

**STATE OF FLORIDA,
DEPARTMENT OF HEALTH
PURCHASE 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, the Department rejects the DMS terms and conditions in its entirety. The Department's terms and conditions take precedence over any other terms and conditions.

For good and valuable consideration, received and acknowledged sufficient, the Department and Contractor, jointly referred to as the parties, agree to the following terms and conditions:

1. Independent Contractor: Contractor, including its agents, subcontractors, officers, and employees, is an independent contractor under this purchase order, and in no manner shall the Contractor be deemed an employee of the State or deemed to be entitled to any benefits associated with such employment. Contractor remains responsible for all applicable federal, State, and local taxes and all FICA contributions.
2. Compliance with Laws: 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. Purchase Order Term: The purchase order begins on the date of issuance, unless otherwise specified by the Department. 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. Governing Law and Venue: 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. Performance Standards: Contractor agrees to perform all tasks and deliverables as set forth in the Statement of Work and any attachments to the purchase order. The Department is entitled at all times to be advised as to the status of work being done by the Contractor under this purchase order.
6. Payment Invoicing: Payment will be made by the Department upon submission of a properly certified invoice after delivery and acceptance of commodities or contractual services is confirmed in writing by the Department. 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. Payment Timeframe: 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 Department.

8. Payment Audit: Any record of costs incurred under the terms of the purchase order must be maintained and made available to the Department 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 the Department 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 the Department for audit.
9. Annual Appropriation: 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 Reimbursement: Travel expenses are not reimbursable unless specifically authorized in writing, and will be reimbursed in accordance with section 112.061, Florida Statutes. If travel expenses are allowed under this purchase order then Contractor must provide supporting documentation of such travel to the Department with its invoice.
11. Payment of Claims: 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. Insurance Requirements:
 - a. Liability Insurance: Maintain insurance sufficient to adequately protect the Department from all liability and property damage/hazards which may result from the Contractor's performance of the purchase order. All insurance must be with insurers qualified and duly licensed to transact business in the state of Florida. If required by the Department and prior to commencing any work the Contractor will provide Certification(s) of Insurance evidencing that all appropriate coverage is in full force and showing the Department to be an additional insured.
 - b. Worker's Compensation: Contractor must maintain Worker's Compensation insurance as required by state of Florida law.
13. Health Insurance Portability and Accountability Act of 1996 (HIPAA): When applicable, Contractor must comply with Federal Privacy and Security Regulations developed by the U.S. Department of Health and Human Services as specified in 45 C.F.R. parts 160 and 164 promulgated pursuant to HIPAA, Pub. L. No. 104-191, and the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A, Title IV of Division B, Pub. L. No 111-5, collectively referred to as "HIPAA."
14. Confidentiality of data, files and records: 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 Department's Information Security Policies, Protocols, and Procedures. A copy of this policy will be made available from the Department upon request. Contractor must comply with any applicable professional standards of practice with respect to confidentiality of

information.

15. Indemnification: 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 Department. This order does not constitute a waiver of sovereign immunity or consent by the Department 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. Patents, Copyrights, and Royalties:
 - a. All patents, copyrights, and trademarks arising, developed or created in the course or as a result hereof are Department property and nothing resulting from Contractor's services or provided by the Department to Contractor may be reproduced, distributed, licensed, sold or otherwise transferred without prior written permission of the Department. This paragraph does not apply to the Department's 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.

 - b. 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. Contractor 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.

17. Background Screening and Drug Screening Requirements:
 - a. Background Screening Requirements: In the Department's sole and exclusive discretion, it may determine that background screening of some or all of the Contractor's officers, agents, employees, subcontractors, or assignees is necessary (collectively individuals). In the event background screenings are required under this purchase order, Contractor agrees to the following:

- 1) Conduct background screenings in accordance with Chapter 435, Florida Statutes, using level 2 screening standards.
 - 2) Provide the Department with a written attestation confirming that the individual has completed and cleared the level 2 background screening.
 - 3) Not allow the individual to begin work under this purchase order until that individual has been cleared by the Department.
- b. Drug Screening Requirements: Pursuant to section 112.0455, Florida Statutes, if the Contractor's officers, agents, employees, subcontractors, or assignees (collectively individuals) are assigned to work in a Department designated Safety-Sensitive Class and/or Position, then a drug test must be performed prior to the individual being allowed to start work under this purchase order. If an individual has already been screened by the Contractor, then a written attestation confirming that the individual has completed and cleared the drug screening must be submitted to the Department before that individual can begin work under this purchase order. If an individual has not been drug screened, notify the Department immediately. No individual can begin work under this purchase order until they have been cleared by the Department.
18. Performance Bond Requirement: The Department, 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 the Department. The type of security and amount is solely within the discretion of the Department. Should the Department determine that a performance bond is needed to secure the agreement, it will notify potential Contractors at the time of solicitation.
19. Procurement Feasibility Study: 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.
20. Public Entity Crime and Discriminatory Vendor: 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.
21. 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 the Department 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, the Department 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. The Department 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. 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 purchase order. In the event of default, in addition to the Department's right to terminate the purchase order, the Department may pursue any of its remedies at law or in equity, including but not limited to, any losses or expenditures of the Department in obtaining replacement services or commodities, investigating, monitoring or auditing, including legal fees, professional fees, consulting fees and witness fees. These remedies shall include offsetting any sums due to the Contractor under this purchase order, and any other remedies at law or in equity.
 - d) In the event this purchase order is terminated for any reason, Contractor will be compensated for any work completed prior to notification of termination.
22. **Order of Precedence:** The terms of this purchase order will supersede the terms of any and all prior or subsequent agreements between the parties with respect to this purchase order. Accordingly, in the event of any conflict, the terms of this purchase order will govern.
 23. **E-Verify Requirement:** Effective January 1, 2021, Contractor is required to use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees used by the Contractor under this purchase order, pursuant to section 448.095, Florida Statutes. Also, the Contractor must include in related subcontracts, if authorized under this purchase order, a requirement that subcontractors performing work or providing services pursuant to this purchase order use the E-Verify system to verify employment eligibility of all employees used by the subcontractor for the performance of services under this purchase order. The subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor must maintain a copy of such affidavit for the duration of the purchase order. If the Department has a good faith belief that a subcontractor knowingly violated section 448.095(1), Florida Statutes,

and notifies the Contractor of such, but the Contractor otherwise complied with this statute, the Contractor must immediately terminate the subcontract with the subcontractor.

24. Assignments and Subcontracts: Contractor must not subcontract any work under the purchase order without the prior consent of the Department. 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 the Department. In the event of any assignment, Contractor remains secondarily liable for performance of the purchase order, unless the Department expressly waives it in writing. The Department may assign the purchase order with prior written notice to the Contractor.

25. Immigration and Nationality Act: 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.

26. 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>.

27. 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>.

28. Amendments: A purchase order may only be modified by a change order.

29. Non-Compete Provisions: Notwithstanding sections 542.18 and section 542.335(2), Florida Statutes, if Contractor restricts the employment of its employees or subcontractors from working with the Department after conclusion or termination of the Contractor's purchase order such restriction must be reasonable in time, area, and for a legitimate business purpose as specified in section 542.335(1), Florida Statutes.

30. Public Records:

a. Pursuant to section 119.0701, Florida Statutes, Contractor must keep and maintain public records that are required by the Department to perform the services required by this purchase order. Upon request from the Department's custodian of public records, Contractor must provide the Department 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 purchase order term and following completion of the purchase order if the Contractor does not transfer the records to the Department. Upon completion of the purchase order, transfer to the Department, at no cost, all public records in possession of Contractor or keep and maintain public records required by the Department to perform the service. If Contractor transfers all public records to the Department upon completion of the purchase order, the Contractor will destroy any duplicate public records that are exempt or confidential and exempt. If the Contractor keeps and maintains public records upon completion of the purchase order, the Contractor will meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department. The Department may unilaterally terminate this purchase order if Contractor refuses to allow access to all public records made or maintained by Contractor in conjunction with this purchase order, unless the records are exempt from section 24(a) of Art. I of the State Constitution and section 119.07(1), Florida Statutes.

b. 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.

