

**STATE OF FLORIDA, DEPARTMENT OF HEALTH (DOH)
ORDER TERMS AND CONDITIONS**

The Department of Management Services (DMS) encourages agencies and eligible users to use the most current purchase order terms and conditions for all purchases made within MyFloridaMarketPlace system. DMS specifies that the terms and conditions are discretionary and may be modified as needed by agencies and eligible users. Pursuant to this acknowledgment, DOH rejects the DMS terms and conditions in its entirety. These terms and conditions take precedence over any other terms and conditions.

For good and valuable consideration, received and acknowledged sufficient, DOH and Contractor agree to the following terms and conditions:

1. Contractor is an independent contractor for all purposes hereof.
2. Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business and performance of its obligations under the purchase order.
3. The purchase order begins on the date of issuance, unless otherwise specified by DOH. Contractual services or commodities to be provided by the Contractor must be completed by the date specified on the purchase order's end date.
4. The laws of the state of Florida will govern this purchase order. Venue for any legal actions arising here from is Leon County, Florida, unless issuer is a county health department, in which case, venue for any legal actions will be the issuing county.
5. Contractor agrees to perform all tasks and deliverables as set forth in the Statement of Work and any attachments to the purchase order. DOH will be entitled at all times to be advised as to the status of work being done by the Contractor under this purchase order.
6. Payment will be made by DOH upon submission of a properly certified invoice after delivery and acceptance of commodities or contractual services is confirmed in writing by DOH. Invoices must contain sufficient detail for audit thereof and must contain the purchase order and the Contractor's Federal Employer Identification Number or Social Security Number.
7. Pursuant to section 215.422, Florida Statutes, agencies have five working days to inspect and approve commodities or contractual services. Deliverables may be tested for compliance with the Statement of Work's specifications. Deliverables not conforming to the Statement of Work's specifications may be rejected and returned at the Contractor's expense. For any issues related to obtaining timely payment(s) from agencies, Contractor may contact the Vendor Ombudsman at 850-413-5516, or call the State Comptroller's Hotline at 1-800-848-3792. Payments not received by the Contractor in accordance with section 215.422, Florida Statutes, may result in an interest penalty payment from the agency.
8. Any record of costs incurred under the terms of the purchase order must be maintained and made available to DOH at all times during the period of the purchase order, and for a period of three years thereafter, unless a longer retention period is specified by DOH in writing. Documentation related to the records of costs incurred under this purchase

order must include the Contractor's general accounting records, with supporting documents and records of the Contractor, all subcontractors performing work if applicable, and all other records of the Contractor and subcontractors considered necessary by DOH for audit.

9. Pursuant to section 287.0582, Florida Statutes, if the purchase order binds the State or an executive agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.
10. Travel expenses are not reimbursable unless specifically authorized in writing, and will be reimbursed in accordance with section 112.061, Florida Statutes.
11. Contractor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Contractor or any employee, agent, subcontractor, assignee, or delegate in connection with the purchase order.
12. Contractor agrees to maintain appropriate insurance as required by law and the terms hereof.
13. Contractor must comply with the Health Insurance Portability and Accountability Act (42 USC & 210, et seq.), and regulations promulgated thereunder (45 CFR Parts 160, 162, and 164), as required under the law.
14. Contractor must maintain confidentiality of all confidential data, files, and records related to the services or commodities provided pursuant to this purchase order and comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, Florida Statutes. Contractor's confidentiality procedures must be consistent with the most recent edition of DOH's Information Security Policies, Protocols, and Procedures. A copy of this policy will be made available from DOH upon request. Contractor must comply with any applicable professional standards of practice with respect to confidentiality of information.
15. Contractor agrees to indemnify, defend, and hold the state of Florida, its officers, employees and agents harmless, to the full extent allowed by law, from all fines, claims, assessments, suits, judgments, or damages, consequential or otherwise, including court costs and attorneys' fees, arising out of any acts, actions, breaches, neglect or omissions of Contractor, its employees and agents, related to this order, as well as for any determination arising out of or related to this order, that Contractor or its employees, agents, subcontractors, assignees or delegates are not independent contractors in relation to the DOH. This order does not constitute a waiver of sovereign immunity or consent by DOH or the state of Florida or its subdivisions to suit by third parties in any matter arising here from. Entities identified in section 768.28(2), Florida Statutes are excluded from this provision.

