

**STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
MEDIUM AND HEAVY DUTY TRUCKS**

THIS CONTRACT is entered into between the State of Florida, **DEPARTMENT OF MANAGEMENT SERVICES**, hereinafter referred to as the "Department", whose address is 4050 Esplanade Way, Tallahassee, Florida 32399, and Tampa Truck center LLC, hereinafter referred to as the "Contractor", whose address is 7528 US HWY 301 N, Tampa, FL 33637

THE PARTIES HEREBY AGREE:

A. The solicitation (ITB NO. 11-25101600-C) and the Contractor's bid, and attachments are hereby incorporated by reference.

B. General Provisions:

1. **Contract Formation:** The Contractor shall provide goods and services according to the terms and conditions set forth in this Contract, the Solicitation, and all other attachments named herein which are attached hereto and incorporated by reference.
2. **Vendor:** To perform as an independent vendor and not as an agent, representative, or employee of the Department.
3. **Taxes:** To recognize that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Contract.
4. **Applicable Law, Severability, and Venue:** The contract resulting from this solicitation shall be delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of the resulting contract shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision shall be found ineffective, then to the extent of such prohibition or invalidity, that provision shall be severed without invalidating the remainder of such provision or the remaining provisions of the resulting contract. Any action hereon or in connection herewith shall be brought in Circuit Court, Leon County, Florida.
5. **Contract Term:** This Contract shall begin upon execution by both parties on October 1, 2016 (whichever is later) and end July 31, 2021, inclusive.
6. **Contract Amount:** The agreed Contract amount is set forth in Attachments D.1-D.6, Price Sheets. The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.
7. **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 Department designee identified in the original solicitation or Contract, or as otherwise identified by the Department. 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.
8. **Diversity Reporting:** The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority, women, and veteran

business enterprises in the economic life of the State. The Department of Management Services encourages supplier diversity through certification of business enterprises, advocacy and outreach and Business Match Maker events. For additional information, please contact the Office of Supplier Diversity at (850) 487-0915 or osdhelp@dms.myflorida.com.

Upon request, the Contractor shall report to the Department, spend with certified and other minority business enterprises. These reports will include the period covered, the name, minority code and Federal Employer Identification Number of each minority Vendor utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority Vendor on behalf of each purchasing agency ordering under the terms of this Contract.

C. Applicable Laws and Regulations:

The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and authority. For example, chapter 287, Florida Statutes (F.S.), and rule 60A, Florida Administrative Code (F.A.C.), govern the Contract. The Contractor shall comply with Section 274 A of the Immigration and Nationality Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of any laws, rules, codes, ordinances, or licensing requirements shall be grounds for Contract termination.

D. Audits/Monitoring:

1. The Department may conduct, or have conducted, performance and/or compliance reviews, reviews of specific records or other data as determined by the Department. The Department may conduct a review of a sample for analyses performed by the selected Contractor to verify the quality. Reasonable notice shall be provided for reviews conducted at the successful Contractor's place of business.
2. Reviews may include, but shall not be limited to, reviews of procedures, computer systems, Customer records, accounting records, and internal quality control reviews. The selected Contractor shall work with any reviewing entity selected by the Department.

E. Inspection of Records and Work Performed:

1. The state and its authorized representatives shall, at all reasonable times, have the right to enter the selected Contractor's premises, or other places where duties under the resulting contract are performed. All inspections and evaluations shall be performed in such a manner as not to unduly delay work.
2. The selected Contractor shall retain all financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to performance under the resulting contract for a period of five (5) years after termination of the resulting contract, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings. If records need to be sent to the Department, the Contractor shall bear the expense of delivery.

3. Refusal by the selected vendor to allow access to all records, documents, papers, letters, other materials or on-site activities related to resulting contract performance shall constitute a breach of the contract. The right of the state and its authorized representatives to perform inspections shall continue for as long as the selected vendor is required to maintain records. The selected Contractor will be responsible for all storage fees associated with the records maintained under the resulting contract. The selected Contractor is also responsible for the shredding of records that meet the retention schedule noted above.
4. Failure to retain records as required may result in cancellation of the contract. The Department shall give the selected vendor advance notice of cancellation pursuant to this provision and shall pay the selected vendor only those amounts that are earned prior to the date of cancellation in accordance with the terms and conditions of the resulting contract. Performance by the Department of any of its obligations under a contract awarded pursuant to this solicitation shall be subject to the selected vendor's compliance with this provision.
5. Pursuant to section 255.055(5), Florida Statutes, contractor and any subcontractors understand and will comply with their duty to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

F. Indemnification:

1. 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, the Department, 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, the Department, or a Customer.
2. Further, the Contractor shall fully indemnify, defend, and hold harmless the State, the Department, 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 Department and 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 and Department the right to continue using the product, the Contractor shall remove the product and refund the Customer and Department the amounts paid in excess of a reasonable rental for past use. The Department and Customer shall not be liable for any royalties.

3. The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the Department or 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 Department or State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.

