

**DEPARTMENT OF FINANCIAL SERVICES
Standard Contract Signature Page**

Contract Title Construction Materials Mining Activities Consultation and Study Preparation Services	P.O. No. or Solicitation No., if any DFS FM RFP 1718-12	Contract Number FM 410
--	--	---------------------------

1. This Contract is entered into between the Department of Financial Services and the Contractor named below:

The Department of Financial Services, [REDACTED] (hereinafter called the Department)

RE/SPEC Engineering, Inc. (hereinafter called the Contractor)

2. Contract to Begin: Upon execution	Date of Completion: No later than June 30, 2018	Renewals: None
---	--	-------------------

3. Performance Bond, if any: N/A	Other Bonds, if any: N/A
----------------------------------	--------------------------

4. Total Value for Contract Term: \$290,000	Total Value of Renewal(s): 0	Total Value of Contract Term Plus Renewal(s): \$290,000
--	---------------------------------	---

5. Department's Contract Manager		Contractor's Contract Manager	
Name:	[REDACTED]	Name:	[REDACTED]
Address:	[REDACTED]	Address:	[REDACTED]
Phone:	[REDACTED]	Phone:	[REDACTED]

6. The parties agree to comply with the terms and conditions of the following attachments which are hereby incorporated by reference:

- | |
|--|
| Attachment 1: Standard Terms and Conditions Applicable to Competitively Procured Contracts |
| Attachment 2: Statement of Work |
| Attachment 3: Price Response Form |
| Attachment 4: PUR 1000, General Contract Conditions |

7. The parties agree to comply with the terms and conditions of the following addenda which are hereby incorporated by reference.

- | |
|---|
| Addendum A: Public Records Requirements |
| Addendum B: Data Security Requirements |
| Addendum C: Construction Materials Mining Map |
| Addendum D: Contractor Response Commitments |

IN WITNESS WHEREOF, this Contract is being executed by the parties and is effective on the date in the Contract Begin Date above or the last date signed below, whichever is later.

8. RE/SPEC Engineering, Inc. **CONTRACTOR**
 Co. [REDACTED] (other corporation, partnership, etc.)
 By [REDACTED] Date Signed 2/1/18
 Printed Name and Title of Person Signing
 [REDACTED] President

9. Department of Financial Services **DEPARTMENT**
 By [REDACTED] Date Signed 2/1/18
 Printed Name and Title of Person Signing
 [REDACTED] Chief of Staff

**DEPARTMENT OF FINANCIAL SERVICES
STANDARD TERMS AND CONDITIONS
APPLICABLE TO COMPETITIVELY PROCURED CONTRACTS**

ATTACHMENT 1

1. Entire Contract.

This Contract, including any Attachments and Addenda referred to herein and attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any preprinted contract terms and conditions included on Contractor's forms or invoices shall be null and void.

2. Contract Administration.

- a. Order of Precedence. If there are conflicting provisions the documents that make up the Contract, the order of precedence for the documents is as follows:
 - i) Attachment 2, Statement of Work
 - ii) Standard Contract
 - iii) Attachments other than the Statement of Work, in numerical order as designated in the Standard Contract
 - iv) The Addenda in alphabetical order as designated in the Standard Contract
- b. All written and verbal approvals referenced in this Contract must be obtained from the parties' Contract Managers, or designees, referenced in the Standard Contract.
- c. In the event that different Contract Managers are designated by either party after execution of this Contract, notice of the name and contact information of the new Contract Manager shall be submitted in writing to the other party and maintained in the respective parties' Contract records.
- d. This Contract may be amended only by a written agreement between both parties.

3. Contract Duration.

- a. Term. The term of the Contract shall begin and end on the dates indicated on the Standard Contract unless terminated earlier in accordance with the applicable terms and conditions.
- b. Renewals. Section 287.058(1)(g), F.S., is hereby incorporated by reference and any renewals provided under the Contract must meet the requirements of this statute. If the Standard Contract indicates renewals are available, the Contract may be renewed for the timeframe(s) indicated in the Standard Contract.

4. Deliverables.

The Contractor agrees to render the services or other units of deliverables as set forth in the Attachment 2, Statement of Work. The services or other units of deliverables specified in the above paragraph shall be delivered in accordance with the schedule and at the pricing outlined in the Statement of Work. Deliverables may be comprised of tasks or activities that must be completed prior to the Department making payment on that deliverable.

5. Performance Measures.

The Contractor warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Statement of Work; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees shall comply with any security requirements and processes as provided by the Department, or provided by the Department's customer, for work done at the Department or other locations. The Department reserves the right to investigate or inspect at any time whether the services or qualifications offered by the Contractor meet the Contract requirements. Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable/minimum requirement does not foreclose the Department's remedies in the event those performance standards that cannot be readily measured at the time of delivery are not met.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by the Contract Manager before payment.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables as outlined in the Statement of Work as incomplete, inadequate, or unacceptable due in whole or in part to the Contractor's lack of satisfactory performance under the terms of this Contract. Failure to use the appropriate technical requirements or complete all tasks or activities as identified in the Statement of Work will result in automatic deliverable

rejection and may not be invoiced or paid until correction of the deliverable. Failure to complete the required duties as outlined in the Statement of Work will result in the rejection of the invoice. The Department, at its option, may allow additional time within which the Contractor may remedy the objections noted by the Department and the Department may, after having given the Contractor a reasonable opportunity to complete, make adequate or acceptable said deliverables, declare this Contract to be in default. If the Contract Manager rejects the deliverables, the Contractor shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time, at the Contractor's expense. If the Contract Manager does not accept the deliverables within 30 days, the will be deemed rejected.

- c. Status Reports. If status reports are required as part of the Contract, the Contractor shall timely submit status reports showing deliverables, tasks, or activities worked on, attesting to the level of services provided, hours spent on each deliverable/task/activity, and upcoming major deliverables, tasks, or activities.
- d. Completion Criteria and Date. The Contract will be considered complete once all of the deliverables under the Contract have been provided and accepted. The final date for completion of the Contract shall not exceed the Contract duration, including any executed renewals or extensions, or, where applicable, the expiration date of any purchase orders made from the Contract.

7. Financial Consequences for Nonperformance.

Withholding Payment. In addition to the specific consequences explained in the Statement of Work, the state of Florida (State) reserves the right to withhold payment when the Contractor has failed to perform/comply with provisions of this Contract. These consequences for nonperformance shall not be considered penalties.

