

CONTRACT BD S 98

**Central Florida Rail Corridor (CFRC)
Insurance Broker Services**

PROCUREMENT NO. RFP-DOT-11-12-5001-INS

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Documents located on the SunRail Website: <http://www.sunrail.com/documents.asp>

- Transition Agreement and Amendment No. 1
(between FDOT and CSX Transportation, Inc.)
- Central Florida Operations and Maintenance Agreement (CFOMA)
(between FDOT and CSX Transportation, Inc.)
- Design Criteria, DBM Contract E-5L71

DEFINITION OF TERMS

Central Florida Rail Corridor (CFRC) Insurance Broker Services

PROCUREMENT NO. RFP-DOT-11-12-5001-INS

ADDITIONAL INSURED: A person or organization that enjoys the benefits of being insured under an insurance policy, in addition to whoever originally purchased the insurance policy.

AGREEMENT or CONTRACT: Agreement or Contract shall mean the document entitled “Agreement between the Department and the Firm.”

BROKER/BROKER OF RECORD, VENDOR: The Vendor selected as a result of this Request for Proposal.

CONTRACT DOCUMENTS: The written agreement between the Department and the Firm setting forth the obligations of the parties thereto. Including, but not limited to the performance of the Work, the furnishing of labor, equipment, materials, and the basis of payments. The Contract Documents include the Request for Proposal, inclusive of all Exhibits and Addenda/Addendum, Firm’s Proposal, Agreement, and Notice to Proceed (NTP).

CENTRAL FLORIDA COMMUTER RAIL TRANSIT (CFCRT): The project name.

CENTRAL FLORIDA RAIL COMMISSION: The Board created to assume responsibility for Funding, operation, management and maintenance of the Commuter Rail System upon the expiration of the FDOT funding period.

CENTRAL FLORIDA RAIL CORRIDOR: (CFRC): The Rail Corridor designation
CONTRACT MANAGER: The Department employee designated to enforce the performance of the contract. (Project Manager)

DEPARTMENT: The Florida Department of Transportation, FDOT or its Assignee, Central Florida Rail Commission.

EVALUATION/SELECTION COMMITTEE: The Committees appointed by the Department to review and evaluate the Proposals, determine the final ranking and make a recommendation of award.

FDOT: The Florida Department of Transportation; See “Department”.

FDOT FUNDING PERIOD: The period commencing on the Revenue Operation Date and ending on the first day of the calendar month following expiration a seven year period, during which FDOT is obligated to fund operating deficits of the Commuter Rail System.

FIRM or PROPOSER: The firm or team of firms that submits a Proposal and the Successful Firm as approved by the Department, which has entered into a bilateral fully executed Agreement with the Department.

INSURED: The State of Florida and any other entities described in the contract.

INSURER: The Insurance Company providing coverage.

INSURANCE POLICY: The contract between the Insurer and the Insured that states the rights and duties of all parties involved.

POLICY INCEPTION: The beginning date of the insurance policy.

PREMIUM: The amount of money the Insured pays the Insurer for insurance.

PRICE PROPOSAL: The firm fixed price schedule which the firm shall submit in response to the Request for Proposal issued by the Department.

PROPOSAL: The written information that the Firm submits in response to the RFP. The Proposal includes the cost Proposal.

REVENUE OPERATION DATE: The date that the Commuter Rail System, after having received all State and Federal approvals for operation, is placed in commuter service for fare paying passengers to ride and shall have the same meaning as used by the FTA.

VENDOR: The broker or firm selected to provide the services described in Exhibit "A".

