

# 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  
OGC - 06/11  
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 1<sup>st</sup> 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 - 28<sup>th</sup> 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

By:   
Authorized Signature

Peter A. Doyle  
(Print/Type)

Title: Area President

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

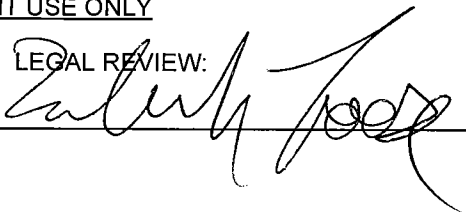
By:   
Authorized Signature

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

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 INSURED**

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.

<b>ADDTNL INSURED/NAMED INSURED</b>	<b>RELATIONSHIP</b>
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.

- |   |   |
|---|---|
| 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.

<b>Infrastructure Item</b>	<b>Description</b>	<b>Replacement or Improvement Cost</b>
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.
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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.
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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.
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- 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.

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 repurchase costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

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

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

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

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

**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://dlis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**37. Warranty of Ability to Perform.** The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract

obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

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

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

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

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

**42. Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion

of standard preprinted forms, product literature, “shrink wrap” terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor’s order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

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

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

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

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

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

## EXHIBIT B

### METHOD OF COMPENSATION

#### Central Florida Rail Corridor Insurance Broker Services

Financial Project ID: 412994-8-82-01



## **1.0 PURPOSE**

This Exhibit B defines the method and limits of compensation to be paid to the Vendor for the services described in Exhibit "A" (Scope of Services) and the procedure by which payments will be made.

## **2.0 FUNDING**

There is no funding currently authorized under this contract. Payment for Brokerage Services will be made based on a percentage commission (Broker Fees) of insurance policies placed with any specific insurance provider directly to the Vendor by the insurer. Funding for Ancillary Services will be authorized with each Task Work Order. The Department will not authorize work to be performed until funding for each Task Work Order has been secured.

## **3.0 COMPENSATION AND AUTHORIZATION OF SERVICES**

This is a term Agreement for an indefinite quantity whereby the Vendor agrees to furnish services during a prescribed period of time. The Department shall request Vendor services on an as-needed basis. There is no guarantee that any or all of the services described in Exhibit "A" of this Agreement will be assigned during the term of this Agreement. Further, the Vendor is providing these services on a non-exclusive basis. The Department may, at its option, elect to have any of the services set forth herein performed by other Vendors or Department staff.

No work shall be performed except pursuant to a specific Written Letter of Authorization for Brokerage Services or a Task Work Order for Ancillary Services, issued by the Department. Each Written Letter of Authorization will define the insurance policy to be procured as described below, and each Task Work Order will specify the Ancillary Services authorized to be performed and a Maximum Amount of compensation that will be paid for the performance of the Ancillary Services described therein (Maximum Limiting Amount), with the Vendor being authorized to invoice only for the actual services performed under the Task Work Order at the Hourly Ancillary Services Rate. Task Work Orders for Ancillary Services will also specify applicable completion deadlines for the Ancillary Services described therein.

### **BROKERAGE SERVICES:**

Compensation for Brokerage Services will be made in the form of commission payments made by the insurance company providing the insurance. The commission payments received by the Vendor may not exceed the percentage specified in the Vendor's price proposal submitted in connection with the procurement of this Agreement.

When the Department desires to obtain insurance pursuant to this Agreement, it will notify the Vendor in writing of the specifics of the insurance required, including, but not limited to, the nature of the coverage, the amount of the coverage, and a specification of named insureds,

additional insureds, or additional named insureds. The Vendor shall then proceed to obtain quotes for the requested insurance. At such time as the Vendor has completed the process, the Vendor shall submit to the Department a report detailing the work performed by the Vendor, the insurance options available to the Department, the Vendor's recommendations with explanation for the recommendation, and all costs, including premiums and commissions, associated with each option. The Department shall review the options and shall either select one of the options available or reject all options. If the Department selects an option, the Department will issue a Purchase Order to the company or companies providing the insurance under that option.

#### **ANCILLARY SERVICES:**

The total amount of this Agreement is expected to be funded by multiple encumbrances. The State of Florida's obligation to pay under this contract is contingent upon encumbrances being issued for each Task Work Order for Ancillary Services. Therefore, it is agreed that the Vendor will not be obligated to perform services nor incur costs under this Agreement until the Vendor has received written authorization from the Department, nor will the Department be obligated to reimburse the Vendor for costs or make fee payments for Ancillary Services work performed without a properly executed Task Work Order. Compensation for Ancillary Services will be made based on the Hourly Ancillary Services Rate of \$100.00 for services defined in each Task Work Order.