8. Dispute Resolution.

Any claim, counterclaim, or dispute between the Department and the Contractor relating to this Contract shall be resolved as set forth herein. For all claims, the party with the dispute shall submit an affidavit executed by that party's Contract Manager or his or her designee certifying that:

- i. The claim is made in good faith,
- ii. The claim accurately reflects the adjustments for performance, and
- iii. The supporting data provided with such an affidavit are current and complete to the Contract Manager's best knowledge and belief.

The Contractor is obligated to address any cost related issues with the Department for which the Contractor believes the State is liable and address all costs of every type to which the Contractor is entitled from the occurrence of the claimed event. The Contractor shall not seek a claim under this Contract for an increase in payment.

- a. Informal Resolution Process. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Department's Chief Financial Officer (CFO), or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:
 - i. The representatives of the Contractor and the Department shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter at issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - ii. During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to this Contract will be honored in order that each of the parties may be fully advised of the other's position.
 - iii. The specific format for the discussions will be left to the discretion of the designated Department's and the Contractor's representatives but may include the preparation of agreed upon statements of fact or written statements of position.
 - iv. Following the completion of this process, the Department, or designee, shall issue a written opinion regarding the issue(s) in dispute. The opinion regarding the dispute shall be considered the Department's final action.
- b. Continued Performance. Each party agrees to continue performing its obligations under this Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute with the Department over compensation shall not be deemed to preclude performance) and without limiting either party's right to terminate this Contract for convenience or default.

9. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Statement of Work, the pricing per deliverable established by the Attachment E, Price Response, or Statement of Work, and the billing procedures established by the Department, the Department agrees to pay the Contractor for services rendered in accordance

with section 215.422, F.S. To obtain the applicable interest rate, please refer to <https://www.myfloridacfo.com/Division/AA/Vendors/default.htm>.

- b. **Vendor Rights.** A Vendor Ombudsman has been established within the Department. The duties of this individual include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be reached at (850) 413-5516.
- c. **Taxes.** The Department is exempted from payment of Florida State sales and use taxes and Federal Excise Tax. The Contractor, however, shall not be exempted from paying Florida State sales and use taxes to the appropriate governmental agencies or for payment by the Contractor to suppliers for taxes on materials used to fulfill its contractual obligations with the Department. The Contractor shall not use the Department's exemption number in securing such materials. The Contractor shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Contract. The Contractor shall provide the Department its taxpayer identification number upon request.
- d. **Invoice Detail.** All charges for services rendered or for reimbursement of expenses authorized by the Department pursuant to the Statement of Work, shall be submitted to the Department in sufficient detail for a proper pre-audit and post-audit to be performed.
- e. **Interim Payments.** Interim payments may be made by the Department at its discretion under extenuating circumstances if the completion of services and other units of deliverables to date have first been accepted in writing by the Department's Contract Manager.

10. Insurance.

- a. **Required Coverage.** At all times during the Contract, the Contractor, at its sole expense, and its subcontractors, if any, shall maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with the Contract. 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 licensed and authorized to write policies in Florida. Unless specifically exempted in the Statement of Work, the following are the minimum insurance requirements applicable to this Contract:
 - i. **Commercial General Liability Insurance.**

By execution of this Contract, unless the Contractor is a state agency or subdivision as defined by subsection 768.28(2), F.S., the Contractor shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Contract. A self-insurance program established and operating under the laws of the State may provide such coverage. The Department shall be named as an additional insured on any general liability policies.
 - ii. **Workers' Compensation and Employer's Liability Coverage.**

The Contractor shall provide workers' compensation, in accordance with Chapter 440, F.S., and employer's liability insurance with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any Contract work.
 - iii. **Other Insurance.**

At all times during the Contract, the Contractor shall maintain any other insurance as required in the Statement of Work.
- b. **Deductibles.** The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor providing such insurance.
- c. **Verification of Insurance.** Upon execution of this Contract, the Contractor shall provide the Department written verification of the existence and amount for each type of applicable insurance coverage. Upon receipt of written request from the Department, the Contractor shall furnish the Department proof of applicable insurance coverage by standard form certificates of insurance.
- d. **Failure to Maintain Coverage.** In the event that any applicable coverage is cancelled by the insurer for any reason, the Contractor shall immediately notify the Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within fifteen (15) business days after the cancellation of coverage.

11. Termination.

- a. **Contractor Obligations upon Notice of Termination.** After receipt of a notice of termination or partial termination, and except as otherwise directed by the Department, the Contractor shall stop performing services on the date, and to the extent specified, in the notice. The Contractor shall accept no further work or new services related to the affected deliverables, and shall, as soon as practicable, but in no event longer than 30

calendar days after termination, terminate any orders and/or subcontracts related to the terminated deliverables and settle all outstanding liabilities and all claims arising out of such termination of orders and/or subcontracts, with the approval or ratification of the Department to the extent required, which approval or ratification shall be final for the purpose of this section. The Contractor shall not perform any services after it receives the notice of termination or after Contract expiration, except as necessary to complete the transition or continued portion of the Contract, if any. Contractor shall submit to the Department within 90-calendar days of termination a request for payment of completed services. Requests submitted later than 90-calendar days after termination will not be honored and will be returned unpaid. All services for which the Department has paid prior to the termination date of this Contract shall be professionally serviced to conclusion in accordance with the requirements of the Contract. Should the Contractor fail to perform all services under the Contract, the Contractor shall be liable to the Department for any fees or expenses that the Department may incur in securing a substitute provider to assume completion of those services.

- b. Contractor Obligations after Termination. If at any time the Contract is canceled, terminated, or expires, and a contract is subsequently executed with a provider other than the Contractor, the Contractor has the affirmative obligation to assist in the smooth transition of Contract services to the subsequent contractor in accordance with Exit Transition requirements in the Statement of Work.
- c. Termination for Convenience. The Department may, in its sole discretion, terminate the Contract at any time by giving 30 days' written notice to the Contractor.

12. Notice of Default.

If the Contractor defaults in the performance of any covenant or obligation contained in the Contract, including, without limitation, any of the events of default listed below, the Department shall provide notice to the Contractor and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Contractor fail to perform within the time provided, the Contractor will be found in default, and the Department may terminate the Contract effective as of the date of receipt of the default notice.