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
STANDARD WRITTEN AGREEMENT

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PROCUREMENT
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Page 1 of 8

Agreement No.: BDS 98
Financial Project I.D.: 412994-8-82-01
F.E.I.D. No.: F36-2102482
Appropriation Bill Number(s) for 1st year of contract,
pursuant to s.216.313, F.S.: _____
(required for contracts in excess of \$5 million)
Procurement No.: RFP-DOT-11-12-5001-INS
D.M.S. Catalog Class No.: 973-000; 973-440

BY THIS AGREEMENT, made and entered into this 19 day of Aug, 2011,
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called "Department" and
Arthur J. Gallagher Risk Management Services, Inc. of Two Pierce Plaza, Itasca, IL 60143 duly authorized to conduct
business in the State of Florida, hereinafter called "Vendor", hereby agree as follows:

1. SERVICES AND PERFORMANCE

- A. In connection with Central Florida Rail Corridor (CFRC) Insurance Broker Services the Department does hereby retain the Vendor to furnish certain services, information, and items as described in Exhibit "A," attached hereto and made a part hereof.
- B. Before making any additions or deletions to the work described in this Agreement, and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into an Amendment covering such work and compensation. Reference herein to this Agreement shall include any amendment(s).
- C. All tracings, plans, specifications, maps, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, shall be the exclusive property of the Department without restriction or limitation on their use and shall be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Vendor shall not copyright any material and products or patent any invention developed under this Agreement. The Department shall have the right to visit the site for inspection of the work and the products of the Vendor at any time.
- D. All final plans, documents, reports, studies, and other data prepared by the Vendor shall bear the professional's seal/signature, in accordance with the applicable Florida Statute, Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the statutes or rules create a conflict with the requirements of published guidelines, requirements of the statutes and rules shall take precedence.
- E. The Vendor agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department shall be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. Coordination shall be maintained by the Vendor with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to the Agreement may request and be granted a conference.
- F. All services shall be performed by the Vendor to the satisfaction of the Director who shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount of value thereof; and the decision upon all claims, questions, and disputes shall be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and amendment(s) shall be entered into by the parties in accordance herewith.

Reference herein to the Director shall mean the District Five Secretary.

2. TERM

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

Services shall commence _____ and shall be completed by _____ or date of termination, whichever occurs first.

Services shall commence upon written notice from the Department's Contract Manager and shall be completed by _____ or date of termination, whichever occurs first.

Other: See Exhibit "A" Scope of Services

- B. RENEWALS (Select appropriate box):

This Agreement may not be renewed.

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

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

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

3. COMPENSATION AND PAYMENT

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

- F. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- G. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(22), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which the Vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall pay the transaction fee pursuant to Rule 60A-1.031(2), Florida Administrative Code. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Vendor shall receive a credit for any transaction fee paid by the Vendor for the purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Vendor in default and recovering procurement costs from the Vendor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.
- H. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all subcontractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Department for a proper audit of project costs.
- J. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

4. INDEMNITY AND PAYMENT FOR CLAIMS

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

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

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

The Firm shall provide at its own cost all General Liability, Professional Liability, Business Auto Liability, Workers' Compensation and all other employee related insurance as may be required by law.

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

- No general liability insurance required.
- The Vendor shall carry and keep in force during the period of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$ _____ per person and \$ _____ each occurrence, and property damage insurance of at least \$ _____ each occurrence, for the services to be rendered in accordance with this Agreement.
- The Vendor shall have and maintain during the period of this Agreement, a professional liability insurance policy or policies or an irrevocable letter of credit established pursuant to chapter 675 and section 337.106, Florida Statutes, with a company or companies authorized to do business in the State of Florida, affording liability coverage for the professional services to be rendered in accordance with this Agreement in the amount of \$ 500,000.00.

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

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

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

E. CERTIFICATION. With respect to any insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Vendor shall provide to the Department certificates showing the required coverage to be in effect and showing the Department to be an additional certificate holder. Such policies shall provide for cancellation notice to the Department as required by law.

5. COMPLIANCE WITH LAWS

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

state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.

- (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.
- (3) Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to chapter 455, Florida Statutes, and applicable state law.

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

6. TERMINATION AND DEFAULT

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

- D. If the Agreement is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Department and shall be turned over promptly by the Vendor.
- E. If the Agreement is for goods or services of \$1 million or more and was entered into or renewed on or after July 1, 2011 and the Department determines that the Vendor submitted a false certification under Section 287.135(5), Florida Statutes, or if the Vendor has been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall have the option of (a) terminating the Agreement after it has given the Vendor notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (b) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.

