulations Compliance Report
- Master Test and Inspection Plan
- Pre-Revenue Service Acceptance Test Plan
- Quality Assurance Plan
- Manufacturing Plan
- Management Plan
- Schedule

Toxicity of Materials Testing and Report (“Boeing Standard”, or equivalent)

Toxic Content Limits In Combustion Products

The maximum toxic gas concentration in the combustion products of any materials used in the construction of the vehicle shall not exceed the following values:

Toxic Gas – BSS-7239	Maximum Concentration
Carbon monoxide (CO),	3500 ppm
Hydrogen Fluoride (HF),	200 ppm
Nitrogen dioxide (NO ₂),	100 ppm
Hydrogen Chloride (HCL),	500 ppm
Hydrogen cyanide (HCN),	150ppm
Sulfur dioxide (SO ₂),	100 ppm

Exhibit E

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
Federal Transit Administration Requirements for Rolling Stock

CONTRACT NO:
ITN-DOT-08-09-5003-CCC

PROJECT DESCRIPTION: Central Florida Commuter Rail Transit (CFCRT) Bi-Level Coaches and Cab Car Vehicles

REFERENCES.

- a. Federal Transit Laws, 49 U.S.C. Chapter 53.
- b. Transportation Equity Act for the 21st Century 1998 (TEA-21), P.L. 105-178 as amended, TEA-21 Restoration Act 1998, P.L. 105-206.
- c. Sections 4001 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. § 403(11) and 40 U.S.C. § 481(b), respectively,
- d. 49 C.F.R. Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- e. 49 C.F.R. Part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
- f. Executive Order 12612, "Federalism," dated 10-26-87.
- g. FTA Circular 5010.1C, "Grant Management Guidelines," dated 10-1-98.
- h. FTA Master Agreement.
- i. Appendix D, Best Practices Procurement Manual.

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Buy America Requirements

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Cargo Preference - Use of United States-Flag Vessels

The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Clean Water

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Pre-Award and Post-Delivery Audit Requirements

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

Buy America Certificate Of Compliance With FTA Requirements For Buses, Other Rolling Stock, Or Associated Equipment

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Clean Air

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Recovered Materials

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

No Obligation by the Federal Government

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

- a. **Termination for Convenience (General Provision)** The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

- b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- c. Opportunity to Cure (General Provision)** The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d. Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

- e. Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

- f. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination.

Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

- j. Termination for Convenience of Default (Cost-Type Contracts)** The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Florida Department of Transportation. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Florida Department of Transportation, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contracts Involving Federal Privacy Act Requirements

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Disputes

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Florida Department of Transportation requests which would cause the Florida Department of Transportation to be in violation of the FTA terms and conditions.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**EXEMPT DOCUMENTS / SECURITY SYSTEM PLAN
DISTRIBUTION FORM**

050-020-26
STATE HIGHWAY ENGINEER
10/06
Page 1 of 2

Exempt Documents being requested or received are included in those exempt from public disclosure as provided by Section 119.071(3)(b), Florida Statutes (Attached). **Security System Plans** being requested are confidential and exempt as provided by Section 119.071(3)(a), Florida Statutes (Attached). The Exempt Documents relate to work being performed for or required by the Florida Department of Transportation, or work related to the Department's structures. The following information is being provided as a record of this request or receipt, and distribution of the Exempt Documents or Security System Plans.

Completion of this form and a signature is required before information will be released (* Means Required To Obtain Security System Plans):

A. Entity Requesting/Receiving Documents: (Check All That Apply and Provide Full Name of Entity.)

- State Agency*:** _____
- Federal Agency*:** _____
- Governmental:** _____
- Architect:** _____
- Engineer:** _____
- Contractor:** _____
- Other:** _____

B. Entity address & phone number:

Address: _____

Phone: _____

C. Federal ID of Organization requesting/receiving (If applicable): _____

D. Exempt Documents / Security Systems Plans requested or provided: (Be specific on what is requested or provided, and include description, project numbers, FIN, contract numbers, etc.)

E. Reason for Request/Intended Use: _____

F. RECIPIENT CERTIFICATION: I, personally, and/or as representative of the above entity, fully understand (check the applicable certification block)

- the exempt nature of the Exempt Documents I am receiving and agree to maintain the exempt status of this information in accordance with Florida law
- the confidential and exempt nature of the Security System Plans I am receiving and Agree to maintain the confidential and exempt status of these Security System Plans in accordance with Florida law.

