

FLORIDA POLYTECHNIC UNIVERSITY
DEPARTMENT OF PROCUREMENT
INVITATION TO BID
ITB 25-040 CONCRETE/ASPHALT REPAIRS AND REPLACEMENT
THIS IS NOT AN ORDER –THIS IS A FORMAL SOLICITATION
PLEASE READ DOCUMENT CAREFULLY

COMMODITY/SERVICES: Concrete/Asphalt Repairs and Replacement	PROCUREMENT CONTACT: Hina Rizwan EMAIL: BIDS@FLORIDAPOLY.EDU	DATE: February 24, 2025
BID OPENING DATE/TIME: March 14, 2025; 2:00 PM (ET)	QUESTION DEADLINE: March 5, 2025; 4:00 PM (ET)	SUBMIT BIDS TO: BIDS@FLORIDAPOLY.EDU
RESPONDENT NAME: ADDRESS: EMAIL: PHONE:		

- Bids will be publicly opened and reviewed by the Procurement Department at the above time and date. Details will be available on Procurement’s website. <https://floridapoly.edu/procurement/solicitations/index.php>
- Please submit a formal response that includes your best offer. The University is not liable for any costs incurred by Respondent in responding to this Competitive Solicitation.
- Bids must be firm. Those containing escalator clauses cannot be accepted. For consideration, bids must be made on this form and signed in full.
- Has Respondent declared bankruptcy, otherwise been declared insolvent, had a delinquency judgment issued against it in any court of competent jurisdiction, been placed in receivership, or is involved in any litigation?
- Has the Respondent had any agreements/contracts within the last three years where liquidated damages, penalties, liens, judgments, defaults, contract cancellations, or contract termination were filed against the Respondent?
- Does Respondent seek to assert trade secret protection for any document the Respondent submits in response to this Competitive Solicitation, under Sections 119.0715, 688.002(4), 812.081(1)(c), 815.04(3), and/or 815.045, Florida Statutes?

AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST

- Respondent’s collusion with other Respondents, other Respondents’ employees, or any employee of the University is prohibited and may result in rescission or cancellation of solicitation (or contract) without liability to the University.
- Respondent is legally entitled to enter into a contract with Florida Polytechnic University.
- The award of this Competitive Solicitation is subject to the provisions of Chapter 112, Florida Statutes, and any other laws, regulations and/or policies concerning conflicts of interest in dealing with entities of the State of Florida (collectively, “Conflicts of Interest Rules”).
 - In accordance with Section 112.3185, Florida Statutes, by submitting a Response, the Respondent certifies that no individual employed by the Respondent or subcontracted by the Respondent has an immediate relationship to any University employee or public officer who was or is directly or indirectly involved in any way in the drafting, evaluating, or awarding of this Competitive Solicitation. (See Attachment A, Section 3.)
 - Solely by way of example, Respondent must disclose in its Response the name of any officer, director, or agent of the Respondent who is also an employee or public officer of the University. Further, Respondent must disclose in its Response the name of any University employee or public officer (or his or her spouse or child) who owns, directly or indirectly, an interest of five percent (5%) or more of the Respondent’s company or any of its affiliates or branches. (See Attachment A, Section 4.)
 - Failure to disclose the required information or violation of the Conflicts of Interest Rules is grounds for the University’s rejection of the Respondent’s Response, cancellation of an intent to award to the Respondent, and/or cancellation of any contract with the Respondent.

CERTIFICATION OF NON-SEGREGATED FACILITIES

The Offeror, by submitting a proposal, certifies that he/she is in compliance with the Code of Federal Regulations, 41 CFR 60-1.8 that prohibits the maintaining of segregated facilities. We understand and agree that a breach of this certification is a violation of the Equal Opportunity clause required by Executive order 11246 of 24 September 1965.

By filing a Response, Respondent certifies that Respondent is not on the convicted vendor list maintained by the Florida Department of Management Services, and Respondent also certifies that any subcontractor listed in Respondent’s solicitation response is not on the convicted vendor list.

Any documents Respondent submits to the University in response to this Competitive Solicitation become the property of the University and become public records.

SIGNATURE REQUIRED – I hereby swear under the penalty for false swearing:

- I am the Respondent, a partner or an Officer or employee of the Respondent with authority to sign on its behalf (if the Respondent is a firm).
- The information provided in this document is accurate and complete.
- Respondent is legally entitled to enter into contracts with the Florida Polytechnic University Board of Trustees.
- Respondent is aware of and has complied with the requirements of the Conflicts of Interests Rules and filed with the State of Florida.
- Respondent’s Response remains valid for six (6) months after the Response Due Date.