16. All patents, copyrights, and trademarks arising, developed or created in the course or as a result hereof are DOH property and nothing resulting from Contractor's services or provided by DOH to Contractor may be reproduced, distributed, licensed, sold or otherwise transferred without prior written permission of DOH. This paragraph does not apply to DOH purchase of a license for Contractor's intellectual property. This paragraph does not apply to state universities as defined in section 1001.705, Florida Statutes.
17. This paragraph applies only to state universities as defined in section 1001.705, Florida Statutes:
 - 1) Contractor will retain ownership of all intellectual property developed as part of this purchase order in accordance with section 1004.23, Florida Statutes. Intellectual property includes all copyrights, trademarks, and patentable developments.
 - 2) Contractor must notify the Florida Department of State of any intellectual property developed as part of this contract in accordance with section 1004.23, Florida Statutes. Provider grants the state of Florida an irrevocable, nonexclusive, and royalty-free license to use all intellectual property developed under this contract for the complete lifetime of the intellectual property rights.
 - 3) If this contract is paid for with federal funds, Contractor will grant the awarding federal agency an irrevocable, non-exclusive, and royalty-free license to use all intellectual property developed under this contract for the complete lifetime of the intellectual property rights.
18. If this purchase order is for personal services by Contractor, at the discretion of DOH, Contractor and its employees, or agents, as applicable, agree to provide fingerprints and be subject to a background screening conducted by the Florida Department of Law Enforcement or the Federal Bureau of Investigation. The cost of the background screening(s) are the responsibility of the Contractor. DOH, solely at its discretion, reserves the right to terminate this agreement if the background screening(s) reveal arrests or criminal convictions. Contractor, its employees, or agents will have no right to challenge DOH's determination pursuant to this paragraph.
19. DOH, at its sole discretion, unless otherwise prohibited by law, may require the Contractor to furnish, a performance bond or negotiable irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder without any additional cost to DOH. The type of security and amount is solely within the discretion of DOH. Should DOH determine that a performance bond is needed to secure the agreement, it will notify potential Contractors at the time of solicitation.
20. Section 287.057(17)(c), Florida Statutes, provides, "A person who receives a contract that has not been procured pursuant to subsections (1) through (3) to perform a feasibility study of the potential implementation of a subsequent contract, who participates in the drafting of a solicitation or who develops a program for future implementation, is not eligible to contract with the agency for any other contracts dealing with that specific subject matter, and any firm in which such person has any interest is not eligible to receive such contract. However, this prohibition does not prevent a vendor who responds to a request for information from being eligible to contract with an agency."

Participation through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing, or any other advisory capacity constitutes participation in drafting of the solicitation.

21. Contractor must maintain Worker's Compensation insurance as required by law.
22. Pursuant to sections 287.133 and 287.134, Florida Statutes, an entity or affiliate which is on the Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under a purchase order with any agency.
23. TERMINATION:
 - a) Termination at Will
 - 1) This purchase order may be terminated by either party upon no less than 30 calendar days' notice in writing to the other party, without cause, unless a lesser time is mutually agreed upon in writing by both parties. The notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery. The provisions of this paragraph do not apply to state universities as defined in section 1001.705, Florida Statutes.
 - 2) Contracts between DOH and state universities, as defined in section 1001.705, Florida Statutes may be terminated by either party upon no less than 90 calendar days' notice in writing to the other party, without cause, unless a lesser time is mutually agreed upon in writing by both parties. The notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.
 - b) Termination Because of Lack of Funds
In the event funds to finance this purchase order become unavailable, DOH may terminate the purchase order upon no less than 24 hours' notice in writing to the Contractor. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery. DOH will be the final authority as to the availability and adequacy of funds. In the event of termination of this contract, Contractor will be compensated for any work satisfactorily completed prior to notification of termination.
 - c) Termination for Breach
This purchase order may be terminated for the Contractor's non-performance upon no less than 24 hours' notice in writing to Contractor by certified mail, return receipt requested or in person with proof of delivery. If applicable, DOH may employ the default provisions in Rule 60A-1.006(3), Florida Administrative Code. Waiver of breach of any provisions of this purchase order will not be deemed to be a waiver of any other breach and will not be construed to be a modification of the terms of this contract. The provisions herein do not limit DOH's right to remedies at law or in equity.

24. The terms of this purchase order will supersede the terms of any and all prior or subsequent agreements with DOH with respect to this purchase order. Accordingly, in the event of any conflict, the terms of this order will govern.
25. In accordance with Executive Order 11-116, “[t]he provider agrees to utilize the U.S. Department of Homeland Security’s E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all new employees hired during the contract term by the Provider. Provider will also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. Contractors meeting the terms and conditions of the E-Verify System are deemed to be in compliance with this provision.”
26. Contractor must not subcontract any work under the purchase order without the prior consent of DOH. Contractor is responsible for ensuring satisfactory completion of all subcontracted work. Contractor must not sell, assign, or transfer any of its rights, duties, or obligations under the purchase order without the prior written consent of DOH. In the event of any assignment, Contractor remains secondarily liable for performance of the purchase order, unless DOH expressly waives it in writing. DOH may assign the purchase order with prior written notice to the Contractor.
27. The employment of unauthorized aliens by any contractor is considered a violation of Section 274A (e) of the Immigration and Nationality Act, 8 U.S.C. § 1324(a) (2006). A contractor who knowingly employs unauthorized aliens will be subject to a unilateral cancellation of the resulting purchase order.
28. Compliance with RESPECT: Pursuant to section 413.036(3), Florida Statutes, “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>.