G. Name of person receiving Exempt Documents / Security Plans: (Printed): _____

Signature: _____ Date: _____

H. Driver license or photo identification number of recipient: _____

(Recipient must provide verification of employment with the above entity and verify identity with photo ID)

I. FDOT Employee Or Other Individual Providing Exempt Documents Or Security Plans:

FDOT Office: _____ Employee Name: _____

Other Individual Name: _____

Name and Office Address of Employer: _____

Exempt Documents / Security Systems Plans provided if different than requested: (Be specific on what is provided, and include description, project numbers, FIN, contract numbers, etc.)

Signature of Person Authorizing Distribution: _____ **Date:** _____

Provider's Signature (if different than person authorizing distribution): _____

J. Method of delivery: Pick-up by requestor _____ other (specify other method of delivery)

Date Provided: _____

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**EXEMPT DOCUMENTS / SECURITY SYSTEM PLAN
DISTRIBUTION FORM**

050-020-26
STATE HIGHWAY ENGINEER
10/06
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EXEMPT DOCUMENTS - Section 119.071(3)(b), Florida Statutes, provides:

Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency are exempt from s. 119.07(1) and s.24(a), Art. I of the State Constitution. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency before, on, or after the effective date of this act. Information made exempt by this paragraph may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or upon a showing of good cause before a court of competent jurisdiction. The entities or persons receiving such information shall maintain the exempt status of the information. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2007, unless reviewed and reenacted by the Legislature.

SECURITY SYSTEM PLAN - Section 119.071(3)(a), Florida Statutes, provides:

1. As used in this paragraph, the term "security system plan" includes all:
 - a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
 - b. Threat assessments conducted by any agency or any private entity;
 - c. Threat response plans;
 - d. Emergency evacuation plans;
 - e. Sheltering arrangements; or
 - f. Manuals for security personnel, emergency equipment, or security training.
2. A security system plan or portion thereof for:
 - a. Any property owned by or leased to the state or any of its political subdivisions; or
 - b. Any privately owned or leased property held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature and it is the intent of the Legislature that this exemption apply to security system plans held by an agency before, on, or after the effective date of this paragraph.
3. Information made confidential and exempt by this paragraph may be disclosed by the custodian of public records to:
 - a. The property owner or leaseholder; or
 - b. Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
STANDARD WRITTEN AGREEMENT

375-040-19
PROCUREMENT - 02/07
Page 1 of 7

Agreement No.: _____

Financial Project I.D.: _____

F.E.I.D. No: _____

Procurement No.: _____

D.M.S. Catalog Class No.: _____

BY THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called the "Department" and

of _____
duly authorized to conduct business in the State of Florida, hereinafter called "Vendor," hereby agree as follows:

1. SERVICES AND PERFORMANCE

A. In connection with _____,

_____ ,
the Department does hereby retain the Vendor to furnish certain services, information, and items as described in Exhibit "A," attached hereto and made a part hereof.

B. Before making any additions or deletions to the work described in this Agreement, and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into an Amendment covering such work and compensation. Reference herein to this Agreement shall include any amendment(s).

C. All tracings, plans, specifications, maps, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, shall be the exclusive property of the Department without restriction or limitation on their use and shall be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Vendor shall not copyright any material and products or patent any invention developed under this Agreement. The Department shall have the right to visit the site for inspection of the work and the products of the Vendor at any time.

D. All final plans, documents, reports, studies, and other data prepared by the Vendor shall bear the professional's seal/signature, in accordance with the applicable Florida Statutes, Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the statutes or rules create a conflict with the requirements of published guidelines, requirements of the statutes and rules shall take precedence.

E. The Vendor agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department shall be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. Coordination shall be maintained by the Vendor with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to this Agreement may request and be granted a conference.

F. All services shall be performed by the Vendor to the satisfaction of the Director who shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount of value thereof; and the decision upon all claims, questions, and disputes shall be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and amendment(s) shall be entered into by the parties in accordance herewith.