7. ASSIGNMENT AND SUBCONTRACTS

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

- B. Select the appropriate box:

The following provisions are not applicable to this Agreement.

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

It is expressly understood and agreed that any articles that are the subject of, or required to carry out this Agreement shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for the state agency (Department) insofar as dealings with such qualified nonprofit agency are concerned.

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

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

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

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

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

8. MISCELLANEOUS

- A. The Vendor and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Vendor and its employees, agents, representatives, or subcontractors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of the Vendor or its employees, agents, representatives, or subcontractors. Vendor agrees to include this provision in all its subcontracts under this Agreement.
- B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Vendor.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- F. In any legal action related to this Agreement, instituted by either party, the Vendor hereby waives any and all privileges and rights it may have under Chapter 47 and section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Department and in the event that any such legal action is filed by Vendor, the Vendor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.
- G. If this Agreement involves the purchase or maintenance of information technology as defined in Section 282.0041, Florida Statutes, the selected provisions of the attached Appendix II are made a part of this Agreement.
- H. If this Agreement is the result of a formal solicitation (Invitation to Bid, Request for Proposal, or Invitation to Negotiate), the Department of Management Services Forms PUR1000 and PUR 1001, included in the solicitation, are incorporated herein by reference and made a part of this Agreement.
- I. Vendor/Contractor:
 - 1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
 - 2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- J. Time is of the essence as to each and every obligation under this Agreement.
- K. The following attachments are incorporated and made a part of this agreement:
Exhibit "A", Scope of Services; Exhibit "B", Method of Compensation; Exhibit "C", Price Proposal


L. Other Provisions: In case of conflict the contract documents shall have the following order of precedence.

- Exhibit "A" Scope of Services
- Exhibit "B" Method of Compensation
- Standard Written Agreement
- Special Conditions and Introduction: RFP-DOT-11-12-5001-INS
- Price Proposal, Exhibit "C"
- Form PUR 1001, General Instructions to Respondents
- RFP-DOT-11-12-5001-INS

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

Arthur J. Gallagher Risk Management Services, Inc.
Name of Vendor

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: 
Authorized Signature

By: 
Authorized Signature

Peter A. Doyle
(Print/Type)

Noranne B. Downs, P.E.
(Print/Type)

Title: Area President

Title: District Five Secretary

FOR DEPARTMENT USE ONLY

APPROVED: 
Procurement Office

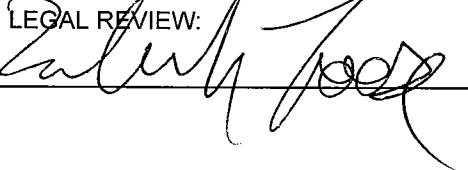
LEGAL REVIEW: 

EXHIBIT A- SCOPE OF SERVICES
Insurance Broker Services

Central Florida Rail Corridor (CFRC)
RFP-DOT-11-12-5001-INS

1.0 BACKGROUND

The Florida Department of Transportation (DEPARTMENT) is a State Agency responsible for the construction, oversight, management, funding and operations of the public commuter rail transportation services to be operated in the central Florida, District Five area. The commuter rail operation will run over a 62-mile rail corridor owned by the DEPARTMENT. The rail corridor is also used for freight and intercity passenger service. The DEPARTMENT is the lead agency in placing General Liability Insurance and other insurance for rail operations and construction related coverage on the rail corridor. The State of Florida, the DEPARTMENT, and CSX Transportation will be named insureds, and Orange County, Osceola County, Seminole County, the County of Volusia, the City of Orlando, and the Central Florida Rail Commission, will be additional named insureds on the General Liability Insurance policies under this program. Other additional insureds or additional named insureds for other policies will be as specified by the DEPARTMENT from time to time.