29. Compliance with PRIDE: Pursuant to section 946.515(6), Florida Statutes, “It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this contract shall be purchased from the corporation identified under chapter 946, Florida Statutes; in the same manner and under the same procedures set forth in section 946.515(2) and (4), 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 this agency insofar as dealings with such corporation are concerned.”

Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org>.

30. A purchase order may only be modified by a change order and must be agreed to by both DOH and the Contractor.
31. DOH will not contract with a Contractor that restricts the employment of its employees or subcontractors after conclusion or termination of a DOH purchase order. By accepting this order, Contractor agrees to this provision.
32. Pursuant to section 119.701, Florida Statutes, Contractor must keep and maintain public records that are required by DOH in order to perform the services required by this contract. Upon request of DOH, Contractor must provide the DOH with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Contractor must ensure that public records that are exempt or confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to DOH; and upon completion of the contract transfer to DOH, at no cost, all public records in possession of Contractor or keep and maintain public records required by the public agency to perform the service. If Contractor transfers all public records to DOH upon completion of the contract, the Contractor will destroy any duplicate public records that are exempt or confidential. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor will meet all applicable requirements for retaining public records. All records stored electronically must be provided to DOH in a format that is compatible with the information technology systems of DOH.
33. Pursuant to sections 11.06 and 216.347, Florida Statutes, purchase order funds are not to be used for the purpose of lobbying the Legislature, the judicial branch, or an Agency. However, section 287.058(6), Florida Statutes does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the purchase order, after the execution and during the term of the purchase order.
34. The state of Florida, Department of Financial Services requires vendors doing business with the State to submit a Substitute Form W-9 electronically. Vendors who do not have a verified Substitute Form W-9 on file will experience delays in processing contracts or payments from the State of Florida For more information go to: <https://flvendor.myfloridacfo.com/>.
35. MyFloridaMarketPlace Fees: Pursuant to Rule 60A-1.031, Florida Administrative Code the following language is added:

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. Payments issued by agencies or eligible users to Vendors for purchases of commodities or contractual services are subject to Transaction Fees, as prescribed by Rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law. Vendors shall submit monthly reports required by the rule. All reports shall be subject to audit. Failure to pay Transaction Fees or submit reports shall constitute grounds for default and exclusion from business with the State of Florida.

36. Cooperation with Inspectors General: Contractor acknowledges and understands that it has a duty to and will cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to section 20.055(5), Florida Statutes.
37. Commodities Logistics: The following provisions apply to all purchase orders unless indicated otherwise in the Scope of Work or purchase order:
- a) All purchases are F.O.B. destination, transportation charges prepaid.
 - b) Each shipment must be shipped to the address indicated on the face of the purchase order and marked to the attention of the individual identified, if any. Each shipment must be labeled plainly with the purchase order number and must show the gross, tare, and net weight. A complete packing list must accompany each shipment. This paragraph will also apply to any third party who ships items on behalf of the Contractor.
 - c) No extra charges must be applied by Contractor for boxing, crating, packing, or insurance.
 - d) The following delivery schedule will apply: 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.
 - e) If delivery to the specified destination cannot be made on or before the specified date, notify DOH immediately using the contact information provided in the MyFloridaMarketPlace system.
 - f) DOH assumes no liability for merchandise shipped to other than the specified destination.
 - g) Deliverables received in excess of quantities specified may, at DOH's option, be returned at the Contractor's expense. Substitutions are not permitted.
38. All limited liability companies, corporations, corporations not for profit, and partnerships seeking to do business with the State must be registered with the Florida Department of State in accordance with the provisions of Chapters 605, 607, 617, and 620, Florida Statutes, respectively prior to Contract execution. The Department retains the right to ask for verification of compliance before Contract execution. Failure of the selected contractor to have appropriate registration may result in withdrawal of Contract award.
39. **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 contract, contact the custodian of public records at (850) 245-4005, by emailing PublicRecordsRequest@flhealth.gov; or by mail at 4052 Bald Cypress Way, Bin A02, Tallahassee, FL 32399.**