Reference herein to the Director shall mean the

2. TERM

A. Initial Term. This Agreement shall begin on date of execution and shall remain in full force and effect through completion of all services required or _____, whichever occurs first. Subsequent to the execution of this Agreement by both parties, the services to be rendered by the Vendor shall commence and be completed in accordance with the option selected below. (Select box and indicate date(s) as appropriate):

- Services shall commence _____ and shall be completed by _____ or date of termination, whichever occurs first.
- Services shall commence upon written notice from the Department's Contract Manager and shall be completed by _____ or date of termination, whichever occurs first.
- Other: See Exhibit "A"

B. RENEWALS (Select appropriate box):

- This Agreement may not be renewed.
- This Agreement may be renewed for a period that may not exceed three (3) years or the term of the original contract, whichever period is longer. Renewals shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds. Any renewal or extension shall be in writing and shall be subject to the same terms and conditions set forth in this Agreement.

C. EXTENSIONS. In the event that circumstances arise which make performance by the Vendor impracticable or impossible within the time allowed or which prevent a new contract from being executed, the Department, in its discretion, may grant an extension of this Agreement. Extension of this Agreement shall be in writing for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in this Agreement; provided the Department may, in its discretion, grant a proportionate increase in the total dollar amount based on the method and rate established herein. There shall be only one extension of this Agreement unless the failure to meet the criteria set forth in this Agreement for completion of this Agreement is due to events beyond the control of the Vendor.

It shall be the responsibility of the Vendor to ensure at all times that sufficient time remains in the Project Schedule within which to complete services on the project. In the event there have been delays which would affect the project completion date, the Vendor shall submit a written request to the Department which identifies the reason(s) for the delay and the amount of time related to each reason. The Department shall review the request and make a determination as to granting all or part of the requested extension.

3. COMPENSATION AND PAYMENT

- A. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Section 215.422(14), Florida Statutes.
- B. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.
- C. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- D. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, shall be submitted in accordance with Section 112.061, Florida Statutes, and Chapter 3 - Travel, Department's Disbursement Operations Manual, 350-030-400.
- E. Vendors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless otherwise specified herein. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

- F. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- G. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(23), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which the Vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall pay the transaction fee pursuant to Rule 60A-1.031(2), Florida Administrative Code. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Vendor shall receive a credit for any transaction fee paid by the Vendor for the purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Vendor in default and recovering procurement costs from the Vendor in addition to all outstanding fees. **VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.**
- H. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Consumer Hotline, 877-693-5236.
- I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all subcontractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Department for a proper audit of project costs.
- J. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

4. INDEMNITY AND PAYMENT FOR CLAIMS

- A. **INDEMNITY:** To the extent permitted by Florida Law, the Vendor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Vendor and persons employed or utilized by the Vendor in the performance of this Agreement.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

PAYMENT FOR CLAIMS: The Vendor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Vendor or any subcontractor, in connection with the Agreement. The Department's final acceptance and payment does not release the Vendor's bond until all such claims are paid or released.

B. LIABILITY INSURANCE. (Select and complete as appropriate):

- No general liability insurance is required.
- The Vendor shall carry and keep in force during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with a combined bodily injury limits of at least \$ _____ per person and \$ _____ each occurrence, and property damage insurance of at least \$ _____ each occurrence, for the services to be rendered in accordance with this Agreement.
- The Vendor shall have and maintain during the term of this Agreement, a professional liability insurance policy or policies or an irrevocable letter of credit established pursuant to Chapter 675 and Section 337.106, Florida Statutes, with a company or companies authorized to do business in the State of Florida, affording liability coverage for the professional services to be rendered in accordance with this Agreement in the amount of \$ _____.

C. WORKERS' COMPENSATION. The Vendor shall also carry and keep in force Workers' Compensation insurance as required for the State of Florida under the Workers' Compensation Law.

D. PERFORMANCE AND PAYMENT BOND. (Select as appropriate):

- No Bond is required.
- Prior to commencement of any services pursuant to this Agreement and at all times during the term hereof, including renewals and extensions, the Vendor will supply to the Department and keep in force a bond provided by a surety authorized to do business in the State of Florida, payable to the Department and conditioned for the prompt, faithful, and efficient performance of this Agreement according to the terms and conditions hereof and within the time periods specified herein, and for the prompt payment of all persons furnishing labor, materials, equipment, and supplies therefor.