Government Classification (check all that apply): W/MBE _____ Small Business _____ Veteran Business _____ Local Business _____ Other (Please identify): _____ - _____
Signature of Respondent’s Authorized Representative: Date:

SOLICITATION INSTRUCTIONS AND CONDITIONS

DEFINITIONS

Addenda/Addendum – Written or graphic instruments issued by the Department of Procurement before the date for the opening of responses that modify or interpret this Competitive Solicitation by additions, deletions, corrections, or clarifications.

Procurement Website - <https://floridapoly.edu/procurement/solicitations/index.php>

Respondent – A firm or individual submitting a Response to this Competitive Solicitation (Vendor, Contractor, Supplier etc.).

Response - An executed offer submitted by a Respondent in response to this Competitive Solicitation.

Successful Respondent - A recommended recipient of an award of a contract under this Competitive Solicitation

Contract – Will be provided as a Notice of Award. All University Terms and Conditions apply.

1. PREPARATION OF RESPONSES

(a) Each response shall furnish the information required by the solicitation. The offeror shall sign the solicitation.

Response must be submitted on the bid sheet. See attachment A. A total lump sum must be entered by respondent after carefully examining the drawings and complete contract documents as defined in the specifications hereby proposes to furnish all labor, materials, supplies, and services required to perform the specifics of this project within the time set forth therein and for the stated lump sum bid amount.

(b) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(c) Response must include at least three references from companies that the respondent has provided services to during the last five years. Provide company name, address, and contact name and phone number. See attachment B

2. QUESTIONS

All questions regarding this ITB shall be made electronically via e-mail in writing and directed to BIDS@FLORIDAPOLY.EDU. The e-mail's subject shall be "QUESTION -ITB 25-040 ". Failure to provide the correct ITB number in the email may deem the question unanswerable and may not be considered as part of any addenda. Any questions submitted after the dates and times may not be considered or answered. Questions properly submitted in writing prior to the due date will be addressed IN AN Addendum and posted on the [Procurement Website](#).

3. EXPLANATION OF OFFERORS

Any explanation desired regarding the meaning or interpretation of the solicitation, must be requested in writing and with sufficient time allowed.

Oral explanations or instructions given before the contract award will not be binding. Any information provided will be posted on the [Procurement Website](#).

4. ACKNOWLEDGMENT OF ADDENDUM

The addendum must be acknowledged by signing and returning the amendment or by letter to bids@floridapoly.edu

5. SUBMISSION OF RESPONSES

(a) Response must be submitted to bids@floridapoly.edu on or before the bid opening date/time.

(b) Late responses and modifications* received by the Procurement Department after the time and date specified may not be considered.

*Responses may be modified or withdrawn by written notice prior to the time and date specified for receipt of bids.

(c) Responses may be withdrawn in person by a Respondent or authorized representative and must sign a receipt for the offer prior to the time and date specified for receipt of bids.

6. AWARD OF CONTRACT

(a) The contract will be in the form of a Notice to Award and be awarded to the Respondent(s) whose offer conforming to the solicitation will be most advantageous to the University and other factors considered. There is no guarantee as to the total hours to be worked.

(b) The University reserves the right to reject any or all offers and to waive informalities and minor irregularities of responses received.

A written communication by the Procurement Representative to the successful Respondent will be provided to the successful Respondent.

(c) Contract term will be from date of award until June 30, 2025, with the option to renew for four (4) additional one (1) year periods.

The University reserves the right to award multiple Respondents.

7. COMPLIANCE

It is agreed and understood that any contracts and/or orders placed as a result of this ITB shall be governed under Florida Board of Governor Regulation and Florida state laws.

8. CONTRACT CHANGES:

During the contract period, no change will be permitted unless the Contractor receives written approval from the Director of Procurement. If changes are necessary, Respondent must promptly report such matter to the Director of Procurement for consideration.

GENERAL OVERVIEW

1. INTENT AND SCOPE

It is the intent of this invitation to bid to develop price contracts with one or more Successful Respondents for Asphalt repair and replacements services. Successful respondents will be required to provide the following:

- Labor and materials for concrete repair/replacement.
- Labor and materials for Asphalt repair/replacement.
- Labor and materials for earthwork needed to perform the assigned scope of work.
- Provide all equipment for services rendered.