13. Events of Default.

Provided such failure is not the fault of the Department or outside the reasonable control of the Contractor, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Contract by the Contractor, including failure to timely deliver a material deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Contract;
- b. Failure to maintain adequate progress, thus endangering performance of the Contract;
- c. Failure to honor any term of the Contract,
- d. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Contractor by the state or other licensing authority;
- e. Failure to pay any and all entities, individuals, and the like furnishing labor or materials, or failure to make payment to any other entities as required herein in connection with the Contract;
- f. Employment of an unauthorized alien in the performance of the work, in violation of section 274 (A) of the Immigration and Nationality Act;
- g. One or more of the following circumstances, uncorrected for more than 30-calendar days unless within the specified 30-day period, the Contractor (including its receiver or trustee in bankruptcy) provides to the Department adequate assurances, reasonably acceptable to the Department, of its continuing ability and willingness to fulfill its obligations under the Contract:
 - i) Entry of an order for relief under Title 11 of the United States Code;
 - ii) The making by the Contractor of a general assignment for the benefit of creditors;
 - iii) The appointment of a general receiver or trustee in bankruptcy of the Contractor's business or property;
 - iv) An action by the Contractor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation;
- h. The commitment of an intentional material misrepresentation or omission in any materials provided to the Department;
- i. Failure to comply with the E-Verify requirements of this Contract; and
- j. Failure to or maintain the insurance required by this Contract.

14. Indemnification.

All references to attorneys' fees in section 19, PUR 1000, are stricken.

15. Limitation of Liability.

The following terms supplement the limitations of liability terms in PUR 1000, section 20: The Department's liability for any claim arising from this Contract is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Contract. Such liability is further limited to a cap of \$100,000.

16. Remedies.

Notwithstanding any provisions to the contrary, written acceptance of a particular deliverable does not foreclose the Department's remedies in the event those performance standards that cannot be readily measured at the time of delivery are not met. Nothing in this Contract shall be construed to make the Contractor liable for force majeure events. Nothing in this Contract, including financial consequences for nonperformance shall limit the Department's right to pursue its remedies for other types of damages under the Contract, at law, or in equity. The Department may, in addition to other remedies available at law or equity and upon notice to the Contractor, retain such monies from amounts due to the Contractor as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against it. The Department may set off any liability or other obligation of the Contractor or its affiliates to the Department against any payments due the Contractor under any contract with the State.

17. Waiver.

The delay or failure by the Department to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Department'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.

18. Record Retention.

The Contractor shall retain records demonstrating its compliance with the terms of the Contract five (5) years after the expiration of the Contract and all pending matters, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer. If the Contractor is required to comply with section 119.0701, F.S., then compliance with the retention of records in accordance with section 119.0701(2)(b)4., F.S., will fulfill the above stated requirement. If the Contractor's record retention requirements terminate prior to the requirements stated herein, the Contractor may meet the Department's record retention requirements for this Contract by transferring its records to the Department at that time, and by destroying duplicate records in accordance with section 501.171, F.S., and, if applicable, section 119.0701, F.S. The Contractor shall adhere to established information destruction standards such as those established by the National Institute of Standards and Technology Special Publication 800-88, "Guidelines for Media Sanitization" (2014). See <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf>.

19. Intellectual Property.

The following terms apply, unless otherwise stated in the Statement of Work:

- a. The Contractor's intellectual property rights that preexists this Contract will remain with the Contractor. Intellectual property rights to all property created or otherwise developed by Contractor specifically for the Department will be owned by the State through the Department. Proceeds derived from the sale, licensing, marketing, or other authorization related to any such Department-controlled intellectual property right shall be handled in the manner specified by applicable statute.
- b. If the Contractor fails to provide, or no longer can provide, a deliverable or service under the Contract that contains or otherwise utilizes intellectual property controlled by the Contractor, the Contractor shall grant the Department a royalty-free, paid-up, nonexclusive, perpetual license to use, modify, reproduce, distribute, publish or release to others, such Contractor-controlled intellectual property solely for use in connection with the deliverables or services under the Contract.

20. Ownership of Property.

Title to all property furnished by the Department under this Contract and deliverables provided to the Department shall remain property of the Department and/or become property of the Department upon receipt and acceptance. The Contractor shall perfect any transfer of the property of the Department upon completion, termination, or cancellation of the Contract prior to payment of the final invoice.

21. Nonexclusive Contract.

This Contract is not an exclusive license to provide the services described in the solicitation or the resulting Contract. The Department may, without limitation and without recourse by the Contractor, contract with other vendors to provide the same or similar services.

22. Statutory Notices.

The Department shall consider the employment by any contractor of unauthorized aliens a violation of section 274A(e) of the Immigration and Nationality Act. Pursuant to sections 287.133 and 287.134, F.S., the following restrictions are placed on the ability of persons placed on the convicted vendor list or the discriminatory vendor list:

- a. **Public Entity Crime.** 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, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- b. **Discriminatory Vendors.** An entity or affiliate that 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 any public entity; and may not transact business with any public entity.

The Contractor shall notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Contract.

23. Compliance with Federal, State, and Local Laws.

- a. The Contractor and all its agents shall comply with all federal, state, and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements.
- b. This Contract shall be governed by and construed in accordance with the laws of the State of Florida.
- c. If applicable, the Contractor shall ensure that, as to its products and services it develops for the Department, electronic and information technology accessibility requirements of the Rehabilitation Act Amendments, 29 USC section 794 are met. Section 508 of the Rehabilitation Act Amendments, 29 USC section 794, compliance information on the supplies and services in this Contract are available on a website indicated by the Contractor. The Electronic and Information Technology standard can be found at: <https://www.section508.gov/>.
- d. **Scrutinized Companies.** This provision applies only when the goods or services to be provided are \$1 million or more. Section 287.135, F.S., requires the Contractor to certify that it is not: 1) on the Scrutinized Companies with Activities in Sudan List, 2) on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or 3) participating in a boycott of Israel. By entering into this Contract, the Contractor certifies that it is not on either of these lists and that it is not participating in a boycott of Israel. A Contract may be terminated if the Contractor submits a false certification regarding such matters or is placed on either list. In addition, a Contract entered into on or after October 1, 2016, may be terminated if the Contractor is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. The State Board of Administration provides a link to the "Scrutinized List of Prohibited Companies" at the following link: <https://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/PFIA/tabId/1478/ItemId/3351/Default.aspx>.