The Vendor shall develop, market, place and administer the insurance program to cover the DEPARTMENT activities for commuter rail operations, railroad property insurance, and right-of-way construction projects as well as any other insurance, which the DEPARTMENT may require. This VENDOR may function as a General Risk/Wrap Administrator for the DEPARTMENT and the Central Florida Rail Corridor (CFRC). The term of this Agreement shall begin on the date of execution hereof and continue for seven (7) years.

Initially, it is anticipated that coverage for General Liability Personal Injury and Property Damage will be procured by the VENDOR for the DEPARTMENT. Additional coverage may be needed and procured by the VENDOR for commuter rail passenger operations, for the Central Florida rail corridor construction program, general business operations, and for the assets of the rail corridor such as the rolling stock, station facilities, and operations and maintenance facilities.

The Vendor will provide insurance Brokerage services for the DEPARTMENT liability insurance program and other business insurance programs that may be deemed necessary. The Vendor will receive a Broker-of-Record letter and will be allowed full access to all insurance markets to put the program together. VENDOR will fully coordinate with the DEPARTMENT Project Manager the performance of all services hereunder.

2.0 BROKERAGE SERVICES

2.1. The DEPARTMENT initially desires during the term of this Contract to purchase two phases of General Liability, Personal Injury and Property insurance policies, the first with limits of **\$30,000,000.00** for coverage during the initial Phase I buildout and then, prior to the start of

Commuter Rail passenger revenue service an increased limit of **\$200,000,000.00**. Coverage will include but is not limited to the following:

A. General Insurance covering the commuter rail operations on the State owned rail corridor including freight rail operators, commuter rail service providers, governmental entities and ancillary development.

B. Additionally, the DEPARTMENT may require broad rail construction insurance for the rehabilitation of the CFRC. The limits of these respective policies will be at the discretion of the DEPARTMENT and will include but not be limited to the following programs:

- Railroad Protective Liability
- Railroad Force Account

C. Additionally, the DEPARTMENT may require general business operations insurance to including but not limited to: commercial liability, commercial property, crime insurance, railroad property insurance for assets located on the CFRC. See the property breakdown as shown on Exhibit A-1, page A-6.

D. The base threshold general liability insurance program for the rail corridor is outlined in the Transition Agreement and the Central Florida Operating and Management Agreement Section 9 of the Transition Agreement and Section 21b of the Central Florida Operating and Management Agreement define these limits. The DEPARTMENT will maintain a **\$5,000,000.00** self-insured retention fund. The first designated named insured for these programs will be the State of Florida and the DEPARTMENT. CSX Transportation, Inc. will be a named insured on these two policies only in respect to Section 9 of the Transition Agreement and Section 21b of the Central Florida Operating and Management Agreement. Orange County, Osceola County, Seminole County, the County of Volusia, the City of Orlando, and the Central Florida Rail Commission will each be named be additional named insureds on these policies.

These documents can be located on the SunRail website at:
<http://www.sunrail.com/documents.asp>

2.2. Underwriting information will be made available to the selected VENDOR as needed. Included in this information will be copies of operating agreements with railroads, cities, counties and other agencies.

2.3. The VENDOR will be permitted to place insurance through intermediaries including the selected VENDOR'S proprietors, affiliates, subsidiaries, parent, or joint venture partners.

2.4 Placement of Policies: The DEPARTMENT will have ultimate discretion in the award of any insurance policy. The Vendor will submit all documentation to the DEPARTMENT prior to issuing a bid for, placing or renewing any insurance policy as specified in Exhibit B, Method of Compensation. The Vendor shall submit all renewals to the DEPARTMENT a minimum of 90 days prior to the expiration of the current policy for review and approval.

2.5 All the work required by the Vendor to provide quotes for insurance policies along with the work required to finalize the obtaining of those policies, track the policy information, and renew any such policies, including the work described in this Section 2.0, shall be described as Brokerage Services and the compensation by way of commissions obtained by the Vendor for providing Brokerage Services shall be referred to as the Brokerage Fee.