2. BASIS OF BIDDING

The purpose of this bid is to establish a price contract for concrete and asphalt repair and replacement services. Awarded contractors must be equipped with tools and trucks to perform each job/project successfully. The contract(s) periods will be from date of award to June 30, 2025, with options to extend annually for four (4) additional one year periods upon the written agreement of both parties.

There is no guarantee as to the total hours to be worked.

Florida Poly will be utilizing the hourly pricing submitted by Contractors at time of bid for all projects \$0.01 - \$19,999.00.

All work performed must be invoiced according to those rates provided below. Invoices require labor and materials to be on separate line items and include sufficient detail for a pre- and post-audit.

For projects of \$20,000 - \$149,999, FPU will be seeking quotations from contracted Trade Service Contractors on a project-by-project basis.

For any project \$150,000 and above, a competitive sealed bid will be issued publicly. Exceptions can be made in certain circumstances but must be recommended by, Assistant Vice President Facilities and Safety Services and approved by CFO/Vice President of Administration & Finance, Director of Procurement and Office of General Counsel.

3. WORK TO BE PERFORMEED

Work shall be performed at the request of a representative from the Facilities and Safety Services Team.

4. PERFORMANCE OF WORK

The Successful Respondent(s) shall be able to commence work upon the effective date of the contract and after authorization by the University. The work shall be continued until the project is completed and/or the University elects to stop work.

- The vendor must clearly define a manager of services to oversee the work and be the main point of contact for the University.
- All Vendor staff must be in uniform and equipped with the proper OSHA-approved Personal Protective Equipment.
- No shirtless or torn attire will be permitted.
- Vendor vehicles must be clearly marked and parked where the University permits. No personal work vehicles will be permitted.
- No smoking, loitering, fishing, or eating in or around buildings is permitted.
- Discourteous acts towards any person will not be permitted.
- The University must approve the scheduling of applications.
- All vendors must check in with the point of contact for the University.
- Vendors must contact the University within 48 hours of the scheduled work if the planned activity has been rescheduled.
- University may at any time request a rescheduling of services or redirection of efforts for planned events.
- Vendor shall provide a field report to the University Contact following the completion of each service. The field report should state all work that was completed on that day.
- Vendor must take precautions at all times utilizing safety equipment, and remain in compliance with OSHA Standards at all times.
- Vendor shall maintain a safety program to ensure the safety of all individuals and property are not affected by the vendor's work. The safety program should be submitted at the time of contract review.
- Vendor shall provide all proper safety data sheets for any chemicals that are used on campus or transported on company vehicles while on campus.
- Vendor must provide an emergency response point of contact in the event of emergencies that may impact life safety, or damage University property. Emergencies could consist of:
 - Damaged property affecting the operation of the University.
 - Items requiring immediate response to prevent further damage or harm to persons or property.
 - Injury to individuals.
- Vendor must be aware of any potential hazards before work is initiated.
- Vendor shall obtain, at its own expense, all necessary permits and licenses required by federal, state, County or local orders, codes, ordinances, regulations, administrative codes, laws, and Florid Poly AHJ.
- The vendor shall provide comprehensive insurance to date with the University named as a certificate holder made out to the Florida Polytechnic University Board of Trustees. The University shall also be listed as additional insured.
- Any changes, improvements, or alternates must be submitted to the University contact for approval.

- Contractor agrees that work will not be brokered or subcontracted without prior written approval from the University.
- The contractor is responsible for maintaining contract documents for their own use, including the cost of printing them.
- Vendors must schedule inspections through the University Inspection request system. Forty-eight (48) hours' notice is required for all inspections.

Should the University elect to stop work and abandon the project, the Contractor shall be paid all earned charges to the date of termination, but no termination expense shall be due the Contractor.

5. OPERATORS AND EQUIPMENT

Operators shall be skilled in the operation of the equipment necessary to their trade, and when, in the opinion of the University, any operator is unskilled and/or fails to operate the equipment expeditiously, the right is reserved by the University to have the Contractor replace the operator. Failure of the Contractor to comply with the direction of the university and continue to operate the equipment improperly shall cause the contract's cancellation.

Equipment shall be in good operational and mechanical condition. The University reserves the right to inspect the equipment before making the award. If the equipment does not meet the foregoing requirement, this shall be cause for rejection of the bid, and failure to maintain equipment in good mechanical condition for economical and expedient operation on the project will be cause for cancellation of the contract.