24. Employment Eligibility Verification.

The Contractor is responsible for payment of costs, if any, and retention of records relating to employment eligibility verification. These records are exempt from Chapter 119, F.S. Verification requires the following:

- a. The Chief Financial Officer has directed, in cooperation with the Governor's Executive Order 11-116, that the Contractor must participate in the federal E-Verify System for employment eligibility verification under the terms provided in the "Memorandum of Understanding" with the federal Department of Homeland Security if any new employees are hired to work on this Contract during the term of the Contract. The Contractor agrees to provide to the Department, within 30 days of hiring new employees to work on this Contract, documentation of such enrollment in the form of a copy of the E-Verify "Edit Company Profile" screen, which contains proof of enrollment in the E-Verify System. Information on "E-Verify" is available at the following website: www.dhs.gov/e-verify.
- b. The Contractor further agrees that it will require each subcontractor that performs work under this Contract to enroll and participate in the E-Verify System if the subcontractor hires new employees during the term of this Contract. The Contractor shall include this provision in any subcontract and obtain from the subcontractor(s) a copy of the "Edit Company Profile" screen indicating enrollment in the E-Verify System and make such record(s) available to the Department upon request.

25. Storage of State Data.

All data centers used to process and store State Data under this Contract shall only be located in the United States.

26. Applicable Law and Disputes.

Any dispute concerning performance of the Contract shall be processed according to the Statement of Work. Jurisdiction for any damages arising under the terms of the Contract will be in the courts of the State of Florida, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Contract.

27. Independent Contractor.

The Contractor is an independent contractor and is not an employee or agent of the Department.

28. Subcontracting.

- a. Unless otherwise specified in the Statement of Work, all services contracted for are to be performed solely by the Contractor and may not be subcontracted or assigned without the prior written consent of the Department.
- b. The Department may, for cause, require the replacement of any Contractor employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to the Department's secure information or any facility by any Contractor employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract.
- e. The Department will not deny the Contractor's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of the Department's denial is safety or security considerations.

29. Guarantee of Parent Corporation.

In the event the Contractor is a subsidiary of another corporation or other business entity, the Contractor asserts that its parent corporation will guarantee all of the obligations of the Contractor for purposes of fulfilling the obligations of the Contract. In the event the Contractor is sold during the period the Contract is in effect, the Contractor agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of the Contractor.

30. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Contract.

31. Exit Transition Services.

Upon the earlier of six (6) months before the expiration of the Contract or upon any notice of termination of the Contract, the Contractor shall provide transition services (Exit Transition Services) to the Department without regard to the reason for termination, as stated herein. Exit Transition Services shall be provided for up to the period outlined in the Statement of Work during the term and after termination and will be limited to post-contract activities involving knowledge transfer for such services and deliverables and all reasonable termination assistance requested by the Department to facilitate the orderly transfer of such services to the Department or its designees.

32. Third Parties.

The Department shall not be deemed to assume any liability for the acts, omissions to act, or negligence of the Contractor, its agents, servants, and employees, nor shall the Contractor disclaim its own negligence to the Department or any third party. This Contract does not and is not intended to confer any rights or remedies upon any person other than the parties. If the Department consents to a subcontract, the Contractor will specifically disclose that this Contract does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Contract.

33. Employment of State Employees.

During the term of this Contract, the Contractor shall not knowingly employ, subcontract with, or subgrant to any person (including any nongovernmental entity in which such person has any employment or other material interest as defined in section 112.312(15), F.S.), who is employed by the State or who has participated in the performance or procurement of this Contract except as provided in section 112.3185, F.S.

34. Audits.

The Contractor understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Contractor will comply with this duty and ensure that subcontracts issued under this Contract, if any, impose this requirement, in writing, on its subcontractors.

35. Travel Reimbursement.

Any travel expenses allowable under this Contract must be submitted in accordance with section 112.061, F.S.

36. Use of State Funds to Purchase or Improve Real Property.

Any State funds provided for the purchase of, or improvements to real property, are contingent upon the Contractor or political subdivision granting to the State a security interest in the property at least in the amount of State funds

provided, for at least five (5) years from the date of purchase or the completion of the improvements, or as further required by law.

- Remainder of Page is Intentionally Left Blank -

DEPARTMENT OF FINANCIAL SERVICES

STATEMENT OF WORK FOR CONSTRUCTION MATERIALS MINING ACTIVITIES CONSULTATION AND STUDY PREPARATION SERVICES

Attachment 2

The terms in this Statement of Work (SOW) shall be read together with general terms outlined in the Attachment 1, Standard Terms and Conditions. Where in conflict, the terms in this Statement of Work shall control.

I. Introduction.

The Department of Financial Services (Department) requires technical support to review whether the established statewide ground vibration limits for construction materials mining activities are still appropriate and to review any legitimate claims paid for damages caused by such mining activities as directed by section 552.30(3), F.S.

With regard to paid claims for damages, the Division of Administrative Hearings (DOAH) possesses exclusive jurisdiction over all claims for property damages caused by the use of explosives in connection with construction materials mining activities. Section 552.36, F.S. Since DOAH obtained exclusive jurisdiction in 2003, a total of twelve petitions seeking damages have been filed. Eight of the twelve petitions settled without a hearing, and the amount paid on those claims, if any, is unknown. One petition was dismissed by DOAH without a hearing. Three petitions proceeded to final hearing, and the mine prevailed in two of the three hearings. It is unknown how many claims may have been paid prior to 2003.

The only claim for damages caused by the use of explosives in connection with construction materials mining activities awarded by DOAH occurred in the matter of GATEWAY ESTATES PARK CONDOMINIUM ASSOCIATION v. SDI QUARRY, A/K/A ATLANTIC CIVIL, INC., DOAH Case No.: 16-001025CM. The Administrative Law Judge concluded SDI Quarry owed \$840,000.00 to pay for the cost of repairing a lakeshore and installing devices to prevent further erosion for the property damage caused by SDI Quarry's use of explosives in connection with construction materials mining. Payment of this claim is currently tolled pending appeal. Section 552.42, F.S. The case is pending at the First District Court of Appeal (DCA) as case number 1D17-1086.