3.0 ANCILLARY SERVICES

In addition to, and separate from, the Brokerage Services described in Section 2.0 above, the DEPARTMENT may require that the VENDOR perform the following ancillary services from time to time pursuant to Task Work Orders issued that authorize said services (Ancillary Services). To the extent that any of the below listed activities are necessary for the Vendor to obtain the insurance policies for which Vendor will be receiving a commission, the services will not be considered Ancillary Services and only when a specific Task Work Order is issued requesting these services as Ancillary Services will the services listed below be paid for as Ancillary Services.

Program Design and Marketing

- ❖ Assist the DEPARTMENT in identifying its risks of loss from third party liability exposures.
- ❖ Develop specifications for the DEPARTMENT's liability insurance program, including but not limited to, the decision to pursue a Wrap approach.
- ❖ Market the DEPARTMENT's risks to the worldwide marketplace and ensure competitive rates.
- ❖ Work directly with the DEPARTMENT with regards to the **\$5 million self-insurance fund**.

Policy Holder Services

- ❖ Be available to answer questions from DEPARTMENT personnel.
- ❖ Obtain answers from underwriters to policy coverage questions.
- ❖ Continually monitor DEPARTMENT operations and loss exposure, and recommend appropriate coverage changes or new coverage.
- ❖ Assist the DEPARTMENT in identifying risks in contractual agreements and in seeking appropriate indemnification and insurance protection from other parties to contracts.
- ❖ Attend meetings with DEPARTMENT management and staff personnel, as requested.
- ❖ Review and comment on insurer loss control activities as requested by DEPARTMENT.
- ❖ Prepare insurance certificates and endorsements as requested by the DEPARTMENT.

Claims Management,

- ❖ Monitor claims procedures on Liability and Property Programs, including auditing of the DEPARTMENT's claim files.
- ❖ Maintain accurate claim data on an accident date basis and provide the DEPARTMENT with periodic status reports as requested.
- ❖ Prior to the program anniversary, submit a written report stating:
 - Summarizing insurance purchased during year, including coverage and insurance carrier;
 - Premiums paid;
 - Anticipated renewal terms and conditions and other indications of market conditions, trends, and anticipated changes;
 - Identify problem areas such as claim handling safety hazards, uninsured risks, etc.; and
 - Recommendations for improved program design.

Safety and Loss Control

- ❖ Services in safety and loss control for the CFCRT system and CFRC.
- ❖ Development of Disaster Management Programs for the CFCRT system and CFRC.

4.0 INSUREDS

Below is a partial list of possible additional insureds or additional named insureds. The specifics as to each policy will be determined by the DEPARTMENT at the appropriate time.

ADDTNL INSURED/NAMED INSURED	RELATIONSHIP
1. Contract Operator (To be selected) Operations and Maintenance	Contract operator of the commuter passenger services that provides the train crews for train operations and maintenance crews to maintain railcars and locomotives.
2. State of Florida	Owner of the rail corridor.
3. City of Orlando, FL	Operations, Maintenance and Security of Florida Hospital, LYNX Central, South Street and Orlando Amtrak commuter rail stations
4. Orange County, FL	Operations, Maintenance and Security of Maitland, Winter Park, Sand Lake Road and Meadow Woods Commuter rail stations and parking.

