

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
DESIGN-BUILD STIPEND AGREEMENT

Contract No. _____
Financial Project ID _____
Vendor No. _____
D.M.S. Catalog Class No. _____

THIS DESIGN-BUILD STIPEND AGREEMENT ("Agreement"), entered into this _____ day of _____, between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida ("Department") and _____ (F.E.I.D. No. _____) of _____, authorized to conduct business in the State of Florida ("Contractor"), agree as follows:

1. AGREEMENT

- A. The Contractor intends to prepare a responsive Technical Proposal in accordance with the Request for Proposal ("RFP") dated _____, for the Project located at _____, with Contract Number _____.
- B. The Department and the Contractor agree that the Department will only pay a stipend for the work done by the Contractor in preparing its Technical Proposal, if the Contractor meets the eligibility requirements contained in the Advertisement and the RFP.
- C. The Contractor agrees that if it meets the requirements and becomes eligible to receive a stipend, the work performed will be considered work for hire and shall, upon payment of the stipend, become the property of the Department without restriction or limitation on its use. If the Contractor is eligible to receive a stipend, it shall not copyright any of the material developed under this Agreement.

2. SERVICES AND PERFORMANCE

- A. In accordance with the Department's RFP, the Department retains the Contractor to prepare a responsive Technical Proposal.
- B. Reference in this Agreement to the Technical Proposal is the portion of the Contractor's proposal pursuant to the RFP that contains the technical requirements.
- C. Reference in this Agreement to the Design-Build Contract is the contract that is awarded and executed as a result of the RFP.

3. TERM

Unless otherwise provided in this Agreement, the provisions of this Agreement shall remain in full force and effect until execution by the Department of a Design-Build Contract pursuant to the RFP or a one (1) year term from the date of the execution of this Agreement, whichever occurs last. Services are authorized to commence effective upon the execution date of this Agreement. Technical Proposals are due by the dates set forth in the RFP.

4. COMPENSATION AND PAYMENT

- A. If the Contractor is not awarded the Design-Build Contract by the Department and the Contractor meets the eligibility requirements contained in the Advertisement and the RFP, the Department agrees to pay the Contractor a lump sum amount of \$_____ for a responsive Technical Proposal.
- B. If the Department awards the Design-Build Contract to the Contractor, the Contractor will not be compensated for preparation of its Technical Proposals through this Agreement. In the event a Design-Build Contract is not awarded, only short-listed Design-Build Firms that have submitted responsive Technical Proposals and also meet the eligibility requirements as described in the Advertisement and the RFP shall receive a stipend.
- C. Payment shall be made only after receipt and approval of goods and services and receipt of an invoice. Additionally, payment will be made only if and when the Department determines that it has received a responsive Technical Proposal, in accordance with the RFP. The Department shall advise the Contractor if the Technical Proposal is responsive. The Contractor shall not invoice the Department for preparation of

a Technical Proposal until it has been determined by the Department to be responsive and the Contractor has been deemed to be eligible to receive the stipend. The Department shall provide written notification to the Contractor once the Design-Build Contract has been executed. Upon notification from the Department, shortlisted Design-Build Firms that submitted responsive Technical Proposals and also meet the advertisement eligibility requirements shall submit an invoice for the lump sum stipend amount, within two weeks of receipt of the notification.

- D. To the extent that payment is made by the Department to the Contractor pursuant to Section 4 and the Design-Build Contract is subsequently executed and delivered by the Contractor and the Department, then the Contractor shall repay the full amount of such payment to the Department concurrently with such execution and delivery.
- E. This Agreement involves the submission of Technical Proposals by the Contractor, which must be received by the due dates set forth in the RFP and determined responsive by the Department as a condition of payment.
- F. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre audit and post audit thereof.
- G. Travel expenses are not authorized for payment in this Agreement. In the event travel expenses should be subsequently allowed by this Agreement, bills for travel expenses when specifically authorized by the Department shall be submitted on the Department's Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes and the most current version of the Disbursement Handbook for Employees and Managers.
- H. Contractors 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 the Agreement specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the date the invoice is received or the goods or services are received, inspected and approved.
- I. If payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, would be due and payable to the Contractor, in addition to the invoice amount. Interest penalties of less than one (1) dollar will not be enforced unless the Contractor requests payment. Invoices that have to be returned to a Contractor because of Contractor preparation errors, will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- J. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.
- K. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request of the Department at all times during the period of this Agreement and for five years after final payment is made for the work pursuant to this Agreement. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred includes the Contractor's general accounting records and the project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- L. In the event this Agreement is in excess of \$25,000 and has a term of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:
 - “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. A statement from the Comptroller of the Department shall be required stating that such 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.”

The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.