The DCA may resolve the Gateway Estates case while the study is pending. If the DCA affirms the DOAH award of damages before April 4, 2018, then the Gateway Estates claim must be included in the study and reviewed by the Contractor in relation to measured vibration amplitudes and frequencies, theoretical analyses of material strength and strains, and structure responses. However, if the DCA does not issue an appellate mandate affirming a final order awarding damages until on or after April 4, 2018, then the Gateway Estates claim will remain outside the scope of the study. The Contractor must address the contingency that the DCA will issue an appellate mandate affirming a final order awarding damages prior to April 4, 2018, in which event the Contractor must review the claim.

II. Scope of Work.

The Contractor shall be a Florida-licensed professional engineer or professional geologist or a business or university employing such licensed professionals and shall provide review and evaluation of the established statewide ground vibration limits for construction materials mining activities, which must include a review of measured vibration amplitudes and frequencies, structure responses, and theoretical analyses of material strength and strains. Additionally, this should include a review of blasting activities reports, blast complaint reports, regulatory permits, and if provided by the Department, blaster's reports and other seismographic

reports. The data provided by the Department to the Contractor may include detailed measurement of the ground vibration limits, frequency, intensity, blast pattern, air blast and time, date, occurrence, and notice restrictions or other applicable standards or limits. The Contractor must review the DOAH case if the award of damages is timely affirmed as specified in Section I, Introduction. The Contractor shall conduct a review of mines and mining activities throughout the state of Florida.

III. Contract Duration.

- A. Contract Term. The service shall begin upon the date last signed by a party (effective date) and continue for a period not to extend beyond June 30, 2018, unless otherwise terminated in accordance with the terms of this Contract.
- B. Contract Renewals. There are no renewals available for this service.

IV. Payment Provisions.

- A. Invoicing. The Contract is a fixed price contract with invoicing after approval of each deliverable. See Table 1 - Payment Schedule by Deliverable.
- B. Travel and other Expenses. All costs incurred by the Contractor under this Contract are at the Contractor's expense. No reimbursement under the Contract is authorized.

V. Department Responsibilities.

- A. Documentation. Provide all documentation that the Contractor is required to analyze to the Contractor within fifteen (15) days of Contract execution.
- B. Format. To the extent possible, provide the documentation that the Contractor is required to analyze in a digital format.
- C. Contract Manager. Assign a contract manager to manage the Contract.
- D. Distribution. Conduct any required coordination, communication, and document distribution with any entities external to the Department, including the Florida Legislature, House and Senate Staff, other State agencies, the Governor's office, and other entities as directed by the Department.
- E. Review of Deliverables. Review all deliverables within five (5) business days and inform the Contractor if the deliverable is not accepted.
- F. Consultation. Be available for consultation throughout the Contract term.
- G. Review of Invoices. Review the Contractor's invoices for accuracy and thoroughness and process them on a timely basis.
- H. Assignment of Team Members. Review and approve the assignment of all team members, both initially proposed and any subsequent changes.
- I. Maintenance of Deliverables. Maintain paper, electronic, and final archive copies of all deliverables.
- J. Response to Inquiries. Expeditiously respond to inquiries or requests from the Contractor.
- K. Provide Meeting Sites. Provide meeting sites when necessary.

VI. Contractor Responsibilities.

- A. Deliverables. The Contractor shall provide the following services:
 - 1. **The table identified as, "Payment Schedule by Deliverable," at the conclusion of this Section VI. provides additional details to the information stated below regarding the deliverables requirements:**
 - a. Submit a summary of the initial analyses of reports, regulatory permits, and related correspondence produced by a representative sample (see subsection VI.A.1.e below) of construction materials mines in Florida.
 - b. Submit a summary of all documentation provided by the Division of State Fire Marshal documenting blasting activities at the same representative sample and complaints by residents located near those same mines.

- c. The Contractor's summary will address the following issues:
 - i. The effects of current ground vibration limits in the communities surrounding Florida's construction material mines.
 - ii. An analysis of the current ground vibration limits set by the U.S. Bureau of Mines, Report of Investigations 8507, with respect to Florida and its soil conditions, particularly in areas surrounding construction materials mines; and
 - d. The representative sample's data set will be limited to a statewide sampling of six (6) mines, to be identified by the State Fire Marshal's office. See Addendum C for a map of all construction materials mines permitted in the state of Florida. The State Fire Marshal will select the data set from all active mines indicated on Addendum C.
 - e. The data set will include all documents provided to the Contractor upon Contract execution, which may include any of the following reports required by statute and/or administrative rule:
 - i. Blasting Activities Reports;
 - ii. Complaint Reports (Requests for Investigation, Preliminary Report, Letters);
 - iii. Regulatory permits issued by federal, state, and local governmental agencies applicable to construction materials mines.
- 2. Submit a Proposed Final Report to the Department that outlines all findings for the period commencing twelve months prior to the effective date of this Contract.**
- a. The Proposed Final Report must include a section outlining whether the current blasting vibration limits set by statute are still appropriate, including a review of measured vibration amplitudes and frequencies, structure responses, and theoretical analyses of material strength and strains.
 - b. The Proposed Final Report must include a section reviewing the Gateway Estates claim if the DCA issues an appellate mandate by April 4, 2018, affirming the final order awarding damages.
 - c. During the Department's review of the Proposed Final Report, the Contractor shall provide technical assistance to the Department by answering questions and addressing concerns regarding the report's findings and contents.
 - d. The Proposed Final Report must include the testing results from the site testing plan outlined in Addendum D, Contractor Response Commitments, and an analysis of those results as it relates to the items in 2.a.
- 3. Provide a Final Report and PowerPoint Presentation to the Department.**
- a. After review of the Proposed Final Report, the Contractor shall make any necessary revisions resulting from the Department's review.
 - b. The Contractor shall submit additional revised drafts as needed until the Department approves the report as final.
 - c. The Contractor shall prepare and submit to the Department a PowerPoint presentation and at least two (2) color, standard size (22" x 28") posters. Both posters and the PowerPoint presentation should also be submitted to the Department in an electronic format to allow for editing and printing by the Department.
- 4. Provide assistance to the Department with outreach to interested parties.**

During the Contract Term, the Contractor shall assist the Department, as described in Addendum D, Contractor Response Commitments, with outreach to the Florida legislature, local government officials (staff, elected), and residents located near Florida's construction materials mines as directed. The Contractor shall complete the outreach responsibilities outlined in Addendum D, Contractor Response Commitments, prior to the date the Contract expires or is terminated.