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| 5. Seminole County, FL | Operations, Maintenance and Security of Sanford, Lake Mary, Longwood, and Altamonte Springs commuter rail stations and parking. |
| 6. Osceola County, FL | Operations, Maintenance and Security of Osceola Parkway, Kissimmee, and Poinciana commuter rail stations and parking. |
| 7. Volusia County, FL | Operations, Maintenance and Security of DeBary and DeLand Amtrak commuter rail stations and parking. |
| 8. AMTRAK | Owner of the DeLand Amtrak Station; and select maintenance facilities. Inter City Passenger Rail Operator. |
| 9. CSXT Transportation | As their interest may appear. |
| 10. City of Winter Park, FL | Owners of the Winter Park Station and parking. |
| 11. CFRTA (LYNX) | Owners of LYNX Central Station |
| 12. Florida Hospital | Owners of the Florida Hospital station parking and pedestrian facilities |
| 13. City of Longwood, FL | Owners of select access, parking and pedestrian facilities |
| 14. Parker Lumber Development | Owner of the Maitland station parking and pedestrian facilities. |
| 15. City of Kissimmee, FL | Owner of select parking and pedestrian facilities at Kissimmee commuter rail station |
| 16. Tupperware, Inc. | Owner of select access and parking facilities at Osceola Parkway commuter rail station |
| 17. Archer-Western Contractors-Railworks, a Joint Venture | Design, Build, Maintain Contractor. |
| 18. Dispatch Contractor | |
| 19. Signal Maintainers | |

20. Signal Contractors

5.0 INFRASTRUCTURE VALUE ESTIMATES

Below are the estimated values of existing corridor infrastructure and the estimated cost of corridor/system improvements. This information is being provided for informational purposes only and shall not be binding on DEPARTMENT.

Infrastructure Item	Description	Replacement or Improvement Cost
Existing CSX Track Structure	Rails, ties, ballast, culverts, crossings	\$88.9 million (1)
Existing CSX Bridges	Including St. John's Bridge	\$18.7 million (1)
Existing CSX Signals	At grade crossings	\$9.8 million (1)
Existing CSX Systems	Wayside, signals and communications	\$4.6 million (1)
Phase I Track Elements	Track, ballast, ties	\$40.917 million (2)
Phase I Stations	Station, Platform, Signage	\$16.186 million (2)
Phase I Support Facilities	Administrative offices, maintenance facilities, yard and track, access, car wash, fueling	\$14.555 million (2)
Phase I Sitework and Special Conditions	Parking, pedestrian access, retaining walls, utilities and utility relocation, earthwork	\$32.366 million (2)
Phase I Systems	Train Control, traffic signals, crossing protection, communications, fare collection, Operations Control Center.	\$80.954 million (2)
Phase I Right of Way	ROW, Land	\$40.183 million (2)(3)
Phase I Vehicles	Locomotives, Coaches, Cab cars, spare parts	\$54.281 million (2)
Phase II Track Elements	Track, ballast, ties	\$50.0 million (4)
Phase II Stations	Station, Platform, Signage	\$7.5 million (4)
Phase II Support Facilities	Administrative offices, maintenance facilities, yard and track, access, car wash, fueling	\$5.0 million (4)
Phase II Sitework and Special Conditions	Parking, pedestrian access, retaining walls, utilities and utility relocation, earthwork	\$17.5 million (4)
Phase II Systems	Train Control, traffic signals, crossing protection, communications, fare collection, Operations Control Center.	\$52.5 million (4)
Phase II Right of Way	ROW, Land	\$25.2 million (3)(4)
Phase II Vehicles	Locomotives, Coaches, Cab cars, spare parts	\$27.6 million (4)

- Notes: (1) 2007 estimate
(2) Year 2009 Dollars w/Contingency, but without Unallocated Contingency (\$18.9 million), finance charges and professional services
(3) For information purposes only
(4) Year 2009 Dollars w/Contingency, but without Unallocated Contingency (\$14.0 million), finance charges and professional services

6.0 STANDARD CONTRACT TERMS AND CONDITIONS

The following form PUR 1000 is a standard contract terms form that the Department includes in all procurements, except that paragraphs 4, 5, 11, 19, 20, 25, 26, 27, 29, 31, 35, 43, and 45 do not apply to this Request for Proposal. Deletion of these paragraphs shall not be deemed to be deletion of content contained elsewhere and the substance of these excepted paragraphs may be addressed in other locations in the procurement documents. That substance located elsewhere continues to apply regardless of this exception paragraph.

**State of Florida
Central Florida Rail Corridor (CFRC),
Insurance Broker Services
PUR 1000
General Contract Conditions**

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.