31. Use of Funds for Lobbying Prohibited: 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.

32. Substitute Form W-9: 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/>.

33. 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 Contractors 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. Contractor must 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.

34. 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.

35. 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 Free on Board 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, unless otherwise designated in the purchase order or accompanying statement of work.
- e) If delivery to the specified destination cannot be made on or before the specified date, notify the Department immediately using the contact information provided in the MyFloridaMarketPlace system.
- f) The Department assumes no liability for merchandise shipped to a location not specified in the purchase order or accompanying statement of work.
- g) Deliverables received in excess of quantities specified may, at the Department's option, be returned at the Contractor's expense. Substitutions are not permitted.

36. Registered to do business in the State of Florida: 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.

37. Scrutinized Companies: The Contractor must comply with the provisions of section 287.135, Florida Statutes as follows:
- a) If the Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, that it is not on the *Scrutinized Companies with Activities in Sudan List*, the *Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List*, or that has been engaged in business operations in Cuba or Syria, this purchase order may be terminated at the option of Department.
 - b) If the Contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel this purchase order may be terminated at the option of Department.
38. Coordination of Contracted Services: Pursuant to section 287.0575(2), Florida Statutes, if a Contractor has more than one contract with one or more of the five Florida health and human services agencies (the Department of Children and Families, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, and the Department of Veterans' Affairs), a comprehensive list of the Contractor's health and human services contracts must be submitted to the respective agencies Contract Manager(s). The list must include the following information: a) The name of each contracting state agency and the applicable office or program issuing the contract; b) the identifying name and number of each contract; c) the starting and ending date of each contract; d) the amount of each contract; e) a brief description of the purpose of the contract and the types of services provided under each contract; f) the name and contact information of the contract manager. For purposes of this paragraph, the term "contract" means "purchase order."
39. Dispute Resolution: Any dispute concerning performance of this purchase order or payment hereunder shall be decided by the Department in writing and submitted to the Contractor for review. The decision is final unless the Contractor submits a written objection to the Department within 10 calendar days from receipt of the decision. Upon receiving an objection, the Department shall provide an opportunity to resolve the dispute by mutual agreement between the parties using a negotiation process to be completed within seven calendar days from the Department's receipt of the objection. Completion of the negotiation process is a condition precedent to any legal action by the Contractor or the Department concerning this Contract. Nothing contained in this section is construed to limit the parties' rights of termination pursuant to paragraph 21, above.
40. Force Majeure: The Contractor may be excused from liability for the failure or delay in performance of any obligation under this purchase order for any event beyond the Contractor's reasonable control, including but not limited to, Acts of God, fire, flood, explosion, earthquake, or other natural forces, war, civil unrest, any strike or labor disturbance. Such excuse from liability is effective only to the extent and duration of the event(s) causing the failure or delay in performance and provided that the Contractor or its employees, including any subcontracted providers, have not caused such event(s) to occur. If the Contractor believes an excusable delay has occurred, the Contractor must notify the Department in writing of the delay or potential delay within five business days after its occurrence for review and approval (which will not be unreasonably withheld) and include at a minimum, a description of the delay, date the force majeure event occurred including the duration, and the tasks and deliverables affected by the delay. The Contractor will not be entitled to an increase in the quoted price or payment of any kind from the Department 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. All

delivery dates under this purchase order that have been affected by the force majeure event is tolled for the duration of such force majeure event. If the purchase order is tolled for any reason, the Contractor is not entitled to payment for the days services were not rendered and no financial consequences will be assessed by the Department for that affected task(s) or deliverable. In the event a force majeure event persists for 30 days or more, the Department may terminate this Contract at its sole discretion upon written notice being given to the Contractor.

41. Waiver of Jury Trial: Contractor, including its employees, subcontractors, officers and assignees, hereby irrevocably waives, as permitted by applicable Florida law, any and all right to trial by jury in any legal proceeding arising out of or relating to this purchase order.