- B. Performance Measures. The Minimum Service Levels are as follows:
All documents (summaries, reports, etc.) must be submitted to the Department in an electronic, Microsoft Office-based application that allows the Department to modify the documents and must be accepted by the Department in accordance with the acceptance process described in subsection VI.C., Acceptance of Deliverables, below.
- C. Acceptance of Deliverables. The Deliverables must be submitted to the Department's Contract Manager for review and approval (acceptance). The Department will review each Deliverable and sign off to indicate its acceptance of each Deliverable that meets the applicable criteria specified in this SOW. If subsequent work that is the responsibility of the Contractor invalidates some or all of the contents of a Deliverable, the Department reserves the right to require the Contractor to revise deliverables previously approved at no additional cost to the Department, or to reject current deliverables based on inconsistency with the SOW.
- D. Designation of Project Manager. The Contractor shall designate a project manager to work with the Department's Contract Manager in fulfilling the Contractor's requirements under this Contract.
- E. Response to Inquiries. The Contractor shall respond to inquiries and answer all questions posed by the Department within five (5) business days.
- F. Response to Department Communications. The Contractor shall be available to respond to telephone calls and emails from the Department on an as needed basis.

TABLE 1 - Payment Schedule by Deliverable				
Deliverable	Due Date	Invoice Submittal	Amount	Financial Consequences
Receipt by the Department of a summary of the initial analysis.	Within seventy (70) days of Contract execution.	Upon the Department's acceptance of summary.	\$150,000	The Department shall reduce payment by one percent (1%) of the deliverable amount for every business day beyond the due date, in excess of three (3) business days, that the deliverable is late.
Receipt by the Department of a Proposed Final Report.	No later than forty-five (45) days after receipt of the Department's acceptance of the summary of the initial analysis.	Upon the Department's acceptance of Proposed Final Report.	\$70,000*	The Department shall reduce payment by one percent (1%) of the deliverable amount for every business day beyond the due date, in excess of three (3) business days, that the deliverable is late.

Receipt by the Department of a Final Report.	June 30, 2018	Upon the Department's acceptance of Final Report.	\$70,000	The Department shall reduce payment by one percent (1%) of the deliverable amount for every business day beyond the due date, in excess of three (3) business days, that the deliverable is late. However, if the effective date of the Contract is after the date stated in the timeline in DFS FM RFP 1718-12 (which is January 31, 2018), the Department shall not apply this financial consequence unless the Final Report is submitted later than thirty (30) days after the Department's acceptance of the Proposed Final Report and, if the Final Report is submitted more than thirty (30) days after that, will only apply this financial consequence to the days in excess of thirty (30) days after the Department's acceptance of the Proposed Final Report.
Total Not to Exceed			\$290,000	

*NOTE: See Attachment 3, Price Response Form, for pricing breakdown

G. Financial Consequences for Failure to Timely and Satisfactorily Perform.

- i. Failure to timely submit each deliverable in accordance with the requirements of this Contract, unless such failure is beyond the control of the Contractor (applicable only if the reasons for such failure have been communicated to the Department in advance of the due date and the Department, in its sole discretion, agrees to extend the due date by written amendment to the Contract), will result in assessment by the Department of the financial consequences specified in the table above.
- ii. In addition, if the Department rejects a deliverable, the Department will begin to assess the same amount of the financial consequence specified in the table above for the deliverable beginning five (5) business days after rejection unless the Department receives the deliverable in a form that is acceptable to the Department by that fifth business day.
- iii. This provision for financial consequences shall in no manner affect the Department's right to terminate the Contract as provided elsewhere in this Contract and pursue damages for breach of contract, if applicable.

H. Monthly Status Reports.

The Contractor shall prepare and submit status reports on all progress relating to the deliverables that shall include:

- i. Summarizing the actions taken to date;
- ii. Identifying the outcomes of those actions; and
- iii. Identifying challenges, if any, the Contractor is encountering.

Reports are due to the Department's Contract Manager on the monthly anniversary of the Contract's effective date.

- Remainder of Page is Intentionally Left Blank -

DEPARTMENT OF FINANCIAL SERVICES

Price Response Form

Attachment 3

Summary of Initial Analysis	Proposed Final Report	Final Report	Required Pricing for Potential Claim Review*
\$150,000.00	\$ 50,000.00	\$70,000.00	\$20,000.00
TOTAL CONTRACT PRICE: \$290,000.00			

***First District Court of Appeal Case Number 1D17-1086.**

The prices specified above will be the maximum compensation paid to the Contractor. No other costs incurred by the Contractor will be reimbursed by the Department.

DEPARTMENT OF FINANCIAL SERVICES

PUR 1000, General Contract Conditions

Attachment 4

Contents

1. Definitions.
2. Purchase Orders.
3. Product Version.
4. Price Changes Applicable only to Term Contracts.
5. Additional Quantities.
6. Packaging.
7. Inspection at Contractor's Site.
8. Safety Standards.
9. Americans with Disabilities Act.
10. Literature.
11. Transportation and Delivery.
12. Installation.
13. Risk of Loss.
14. Transaction Fee.
15. Invoicing and Payment.
16. Taxes.
17. Governmental Restrictions.
18. Lobbying and Integrity.
19. Indemnification.
20. Limitation of Liability.
21. Suspension of Work.
22. Termination for Convenience.
23. Termination for Cause.
24. Force Majeure, Notice of Delay, and No Damages for Delay.
25. Changes.
26. Renewal.
27. Purchase Order Duration.
28. Advertising.
29. Assignment.
30. Antitrust Assignment
31. Dispute Resolution.
32. Employees, Subcontractors, and Agents.
33. Security and Confidentiality.
34. Contractor Employees, Subcontractors, and Other Agents.
35. Insurance Requirements.
36. Warranty of Authority.
37. Warranty of Ability to Perform.
38. Notices.

39. Leases and Installment Purchases.
40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).
41. Products Available from the Blind or Other Handicapped.
42. Modification of Terms.
43. Cooperative Purchasing.
44. Waiver.
45. Annual Appropriations.
46. Execution in Counterparts.
47. Severability.