G. 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 or the Department reject a product or services, Contractor shall remove the product from the premises within ten days after notification or rejection and the risk of loss shall remain with the Contractor. Product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer or the Department shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer or the Department for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

H. Assignments:

1. 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 Department. In the event of any assignment, the Contractor remains secondarily liable for performance of the Contract, unless the Department expressly waives such secondary liability. The Department may assign the Contract with prior written notice to Contractor of its intent to do so.
2. Subcontractors: The Contractor shall not subcontract any work under the Contract without the prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all subcontracted work. The Department supports diversity in its Procurement Program and requests that all subcontracting opportunities afforded by this contract enthusiastically embrace diversity. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. Contractor can contact the Office of Supplier Diversity at (850)487-0915 for information on minority vendors who may be considered for subcontracting opportunities.

I. Return of Funds:

Contractor will return to the Department any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Contract that were disbursed to the Contractor by the Department or Customer.

The Contractor shall return any overpayment to the Department within forty (40) calendar days after either discovery by the Contractor its independent auditor, or notification by the Department, of the overpayment.

J. State Project Plan:

Within thirty (30) calendar days following award of the Contract, the successful Contractor shall submit a plan addressing each of the three (3) objectives listed below, to the extent applicable to the services covered by this Contract. The State reserves the right to negotiate mutually acceptable changes in regard to the below objectives, prior to execution of the resulting contract.

1. Environmental Considerations: The State supports and encourages initiatives to protect and preserve our environment. The respondent shall submit a plan to support the procurement of products and materials with recycled content, and the intent of s. 287.045, F.S. The Contractor shall also provide a plan for reducing and/or handling of any hazardous waste generated by the Contractor's company. Reference Rule 62-730.160, F.A.C. It is a requirement of the Florida Department of Environmental Protection that a generator of hazardous waste materials that exceeds a certain threshold must have a valid and current Hazardous Waste Generator Identification Number. This identification number shall be submitted as part of the Contractor's explanation of its company's hazardous waste plan and shall explain in detail its handling and disposal of waste.
2. Products Available from the Blind or Other Handicapped (RESPECT): The State supports and encourages the gainful employment of citizens with disabilities. It is expressly understood and agreed that any articles that are the subject of, or required to carry out, the resulting 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>.
3. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE): The State supports and encourages the use of Florida Correctional work programs. It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the resulting 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 s. 946.515(2) and (4), F.S.; 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/>.

K. Civil Rights Requirements/Vendor Assurance:

The Contractor assures that it will comply with:

1. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin.
2. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap.
3. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex.
4. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age.
5. Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs.
6. The Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities.
7. All regulations, guidelines, and standards as are now or may be lawfully adopted under the above statutes.

The Contractor agrees that compliance with this assurance constitutes a condition of continued receipt of or benefit from funds provided through this Contract, and that it is binding upon the Contractor, its successors, transferees, and assignees for the period during which services are provided. The Contractor further assures that all contractors, subcontractors, sub grantees, or others with whom it arranges to provide services or benefits to participants or employees in connection with any of its programs and activities are not discriminating against those participants or employees in violation of the above statutes, regulations, guidelines, and standards.

L. Media:

1. Advertising: Subject to chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Department, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer, the Department 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 Department 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.
2. Literature: Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

M. Employment:

1. Florida Substitute Form W-9 Process: State of Florida vendors must register and complete an electronic Substitute Form W-9. The Internal Revenue Service (IRS) receives and validates the information vendors provide on the Form W-9. For instructions on how to complete the Florida Substitute Form W-9, please visit:
<http://www.myfloridacfo.com/Division/AA/StateAgencies/W-9Instructions022212.pdf>
2. E-Verify: Pursuant to State of Florida Executive Order Number 11-116, the Contractor is required to 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 Contract term. Also, Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the Contract utilize the E-Verify system to verify employment eligibility of all new employees hired by the subcontractor during the Contract term.
3. 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.

N. Vendor Performance:

1. Performance Qualifications:
 - a. The Department reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by Contractor meet the Contract requirements. Contractor shall at all times during the contract term remain responsive and responsible. In determining Contractor's responsibility as a vendor, the Department shall consider all information or evidence which is gathered or comes to the attention of the Department which demonstrates the Contractor's capability to fully satisfy the requirements of the solicitation and the contract.
 - b. Contractor must be prepared, if requested by the Department, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the Contractor for the production, distribution, and servicing of the product to be furnished. If the Department determines that the conditions of the solicitation documents are not complied with, or that the product to be furnished does not meet the specified requirements, or that the qualifications, financial standing, or facilities are not satisfactory, or that performance is untimely, the Department may terminate the contract.