6. MATERIALS

All materials, parts, and components used must be original equipment manufacturers or approved equal products. The Contractor shall attempt in every practical way to ensure that the materials provided are at the lowest possible cost to the University and are comparable to those prices charged to the Contractor's most favorable customers.

7. METHOD OF BIDDING

Respondent shall submit responses as indicated within this ITB. No other method of bidding will be considered. The respondent must use the bid sheet, which is included and made a part of this Invitation, and include all data and other information requested in said Form of Proposal, which must be supplied.

8. RECIPROCAL AND OTHER PREFERENCES

The Procurement Department will also review the Responses to determine if any preferences should be applied. The University will provide preferences to eligible Respondents in accordance with Board of Governors regulation 18.001, and Sections 287.084, 287.087, and 287.092, Florida Statutes, as applicable. There is a preference for Florida-based vendors for purchases of personal property; a preference is provided to Respondents with a principal place of business in Florida.

9. QUALIFICATIONS OF BIDDER

Bidder must have and include with their bid copies of any Trade Certificate or Trade License required for each trade bid. Bidder must include at least three references from companies to which they have provided services during the last five years. Provide the company name, address, contact name, and phone number.

10. INSURANCE

The Bidder shall provide the following minimum insurance coverage:

- Workers' Compensation \$1,000,000
- General Liability \$1,000,000
- Excess Liability \$1,000,000
- Business Automobile Liability \$1,000,000 (each occurrence, any auto owned, non-owned, hired, or borrowed)
- Public Liability \$1,000,000 Combined Single Limit
- Property Damage \$1,000,000 Combined Single Limit

The minimum limit for employee liability coverage is:

- \$100,000 Each Accident
- \$500,000 Policy Limit Disease
- \$100,000 Each Employee Disease

The insurance certificate needs to be on an "ACORD" Certificate of Insurance. The Florida Polytechnic University Board of Trustees must be shown as the Certificate Holder on the Certificate of Insurance and the additional insured.

The Successful Bidder agrees to furnish Certificates of Insurance for the above-described coverages and limits to Florida Polytechnic University Procurement.

**ATTACHMENT A BID
SHEET**

INVITATION NO.: ITB

BIDDER NAME: _____

Item	Specification/Description	UOM (Hr., Ea....)	Contract Unit Price	Total Price
1				
2				
3				
4				
5				
6				
7				

The Bidder hereby acknowledges receipt of the following Addenda:

ADDENDUM NO. _____ DATED _____

ADDENDUM NO. _____ DATED _____

ADDENDUM NO. _____ DATED _____

(IF NO ADDENDUM HAS BEEN ISSUED AND RECEIVED, INSERT THE WORD, "NONE".)

For Use of Respondent:

Signature of Authorized Official: _____

Title: _____ Date: _____

For Use of Department of Procurement:

Approved: _____ Date: _____

ATTACHMENT B
QUALIFICATIONS (Experience of Contractor on other similar work)

Business and Type of Job	Contact name	Phone/Email	Dates of Project (start – end)	Total Project Amount

PRIMARY OFFICE/BRANCH (List the address of principle office/branch and the nearest to University location that would provide the services/equipment necessary to meet the terms and conditions listed in this bid and incorporated into an awarded contract.)

Primary Office Address	Principle Contact	Phone	E-mail
Nearest Branch Address	Principle Contact	Phone	E-mail

THIS PROPOSAL SUBMITTED BY:

(name and address of bidder)

DATE: _____ PHONE: _____ EMAIL: _____

UNIVERSITY TERMS & CONDITIONS

The following terms and conditions apply to all Successful Respondents. By participating in this Competitive Solicitation process, Respondent agrees to be bound by the additional terms and conditions:

- 1) **Payment.** The Contractor will submit invoices for fees or other compensation for Goods/Services or expenses in detail sufficient for a proper pre-audit and post-audit.
 - a) Upon receipt, the University has five (5) business days to inspect and approve the goods or services.
 - b) The University will make payment in accordance with the University's Regulation, which states the Contractor's rights as a vendor and the University's responsibilities concerning interest penalties and time limits for payment of invoices.
 - c) If a payment is not issued within thirty (30) days of receipt of a proper invoice and receipt and inspection and approval of the goods and services, the University, upon a valid request, will pay to the Contractor, in addition to the amount of the invoice, an interest penalty at the rate established pursuant to Section 55.03(1), Florida Statutes, provided the interest penalty is in excess of one dollar (\$1.00). The interest will be calculated on the unpaid balance from the expiration of the 30-day period until such time as the payment is issued to the Contractor.
 - d) A Vendor Ombudsman, whose duties include acting as an advocate for Contractors who may be experiencing problems in obtaining timely payment from the University, may be contacted at 863-874-8448.
- 2) **Cooperation on Audits and Investigations.** The Contractor must cooperate with the University and provide specific records and/or access to the Contractor's records related to the Agreement for purposes of conducting an audit or investigation. The University will provide Contractor with reasonable notice of the need for such records or access.
- 3) **Travel Expenses.** Contractor will not charge the University for any travel expenses, meals, and lodging unless otherwise specifically provided for in the Agreement, and upon the University's prior written approval of the expenses. Under such circumstances, Contractor is authorized to incur the agreed to travel expenses which will be payable by the University, but only to the extent permitted in Section 112.061, Florida Statutes. Contractor is responsible for any expenses in excess of these prescribed amounts.
- 4) **Taxes.** The University is a tax immune sovereign and exempt from the payment of sales, use, or excise taxes. The Contractor must pay all personal property taxes on leased equipment and all taxes based upon net income.
- 5) **Relationship of the Parties.** The Contractor is an independent contractor, and neither the Contractor nor the Contractor's employees, agents, or other representatives are the University's employees or agents. The Contractor may not use the University's name, trademarks, logos, or marks without the University's prior written approval. The Contractor assumes all risk of personal injury and property damage attributable to the willful or negligent acts or omissions of itself and of its subcontractors or persons otherwise acting or engaged to act at the instance of the Contractor in furtherance of its obligations under the Agreement.
- 6) **Background Checks.** Prior to any of Contractor's (or subcontractor's) employees or agents entering the University's campus or premises to perform work pursuant to the Agreement, Contractor must have conducted, and the employee or agent must have passed, a background check. In addition, if Contractor's (or subcontractor's) employee or agent is listed on the Florida or National Sex Offenders Registry, that employee or agent may not enter the University's campus or premises in furtherance of the Agreement.
- 7) **Parking.** The Contractor must ensure that all of Contractor's and Contractor's employees', agents', and subcontractors' vehicles parked on the University premises have proper parking permits. All vehicles must be registered with and have parking permits purchased from the University's Parking and Transportation Services Department. Contractor and Contractor's employees, agents and subcontractors must observe all parking rules. The failure to purchase parking permits and otherwise comply with all the University's parking rules could result in the ticketing and/or the towing of Contractor's or Contractor's employees', agents', and subcontractors' vehicles.
- 8) **Contractor's Employment of Unauthorized Aliens.** Employment of unauthorized aliens is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, the University may terminate the Agreement immediately upon notice to Contractor for Contractor's violation of this provision.
- 9) **E-Verify.** All terms defined in Section 448.095, Florida Statutes are adopted and incorporated into this provision. Pursuant to Section 448.095, Florida Statutes, Contractor certifies (Exhibit I) that it is registered with and uses 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 Agreement. If Contractor enters into a contract with a subcontractor to perform work or provide services pursuant to the Agreement, Contractor must also require the subcontractor to comply with the requirements of Section 448.905, Florida Statutes. The subcontractor must provide to the Contractor an affidavit stating that the subcontractor does not employ, contract with, or subcontract with or to, any unauthorized alien. Contractor must maintain a copy of such affidavit for the duration of the Agreement. The University may terminate the Agreement immediately upon notice to Contractor for Contractor's violation of this provision.
- 10) **Workers' Compensation.** Contractor must have and maintain during the life of the Agreement, Workers' Compensation Insurance for all its employees connected with the work related to the Agreement. In the event any work related to the Agreement is sublet or subcontracted, the Contractor must require the subcontractor to provide Workers' Compensation Insurance for all of the subcontractor's employees unless such employees are covered by the protection afforded by the Contractor. Such insurance must comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under the Agreement is not protected under Workers' Compensation, the Contractor must provide, and cause each subcontractor to provide, adequate insurance for the protection of such employees.
- 11) **Equal Opportunity.** The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, Veteran status, marital status, age or disability.
 - a) The Contractor will comply with the provisions of Executive Order 11246, September 24, 1965, as amended by Executive Order 11375, and the rules, regulations and relevant orders of the Secretary of Labor that are applicable to each order placed against the Contract regardless of value.