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

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

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

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

- 4. Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.
- (a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.
 - (b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.
 - (c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.
 - (d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.
 - (e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.
- 5. Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.
- 6. Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted

commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

7. **Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.
8. **Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.
9. **Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.
10. **Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.
11. **Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.
12. **Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall

perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

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

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

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

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

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

15. Invoicing and Payment. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any

other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

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

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

16. **Taxes.** The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.
17. **Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.
18. **Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the

General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

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.

DEPARTMENT OF FINANCIAL SERVICES

Public Records Requirements

Addendum A

1. Public Records Access Requirements.

- a. If the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from public access pursuant to section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access to Public Records as required by law.

2. Public Records Requirements Applicable to All Contractors.

- a. For purposes of the Contract, the Contractor is responsible for becoming familiar with Florida's Public Records law, consisting of Chapter 119, F.S., section 24(a) of Article I of the Florida Constitution, or other applicable state or federal law (Public Records Law).
- b. All requests to inspect or copy Public Records relating to the Contract must be made directly to the Department. Notwithstanding any provisions to the contrary, disclosure of any records made or received by the State in conjunction with the Contract is governed by Public Records Law.
- c. If the Contractor has a reasonable, legal basis to assert that any portion of any records submitted to the Department are confidential, proprietary, trade secret, or otherwise not subject to disclosure ("Confidential" or "Trade Secret") under Public Records Law or other authority, the Contractor must simultaneously provide the Department with a separate redacted copy of the records the Contractor claims as Confidential or Trade Secret and briefly describe in writing the grounds for claiming exemption from the Public Records Law, including the specific statutory citation for such exemption. The un-redacted copy of the records shall contain the Contract name and number, and shall be clearly labeled "Confidential" or "Trade Secret." The redacted copy of the records should only redact those portions of the records that the Contractor claims are Confidential or Trade Secret. If the Contractor fails to submit a redacted copy of records it claims are Confidential or Trade Secret, such action may constitute a waiver of any claim of confidentiality.
- d. If the Department receives a Public Records request, and if records that have been marked as "Confidential" or "Trade Secret" are responsive to such request, the Department shall provide the Contractor-redacted copies to the requester. If a requester asserts a right to the portions of records claimed as Confidential or Trade Secret, the Department shall notify the Contractor that such an assertion has been made. It is the Contractor's responsibility to assert that the portions of records in question are exempt from disclosure under Public Records Law or other authority. If the Department becomes subject to a demand for discovery or disclosure of the portions of records the Contractor claims as Confidential or Trade Secret in a legal proceeding, the Department shall give the Contractor prompt notice of the demand, when possible, prior to releasing the portions of records the Contractor claims as Confidential or Trade Secret (unless disclosure is otherwise prohibited by applicable law). The Contractor shall be responsible for defending its determination that the redacted portions of its records are Confidential or Trade Secret. No right or remedy for damages against the Department arises from any disclosure made by the Department based on the Contractor's failure to promptly legally protect its claim of exemption and commence such protective actions within ten days of receipt of such notice from the Department.

- e. If the Contractor claims that the records are "Trade Secret" pursuant to section 624.4213, F.S., and all the requirements of section 624.4213(1), F.S., are met, the Department will respond to the Public Records Request in accordance with the provisions specified in that statute.
- f. The Contractor shall ensure that exempt or confidential and exempt Public Records are not disclosed except as permitted by the Contract or by Public Records Law.

3. **Additional Public Records Duties of Section 119.0701, F.S., If Applicable.**

If the Contractor is a "contractor" as defined in section 119.0701(1)(a), F.S., the Contractor shall:

- (1) Keep and maintain Public Records required by the Department to perform the service.
- (2) Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (3) A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- (4) Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.
- (5) Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.

(6) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT PUBLIC RECORDS AT:**

Telephone: [REDACTED]

Email: PublicRecordsInquiry@myfloridacfo.com

Mailing Address: The Department of Financial Services
Office of the General Counsel, Public Records
[REDACTED]

DEPARTMENT OF FINANCIAL SERVICES

Data Security Requirements

Addendum B

1. Data Security.

The Contractor, its employees, subcontractors, and agents, shall comply with Rule Chapter 74-2, Florida Administrative Code (F.A.C.), which contains information technology (IT) security procedures and requires adherence to the Department's security policies, the relevant parts of which are contained herein, in performance of this Contract. The Contractor shall provide immediate notice to the Department's Information Security Office, within the Office of Information Technology, in the event it becomes aware of any security breach or any unauthorized transmission or loss of any or all of the data collected, created for, or provided by the Department (State Data). Except as required by law or legal process, and after notice to the Department, 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 according to applicable rules, including, but not limited to, Rule Chapter 74-2, F.A.C. "Confidential Information" means information in the possession of, or under the control of, the state of Florida (State) or the Contractor that is exempt from public disclosure pursuant to Chapter 119, Florida Statutes (F.S.), or to any other applicable provision of State or federal law that serves to exempt information from public disclosure. This includes, but is not limited to, the security procedures, business operations information, or commercial proprietary information in the possession of the State or the Department. The Contractor will not be required to keep confidential any information that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's Confidential Information, or information that is otherwise obtainable under State law as a public record.

2. Data Protection.

No State Data will be transmitted, processed, or stored outside of the United States of America regardless of method, except as required by law. Access to State Data will only be available to staff approved and authorized by the Department that have a legitimate business need. Access to State Data does not include remote support sessions for devices that might contain the State Data; however, during remote support sessions the Department requires the Contractor to escort the remote support access and maintain visibility of the support personnel's actions. The Contractor shall encrypt all data transmissions containing Confidential Information. The Contractor agrees to protect, indemnify, defend, and hold harmless the Department from and against any and all costs, claims, demands, damages, losses, and liabilities arising from or in any way related to the Contractor's breach of this addendum or the negligent acts or omissions of the Contractor related to this addendum.

3. Separate Security Requirements.

Any Criminal Justice Information Services-specific and/or Health Information Portability and Accountability Act-specific security requirements are attached in a separate addendum, if applicable. The Contractor shall develop data security procedures to ensure only authorized access to data submissions by personnel for contracted activities.