2. Default:

When a Contractor is failing to fulfill its duties specified in any contract with the Department, or when a Department becomes aware that the Contractor has failed to remain qualified to perform the contract requirements, the Department may take the following actions:

- a. The Department will provide written notice to the vendor which identifies the nature of the failure and the necessary corrective action by the Contractor, which must be completed in no more than ten (10) business days, unless the Department determines a different time span based on the Departments sole discretion and in the best interests of the State. The notice will also state that should the Contractor fail to perform within the time provided, the Contractor will be found in default.
- b. Unless the Contractor corrects the failure within the time provided, or unless the Department determines that the vendor's failure is legally excusable, the Department shall find the vendor in default and shall issue a second notice stating: (i) the reasons the Contractor is considered in default; (ii) that the Department will reprocore or has reprocored the commodities or services; and (iii) and the amount of the reprocorement costs if known.
- c. A Contractor found in default will not be eligible for award of a contract by the State until such time as the Department is reimbursed by the Contractor for all reprocorement costs. Reprocorement costs may include both administrative costs and cost or price increases incurred or to be incurred as a result of the reprocorement, as well as all legal costs encumbered by the State. At the Department's discretion, reprocorement of substitute commodities or contractual services may be accomplished by first attempting to contract with the next eligible awardee under the original solicitation, when applicable. If the Department fails to contract with the next eligible awardee, it may continue in this manner sequentially through all eligible awardees until a vendor willing to perform at acceptable pricing under the solicitation's terms and conditions is found. Alternatively, the Department may elect to reprocore the commodity or contractual service pursuant to all applicable requirements of chapter 287, F.S.
- d. Until such time as it reimburses the Department for all reprocorement costs and the Department is satisfied that further instances of default will not occur, a Contractor found in default shall not be eligible for award of a contract by the Department. To satisfy the Department that further instances will not occur, the Contractor shall provide a written corrective action plan addressing the default.
- e. The foregoing provisions do not limit, waive or exclude the State's legal or equitable remedies against a defaulting Contractor.

3. Dispute Resolution:

Any dispute concerning performance of the Contract shall be decided by the Department's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate Circuit Court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.

O. Termination:

1. Termination for Convenience:

The Department, by written notice to the Contractor, may terminate the Contract in whole or in part when the Department determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product or service 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.

2. Termination Due To Lack of Funds:

- a. In the event funds to finance this contract become unavailable, the Department may terminate the contract upon no less than twenty-four (24) hours written notice to the vendor. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The Department shall be the final authority as to the availability of funds.
- b. The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

3. Suspension of Work:

The Department 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 Department 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. Within ninety days, or any longer period agreed to by the Contractor, the Department 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.

4. Termination for Breach:

- a. The Department 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. 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 Department. The rights and remedies of the Department in this clause are in addition to any other rights and remedies provided by law or under the Contract.

- b. Unless the Contractor's breach is waived by the Department in writing, the Department may, by written notice to the Contractor, terminate this Contract upon no less than twenty-four (24) hours written notice. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. If applicable, the Department may, at its sole discretion employ the default provisions in rule 60A-1.006 (4), F.A.C.
- c. Waiver of breach of any provisions of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract. The provisions herein do not limit the Department's right to remedies at law or to damages.
- d. Pursuant to subsection 287.135(3) (b), Florida Statutes, Department may immediately terminate any contract for cause if the Contractor is found to have submitted a false certification under subsection 287.135(5), Florida Statutes, or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List during the term of the Contract.

P. Contract Managers:

1. The Department's Contract Manager's name, address and telephone number for this Contract is as follows:

Jennifer Hyatt
Department of Management Services
4050 Esplanade Way,
Tallahassee, FL 32399
850-414-6741

2. The Vendor's Contract Manager's name, address and telephone number for this Contract is as follows:

Scott Endris
Tampa Truck Center LLC
7528 US HWY 301 N, Tampa, FL 33637
813-262-0890

Q. Renegotiation or Modification:

The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Department and the Contractor.

The Contract may only be amended upon mutual written agreement of the Department and the Contractor, with the exception of personnel updates. No oral agreements or representations shall be valid or binding upon the Department or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the department. 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 Department'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.

R. Name, Mailing and Street Address of Payee:

1. The name (Vendor name as shown on Page 1 of this Contract) and mailing address of the official payee to whom the payment shall be made:

Tampa Truck Center LLC
7528 US HWY 301 N
Tampa, FL 33637

2. The name of the contact person and street address where financial and administrative records are maintained:

Trish Hallman
Tampa Truck Center LLC
7528 US HWY 301 N
Tampa, FL 33637

S. All Terms and Conditions:

This Contract, the solicitation, and its attachments as referenced herein contain all the terms and conditions agreed upon by the parties.

List of attachments included as part of this Contract:

<u>Type</u>	<u>Number</u>	<u>Description</u>
Attachment	I	ITB 11-25101600-C and Addenda
Attachment	II	Completed Attachment D, Price Sheets
Attachment	III	Solicitation Attachments: B, C, E, F, G, H, I
Attachment	IV	PUR 1000

IN WITNESS THEREOF, the parties hereto have caused this Contract, which includes any referenced attachments, to be executed by their undersigned officials as duly authorized. This Contract is not valid until signed and dated by both parties.

VENDOR: Tampa Truck Center LLC

STATE OF FLORIDA, DEPARTMENT OF
MANAGEMENT SERVICES

SIGNED
BY:

Scott Enoris

SIGNED
BY:

Debra Forbess

NAME:

Scott ENORIS

NAME:

Debra Forbess

TITLE:

MUNICIPAL FLEET MGR

TITLE:

Director of Finance and Administration

DATE:

8/18/16

DATE:

9/8/16