E. CERTIFICATION. With respect to any insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Vendor shall provide to the Department certificates showing the required coverage to be in effect and showing the Department to be an additional certificate holder. Such policies shall provide that the insurance is not cancelable except upon thirty (30) days prior written notice to the Department.

5. COMPLIANCE WITH LAWS

- A. The Vendor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Failure by the Vendor to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department.
- B. The Vendor agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department's Contract Manager and securing prior written consent. The Vendor also agrees that it shall not publish, copyright, or patent any of the data developed under this Agreement, it being understood that such data or information are works made for hire and the property of the Department.
- C. The Vendor shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- D. If the Vendor is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then Section 337.162, Florida Statutes, applies as follows:
- (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.

- (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.
 - (3) Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to Chapter 455, Florida Statutes, and applicable state law.
- E. The Vendor covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Vendor further covenants and agrees that when a former state employee is employed by the Vendor, the Vendor shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Vendor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
 - F. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.
 - G. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity.
 - H. The Department shall consider the employment by any vendor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this agreement.
 - I. Pursuant to Section 216.347, Florida Statutes, the vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

6. TERMINATION AND DEFAULT

- A. This Agreement may be canceled by the Department in whole or in part at any time the interest of the Department requires such termination. The Department reserves the right to terminate or cancel this Agreement in the event an assignment be made for the benefit of creditors.
- B. If the Department determines that the performance of the Vendor is not satisfactory, the Department shall have the option of (a) immediately terminating the Agreement, or (b) notifying the Vendor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) taking whatever action is deemed appropriate by the Department.
- C. If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Vendor, the Department shall notify the Vendor of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

- D. If the Agreement is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Department and shall be turned over promptly by the Vendor.

7. ASSIGNMENT AND SUBCONTRACTS

- A. The Vendor shall maintain an adequate and competent staff so as to enable the Vendor to timely perform under this Agreement and may associate with it such subcontractors, for the purpose of its services hereunder, without additional cost to the Department, other than those costs within the limits and terms of this Agreement. The Vendor is fully responsible for satisfactory completion of all subcontracted work. The Vendor, however, shall not sublet, assign, or transfer any work under this Agreement to other than subcontractors specified in the proposal, bid, and/or Agreement without the written consent of the Department.

- B. Select the appropriate box:

The following provision is not applicable to this Agreement:

The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles that are the subject of, or required to carry out this Agreement 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 Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for the state agency (Department) insofar as dealings with such qualified nonprofit agency are concerned.

The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out this Agreement shall be purchased from the corporation identified under Chapter 946, Florida Statutes, in the same manner and under the procedures set forth in Sections 946.515(2) and (4), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for this agency (Department) insofar as dealings with such corporation are concerned.

The "corporation identified" is Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises
12425 - 28th Street, North
St. Petersburg, FL 33716-1826
(800)643-8459

This Agreement involves the expenditure of federal funds and Section 946.515, Florida Statutes, as noted above, does not apply. However, Appendix I is applicable to all parties and is hereof made a part of this Agreement.

8. MISCELLANEOUS

- A. The Vendor and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Vendor and its employees, agents, representatives, or subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of the Vendor or its employees, agents, representatives, or subcontractors. Vendor agrees to include this provision in all its subcontracts under this Agreement.

- B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Vendor.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- F. In any legal action related to this Agreement, instituted by either party, the Vendor hereby waives any and all privileges and rights it may have under Chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Department and in the event that any such legal action is filed by the Vendor, the Vendor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.
- G. If this Agreement involves the purchase or maintenance of information technology as defined in Section 282.0041, Florida Statutes, the selected provisions of the attached Appendix II are made a part of this Agreement.
- H. If this Agreement is the result of a formal solicitation (Invitation to Bid, Request for Proposal or Invitation to Negotiate), the Department of Management Services Forms PUR1000 and PUR1001, included in the solicitation, are incorporated herein by reference and made a part of this Agreement.
- I. Time is of the essence as to each and every obligation under this Agreement.
- J. The following attachments are incorporated and made a part of this agreement:

- K. Other Provisions:

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Name of Vendor

BY: _____
Authorized Signature

BY: _____
Authorized Signature

(Print/Type)

(Print/Type)

Title: _____

Title: _____

FOR DEPARTMENT USE ONLY

APPROVED: _____
Procurement Office

LEGAL REVIEW: _____