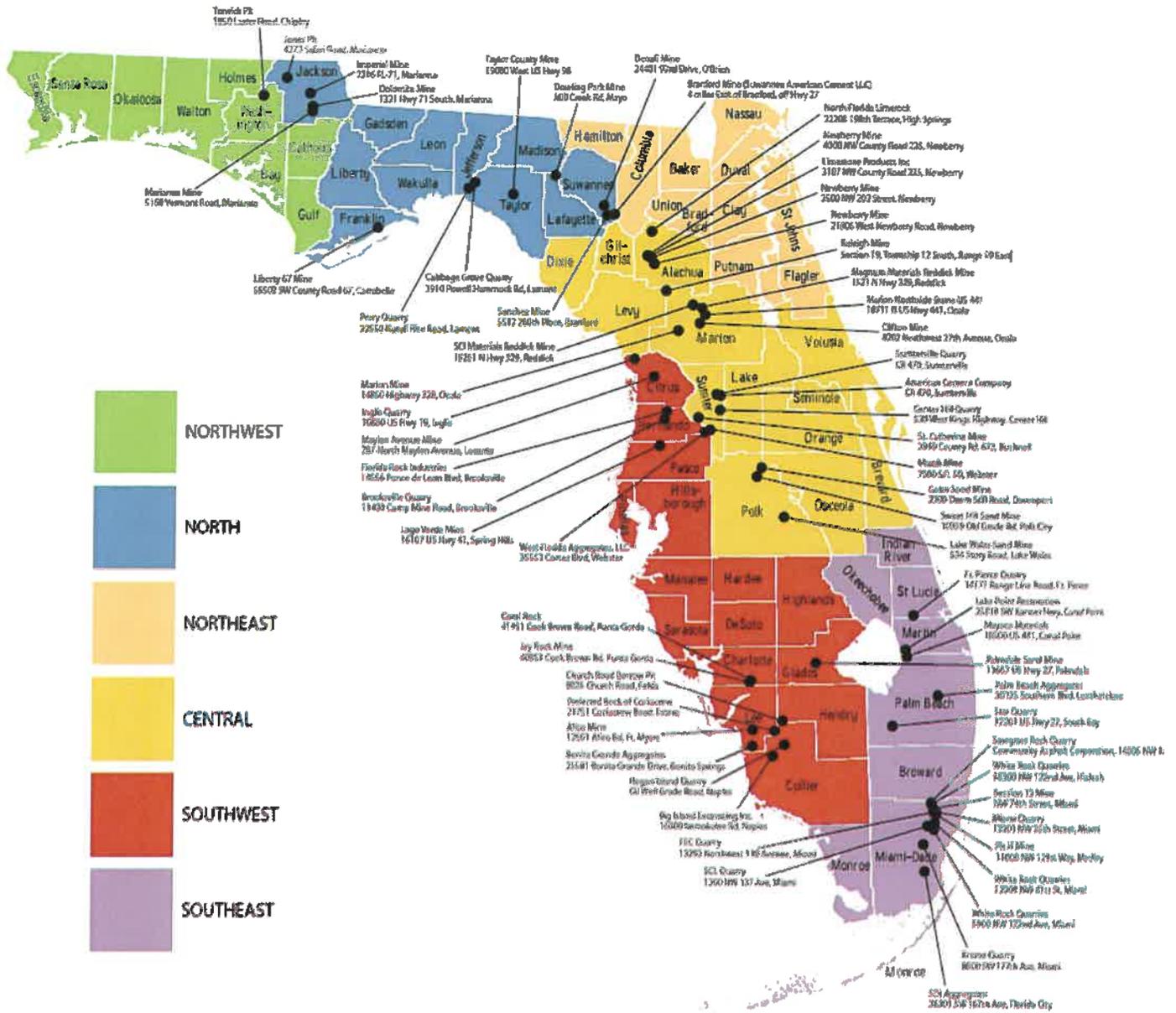
4. Ownership of State Data.

State Data will be made available to the Department upon its request, in the form and format reasonably requested by the Department. Title to all State Data will remain property of the Department and/or become property of the Department upon receipt and acceptance. The Contractor shall not possess or assert any lien or other right against or to any State Data in any circumstances.

DEPARTMENT OF FINANCIAL SERVICES

Construction Materials Mining Map

Addendum C



DEPARTMENT OF FINANCIAL SERVICES

Contractor Response Commitments

Addendum D

Site Visits and Field Testing

A vital part of this project will include site visits and empirical testing. The soil conditions and highly saturated ground in Florida may affect ground vibration attenuation in a manner that other states in the United States do not have to consider. The need for site and laboratory testing that applies to Florida is highly recommended and is part of the proposed solution submitted by RE/SPEC Engineering, Inc. (RE/SPEC).

Site Visits

RE/SPEC's personnel propose to visit each site selected by the Fire Marshal to review the typical blasting operations, the seismograph set up, the neighborhood and the blast itself. Site visits are important because one cannot truly know site specific practices and nuances from only reviewing reports.

Site Testing Plan

One seismograph will be set up at each of the six sites provided by the State Fire Marshal to be able to determine the attenuation and magnitude of the vibrations. After one or two months of blasting data have been collected the data will be analyzed. If possible, RE/SPEC will also place crack monitors and strain gauges to monitor crack expansion and shrinkage on dry wall, foundation, and any other building material typically used for residential structures in Florida. The crack monitors and strain gauges will help compare the effects of blasting and outside elements such as temperature and humidity changes. The results from crack monitors and strain gauges can also be used during community outreach to illustrate nature's effects on cracks compared to blasting events.

The results of the tests along with all other data reviewed and analyzed will be used to author recommendations regarding the requirements outlined in the RFP.

Outreach Plan

During the duration of the project, RE/SPEC will assist the department with any outreach. Assistance with outreach could include local government offices and residents located near Florida's construction materials mines as directed by the Department.

RE/SPEC will develop a Public Outreach Plan (POP), which will outline a clear process for building and maintaining trust among all stakeholders involved. The process defines the project outreach purpose, its outcomes, and an evaluation of the outcomes. The plan's process incorporates an adaptive management approach to provide flexibility, assessment, and adjustment. This adaptive approach is critical for a project of this duration.

The POP identifies who to engage as well as the methods and resources for engagement. The POP message strategy is focused on shared interests between the Department of Financial Services and RE/SPEC and stakeholders. By executing the prepared POP, we will establish and maintain the public support required to achieve the DFS's scientific objectives outlined in the RFP.

RE/SPEC shall complete these outreach responsibilities prior to the date the Contract expires or is otherwise terminated.