5. INDEMNITY

- A. Contractor agrees that it will indemnify, defend, and hold the Department, its officers, agents, and employees harmless from any claims, losses, causes of action, damages, costs, charges, or expenses, including attorney's fees incurred by the Department, from any acts, actions, neglect, or omissions arising from the performance of this Agreement by Contractor, its agents, employees, and subcontractors.
- B. The Department's failure to notify the Contractor of a claim shall not release the Contractor's obligation to indemnify, defend, and pay for the defense, or at the Department's option, to participate and associate with the Department in defense of any claim.
- C. The parties agree that 1% of the total compensation to the Contractor for performance of this Agreement is the specific consideration from the Department to the Contractor for the Design Build Firm's indemnity agreement.

6. COMPLIANCE WITH LAWS

- A. In the event the Department makes a payment to the Contractor pursuant to Section 4, the Contractor shall comply with Chapter 119, Florida Statutes. Specifically, the Contractor shall:
 - (1) Keep and maintain public records required by the Department to perform the service.
 - (2) Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the Department.
 - (4) Upon completion of the Agreement, transfer, at no cost, to the Department, all public records in possession of the Contractor or keep and maintain public records required by the Department to perform the service. If the Contractor transfers all public records to the Department upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

Failure by the Contractor to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by the Department.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119 ,FLORIDA STATUTES ,TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

District PIO Name and Address:

- B. The Contractor shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- C. Chapter 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 will submit a complaint about the violations to the Department of Business and Professional Regulations. 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 his employment, has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules will submit a complaint about 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 and the state licensing law applicable to that licensee. The complaint will be confidential.
 - (3) Any confidential information submitted to the Department of Business and Professional Regulation will remain confidential pursuant to Chapter 455 and applicable state law.
- D. Contractor covenants and agrees that it and its employees will be bound by the standards of conduct provided in applicable Florida Statutes and applicable rules of the Department of Business and Professional Regulation or applicable licensing board as they relate to work performed under this Agreement.
- E. The Department will consider employment of unauthorized aliens by any contractor to be a violation of Section 274(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of 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 on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit a bids 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 from 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 on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

- H. The following provision is hereby incorporated in and made a part of this Agreement when the services provided herein do not involve the expenditure of federal funds. If this Agreement involves the expenditure of federal funds, the provision below is not applicable, and Contractor shall comply with the provisions of 23 U.S.C. 114(b).

It is expressly understood and agreed that any articles which are subject of, or required to carry out this Agreement will 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 carrying out the provisions of this Agreement will be substituted for the Department insofar as dealings with such Corporation.

The Corporation referred to in the above paragraph is Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises
223 Morrison Road
Brandon, FL 33511
Phone: 813.324.8700

- I. The contractor/consultant/vendor agrees to comply with section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with section 20.055(5), Florida Statutes.

7. EARLY TERMINATION

- A. This Agreement may be terminated by the Department in whole or in part at any time the interest of the Department necessitates such termination.
- B. If the Department withdraws the RFP, this Agreement shall be considered terminated effective the date of the withdrawal.
- C. If this Agreement is terminated prior to the evaluation of the Letters of Interest, no payment will be made to the Contractor.
- D. If this Agreement is terminated after the Letters of Interest have been scored, as set forth in the Advertisement and prior to execution of a Design-Build Contract, the Contractor shall be entitled to the compensation set forth in Section 4.A., provided the Contractor submitted to the Department a responsive Technical Proposal and meets the eligibility requirements contained in the RFP.
- E. For Contracts \$1,000,000 and greater, if the Department determines the Contractor submitted a false certification under Section 287.135(5) of the Florida Statutes, or if the Contractor has been placed on the Scrutinized Companies with Activities in the Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, the Department shall either terminate the Contract after it has given the Contractor notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.

8. ASSIGNMENT

The Contractor shall not assign or transfer any rights under this Agreement without the written consent of the Department.

9. MISCELLANEOUS

- A. The Contractor and the Department agree that the Contractor, its employees, and subcontractors are not agents of the Department as a result of this Agreement for purposes other than those set out in Section 337.274, Florida Statutes.
- 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 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, representation, or agreements, either verbal or written, between the parties hereto.
- 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 laws 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 provisions 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, Contractor 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 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 any county chosen by the Department and in the event that Contractor files any such legal action, Contractor hereby consents to the transfer of venue of the county chosen by the Department upon the Department filing a motion requesting the same.
- G. 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 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; and
 - (3) Shall adhere to requirements in section 448.095, Florida Statutes.
- H. The Department may grant the Contractor's employees or subcontractors access to the Department's secure networks as part of the project. In the event such employees' or subcontractors' participation in the project is terminated or will be terminated, the Contractor shall notify the Department's project manager no later than the employees' or subcontractors' separation date from participation in the project or immediately upon the Contractor acquiring knowledge of such termination of employees' or subcontractors' participation in the project, whichever occurs later.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) below.

NAME OF CONTRACTOR

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

(Print /Type Name)

(Print/Type Name)

Title: _____

Title: _____

Date: _____

Date: _____

FOR DEPARTMENT USE ONLY

APPROVED:

LEGAL REVIEW:

Contracts Unit