For each Task Work Order the Vendor, following the Scope of Services as set forth in Exhibit "A", shall prepare an estimate of work and price based on the Hourly Ancillary Services Rate above. The Department and the Vendor shall then attempt to agree upon a Maximum Limiting Amount for the Task Work Order. Once an acceptable Maximum Limiting Amount has been agreed upon by the Vendor and the Department's Project Manager, a Task Work Order shall be issued by the Project Manager. If the Department and the Vendor are unable to agree to a Maximum Limiting Amount for the Task Work Order, the Department may issue a Task Work Order for a specific number of hours of specific Ancillary Services and the number of hours specified multiplied by the Hourly Ancillary Services Rate shall become the Maximum Limiting Amount for that Task Work Order. For such Task Work Orders, the Vendor shall be obligated to perform the hours of Ancillary Services as specified in the Task Work Order. The Project Manager shall obtain fund approval for each authorization by an approved encumbrance prior to issuing the Task Work Order. All work authorizations shall be completed within the time limits specified in the Task Work Order.

### **3.1 BASIS OF COMPENSATION AND DISPOSITION OF COMMISSION PAYMENTS**

The Vendor shall not accept any remuneration other than the amount stipulated as the Broker Fee in connection with providing the Brokerage Services. The Vendor will disclose to the Department any and all commissions received by the Vendor. Such commissions shall not include and the Vendor shall not accept in connection with the Brokerage Services any additional remuneration, including but not limited to the following: wholesale Brokerage fees or commissions; administrative fees and similar items; contingent commissions, or any other revenue source other than approved commissions as provided for by this paragraph. The Vendor shall provide to the Department a detailed accounting of all revenues associated with the Brokerage Services provided under this contract annually or as requested by the Department. It shall be the sole responsibility of the Vendor to ensure receipt of commissions. The Department will not be held liable for any commissions due the Vendor. The commissions received by the Vendor shall be the full, final and sole compensation paid for the performance of Brokerage

Services under this Agreement.

#### **4.0 INVOICING PROCEDURE**

##### **BROKERAGE SERVICES:**

The Vendor shall not invoice the Department for Brokerage Services under this contract. Once the Department has issued a Purchase Order for the specific insurance policy, the Vendor shall be deemed authorized to receive the commission for that policy.

##### **ANCILLARY SERVICES:**

The Vendor shall submit monthly Task Work Order invoices (3 copies) in a format acceptable to the Department. For the satisfactory performance of the services detailed in each Task Work Order the Vendor shall be paid up to the Maximum Limiting Amount of the Task Work Order at the Hourly Ancillary Services Rate above. Progress payments shall be made to the Vendor for a portion of the work performed under each Task Work Order as approved by the Department.

#### **5.0 PROJECT CLOSEOUT**

If requested, the Vendor will permit the Department to perform or have performed an audit of the records of the Vendor and any or all sub-vendors to support the compensation paid the Vendor. In the event funds paid to the Vendor under this Agreement are subsequently properly disallowed by the Department because of accounting errors or charges not in conformity with this Agreement, the Vendor agrees that such disallowed costs are due to the Department upon demand. Further, the Department will have the right to deduct from any payment due the Vendor under any other contract any amount due the Department.

Florida Department of Transportation  
 Project Description: Central Florida Rail Corridor (CFRC), Insurance Broker Services

**RFP-DOT-11-12-5001-INS**  
**BID PRICE PROPOSAL FORM**  
**EXHIBIT "C"**

The Vendor is required to state the proposed Commission Percentage and Hourly Ancillary Services Rate and submit to P. Diane Warnock Purchasing Agent Florida Department of Transportation, 719 South Woodland Boulevard, DeLand, Florida 32720-6834 as per the Request for Proposal.

Proposal Due Date: July 22, 2011 Time: 12:00PM.

Firm Name: Arthur J. Gallagher Risk Management Services, Inc.

Address: 200 S. Orange Avenue, Suite 1350, Orlando, FL 32801

Vendor will be compensated under this contract based on the Commission Percentage below times the amount of the policy purchased, additionally the Vendor will be compensated for any time expended in the completion of authorized Ancillary Services at the hourly rate provided below.

Commission Percentage: \_\_\_\_\_ 5 %

Hourly Ancillary Services Rate: \$ \_\_\_\_\_ 100 .00 Per Hour

Signature: Peter Doyle

Printed Name: Peter Doyle

Title: Area President

Firm Name: Arthur J. Gallagher Risk Management Services, Inc.

The criteria for price evaluation shall be based upon the following formula:

$(\text{Low Commission \%} / \text{Proposer's Commission \%}) \times \text{Commission Percentage Points} = \text{Proposer's awarded Commission Percentage Points.}$

$(\text{Low Hourly Ancillary Services Rate} / \text{Proposers Ancillary Services Hourly Rate}) \times \text{Hourly Ancillary Services Rate Points} = \text{Proposers awarded Hourly Ancillary Services Rate points}$

Total Price Proposal Score equals Commission Percentage Points awarded plus the Hourly Ancillary Services Rate Points awarded.