If the Contractor anticipates receiving \$10,000 in orders during the first 12 months of the Agreement, Contractor must complete the Certificate and Agreement of Non-Segregated Facilities (Exhibit II).

b) The Contractor will also comply with the Americans with Disabilities Act (ADA) of 1990, as revised.

c) If the Contractor anticipates receiving \$50,000 in orders during the first 12 months of the Agreement, and employs more than 50 people, the Contractor will complete and file prior to March 1 of each year a standard form 100 (EEO-1) and will maintain a written program for affirmative action compliance that is available for review upon the University's request.

12) Subcontractors. The Contractor is fully responsible for all work performed under the Agreement. The Contractor may, with the prior written consent of the University, enter into written subcontract(s) for performance of certain of its functions under the Agreement. The Contractor's subcontracts must not be implemented or effective until and unless approved in writing by the University. Contractor will fully notify any subcontractors of Contractor's responsibilities pursuant to the Agreement by providing language in the Contractor's subcontracts with subcontractors for work related to the Agreement. Contractor is solely responsible for all payments to its subcontractors. Contractor will require its subcontractors to provide proof of the required insurance coverage as well as proof of appropriate licenses before allowing the subcontractor to perform work related to the Agreement.

13) Small Business Minority Enterprise (SBME) Reporting. In each invoice submitted to the University, the Contractor will report the following information for each SBME used in the performance of the Agreement: the Name, Address, Type of Certification and Dollar Amount paid for work related to the Agreement.

14) Covenant Against Commissions or Brokerage and Contingent Fees. Contractor warrants that the Contractor has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of the Agreement. In the event of Contractor's breach or violation of this warranty, the University has the right to terminate the Agreement, without liability, and to deduct from any amounts otherwise payable to Contractor under the Agreement the full amount of such fee, commission, percentage, gift, or other consideration, and to pursue any other remedy available to the University under the Agreement, at law or in equity.

15) Insurance. Contractor will maintain, at its own expense, amounts of insurance as required in the Solicitation. If no insurance is mandated in the Solicitation, Contractor must at a minimum maintain insurance that covers the Contractor's exposure in performing the Agreement. The University is self-insured and is not required to obtain additional insurance for purposes of the Agreement.

16) Licensing Requirements. To the extent applicable, Contractor must have and maintain all appropriate licenses necessary to provide the Goods/Services related to the Agreement. Contractor must provide proof of such licenses to the University upon request.

17) Work for Hire. Any work specifically created for the University under the Agreement is considered a "work for hire." All designs, prints, paintings, artwork, sketches, etchings, drawings, writings, photographs, or any other work or material or property produced, developed or fabricated and any other property created hereunder, including all material incorporated therein and all preliminary or other copies thereof, (the "Materials") are and remain the property of the University, and, unless otherwise specifically set forth herein, are considered specially ordered for the University as a "work made for hire," or, if for any reason held not to be a "work for hire," the Contractor (or subcontractor or agent) who created, produced, developed or fabricated the Materials hereunder assigns all of his/her/its right, title and interest in the Materials to the University.

a) The University owns all right, title and interest in the Materials. Contractor agrees upon request to take the necessary actions (and if necessary, ensure the Contractor's subcontractor or agent takes the necessary actions) to perfect the transfer of such title to the University.

b) The Materials must be to the University's satisfaction and are subject to the University's approval. Contractor bears all risk of loss or damage to the Materials until the University has accepted delivery of the Materials.

c) The University is entitled to return, at Contractor's expense, any Materials which the University deems to be unsatisfactory.

d) On or before completion of the Contractor's services hereunder, the Contractor must furnish the University with valid and adequate releases necessary for the unrestricted use of the Materials for advertising or trade purposes, including model and property releases relating to the Materials and releases from any persons whose names, voices or likenesses are incorporated or used in the Materials.

e) The Contractor warrants that the Materials may be used or reproduced for advertising or trade purposes or any commercial purposes without violating any laws or the rights of any third parties and that no third party will have any rights in, to, or arising out of, or in connection with the Materials, including without limitation any claims for fees, royalties, or other payments.

18) Trademark or Copyright Infringement. The Contractor will, at its expense, defend any suit brought against the University and will indemnify the University against an award of damages and costs made against the University by settlement or final judgment of a court that is based on a claim that the use of the Contractor's product infringes a trademark or copyright of a third party; provided that the University notifies the Contractor in writing of the suit or any claim of infringement within thirty (30) days after receiving notice thereof, and further provided that the Contractor is permitted to control the defense in any litigation or settlement of the suit. The University will provide reasonable cooperation in the defense of the suit at the Contractor's expense. Such defense and indemnity survives termination or expiration of the Agreement.

19) Confidentiality of Information.

a) The Contractor acknowledges and agrees that the following items are and remain confidential, proprietary, and the sole property of the University:

- i) all documents, studies, materials and information furnished to the Contractor by the University or the University's affiliates in connection with the Agreement, and
- ii) all reports, studies, plans, deliverables, strategies, materials and other documents and information developed or prepared for the University in connection with the Agreement or which reflect any of the documents, studies, materials or information furnished to the Contractor by the University (the materials described in this provision are collectively referred to as the "Information").

b) The Contractor agrees that it will not use the Information, nor share the Information with its employees, except as necessary to the Contractor's performance under the Agreement, and the Contractor will at all times comply with all state and federal laws governing the use and/or safe-keeping

of confidential and/or personally identifiable information. The Contractor must not disclose Information to third parties unless it obtains the University's written consent to such disclosure.

c) In the event the Contractor is required by subpoena or other judicial or administrative process or by law to disclose such records, the Contractor will:

- i) provide the University with prompt notice thereof;
 - ii) consult with the University on the advisability of taking steps to resist or narrow such disclosure;
 - iii) furnish only that portion of the information that is responsive to the request;
 - iv) comply with the requirements of all state and federal privacy laws applicable to the Information, which may include but is not be limited, to Florida Public Records laws, FERPA, the Gramm-Leach Bliley Act, the Federal Trade Commission's Red Flags Rule (which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003); and
 - v) reasonably cooperate with the University in any attempt that the University may make to obtain an order or other reliable assurance that confidential treatment will be accorded the records.
- d) Upon termination of the Agreement or upon request by the University, the Contractor will promptly return the Information to the University. Notwithstanding the foregoing, if the University will share or provide access to protected health information or "PHI" with the Contractor for the Contractor to perform the Agreement, the University and the Contractor will enter into a separate business associate agreement which will govern the confidentiality and non-use obligations of the Agreement regarding the PHI (in lieu of this provision). This provision survives the termination or expiration of the Agreement.

20) Compliance with Public Records Law. The University is subject to applicable public records laws as provided by provisions of Florida Statutes Chapter 119, and the University will respond to such public records request without any duty to give the Contractor prior notice. The University may unilaterally terminate the Agreement for Contractor's refusal to allow public access to all public records that were made or received in conjunction with the Agreement. This provision survives termination or expiration of the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (863) 874-8412, ogc@floridapoly.edu, Florida Polytechnic University, Attention: General Counsel, 4700 Research Way, Lakeland, FL 33805.

a) To the extent that Contractor meets the definition of "contractor" under Section 119.0701, Florida Statutes, in addition to other requirements provided by law, Contractor must comply with public records laws, including the following provisions of Section 119.0701, requiring Contractor to:

- i) Keep and maintain public records required by the University to provide the Goods/Service.
 - ii) Upon request from the University, provide the University 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 or as otherwise provided by law.
 - iii) 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 University.
 - iv) Upon completion of the Agreement contract, transfer, at no cost, to the University all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency 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 University, upon request from the University's custodian of public records, in a format that is compatible with the information technology systems of the University.
- b) The University may inspect the:
- i) Financial records, papers, and documents of the Contractor that are directly related to the performance of the Agreement or the expenditure of state funds.
 - ii) The Contractor's programmatic records, papers, and documents which the University determines are necessary to monitor the performance of the Agreement or to ensure that the terms of the Agreement are being met.
 - iii) The Contractor must provide such records, papers, and documents requested by the University within 10 business days after the request is made.
 - iv) The right of access in this provision is not limited to the required retention period but lasts as long as the records are retained.
- c) The terms of this section 23 Compliance with Public Record Laws are material terms of the Agreement, and failure to comply may result in termination of the Agreement and/or civil penalties.

21) Termination.

- a) Termination for Cause. Either party may terminate the Agreement for cause by giving the other party thirty (30) calendar-days written notice and an opportunity to cure by setting forth with specificity the basis for the termination of the Agreement for cause. For purposes of the Agreement, "cause" means the failure by either party to: (i) provide the Goods/Services within the time specified in the Agreement; or (ii) adhere to any terms of the Agreement.
- b) Termination for Convenience. The Agreement may be terminated by the University for convenience by providing written notice to Contractor of such intent to terminate at least 10 days prior to the effective date of such termination.
- c) If the Agreement is terminated, the University is liable only for payment of Goods/Services received or rendered and accepted by the University prior to the date of termination.

22) Convicted Vendor List. The Contractor represents and warrants that it is not on the Convicted Vendor List (see Fla. Stat. § 287.133(2)(a)).

23) Annual Appropriations. The State of Florida and the University's performance and obligation to pay under the Agreement are subject to and contingent upon sufficient appropriations by the Florida Legislature and other entities' allowance of the University to use such funds. In the event the

entities controlling such funding fail to appropriate funds or to allow the University to use such funds, and the University has determined, in the University's sole discretion, that there are insufficient funds available to cover the University's obligation under the Agreement, the University may terminate the Agreement without damage, penalty, cost or further obligation. The University will give notice to the Contractor of the non-availability of funds when the University has knowledge thereof. Upon receipt of such notice by the Contractor, the Contractor is entitled to payment only for those Goods/Services performed and accepted by the University prior to the date such notice is received.

24) Waiver of Rights and Breaches. No right conferred on the University by the Agreement is deemed waived and no breach of the Agreement excused unless such waiver of right or excuse of breach is in writing and signed by the University. The University's waiver of a right or excuse of breach does not constitute a waiver or excuse of any other right or breach.

25) Federal, State, Local Laws, and Regulations. The Contractor and any subcontractors must comply with all applicable laws, ordinances, and regulations.

26) Force Majeure. In the event compliance with any obligation under the Agreement is impractical or impossible due to any Event of Force Majeure, then the time for performance of such obligation will be extended for a period equivalent to the duration of the Event of Force Majeure. The provisions of this section do not excuse either party's inability to perform its obligations hereunder because of inadequate finances. "Event of Force Majeure" means any strike, lockout, labor dispute, embargo, flood, earthquake, storm, dust storm, lightning, fire, epidemic, act of God, war, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, restraint by governmental order or any other occurrence beyond the reasonable control of the party in question.

27) Lobbying. Contractor is prohibited from using funds provided under the Agreement for the purpose of lobbying the Legislature or any official, officer, commission, board, authority, council, committee, or department of the executive branch or the judicial branch of state government.

28) Assignment/Modification of Agreement. The Agreement may not be assigned or modified by either party except as agreed to in writing and signed by both parties. The Agreement is binding upon the parties' successors and assigns.

29) Indemnification. The Contractor is responsible for its performance under the Agreement. The Contractor will indemnify and hold harmless, assume liability for and defend, the State of Florida, the Florida Board of Governors, the University and their officers, employees, and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which may arise in any manner or are alleged to have arisen, from the acts, omissions or wrongful conduct of Contractor or Contractor's officers, employees, agents, guests, patrons, licenses, invitees or subcontractors in connection with or related to their operations, activities, and/or occupancy or use of the University premises in performance of the Agreement. This provision survives termination or expiration of the Agreement. The Contractor's obligations under this provision do not extend to any liability caused by the sole negligence of the University or its officers, agents, or employees.

30) Sovereign Immunity. Nothing in the Agreement is to be construed as an indemnification of the Contractor by the University or as a waiver of sovereign immunity beyond that provided in Section 768.28, Florida Statutes.

31) Governing Law; Venue. The Agreement is governed by the laws of the State of Florida and will be construed, performed, and enforced in all respects in accordance with the laws and rules of the State of Florida. Any disputes related to the Agreement will be governed by Florida law, and the Agreement is deemed to have been executed and entered into in the State of Florida. Exclusive venue of any actions arising out of the Agreement will be in the courts in Polk County, Florida.

32) Use of Agreement by Other Governmental Agencies. At the option of the Contractor, the use of the Agreement may be extended to other governmental entities, including the State of Florida, its agencies, political subdivisions, counties, and cities, and any university in the State University System of Florida. Each such entity using the Agreement does so independently of the University and is solely responsible for its duties under its own agreement.

33) F.O.B. for Deliveries. For shipping and delivery of goods, shipping charges are included in the price of the goods and the shipped goods become the legal property and responsibility of the University only after the goods have been delivered and the University has inspected and accepted the goods; Contractor is responsible for the goods until such time.