

**FLORIDA**

---

**POLYTECHNIC**  
**UNIVERSITY**

**COMPETITIVE SOLICITATION**

**INVITATION TO NEGOTIATE**

**FOR**

**ENGLISH AS A SECOND LANGUAGE (ESL)  
SERVICES**

Please mark all proposal submission envelopes with the following information:

**OPENING 11/06/2015 at 2:00 PM EST  
ITN 09-003  
ESL SERVICES**

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## EXHIBITS



## **1.0 INTRODUCTION AND SCOPE OF WORK**

### **1.1 Objective and Scope of Work**

Florida Polytechnic University (“University”) is interested in proposals from experienced and financially sound vendors to operate the University’s English as a Second Language Program (“ESL”). All instruction will be conducted at facilities operated by Florida Polytechnic University beginning Spring 2016 semester.

The ESL partner shall provide a language and cultural bridge program for Florida Polytechnic University international students who have not yet developed the English language skills necessary for University study in the United States. The program shall also include English testing for incoming degree seeking students who have not taken the TOEFL or other proof of language abilities to get fully enrolled. Vendors shall describe in detail the services proposed to provide a successful program that meets the needs of the University and participating students.

The ESL partner must have an *ACCET* certification.

### **1.2 Term of the Agreement**

Term of the agreement will be for three (3) years with the option to renew for two (2) additional one-year periods, upon the agreement of the parties.

### **1.3 Coverage and Participation**

With the consent and agreement of the successful proposer, the other State Universities, Community Colleges, District School Boards, other educational institutions, and other Governmental Agencies, may also assess and access the Agreement resulting from this solicitation issued and administered by the Florida Polytechnic University.

The University reserves the right to add and/or delete elements, or to change any element of the coverage and participation at any time without prior notification and without any liability of any kind or amount.

### **1.4 University Demographics**

Florida Polytechnic University's mission is to educate students emphasizing Science, Technology, Engineering, and Mathematics (STEM) in an innovative, technology-rich, and interdisciplinary learning environment. The University collaborates with industry partners to offer students real-world problem-solving, work experience, applied research and business leadership opportunities. Florida Polytechnic prepares students to assume available leadership positions in the dynamic technological landscape in Florida, the nation, and the world.

Florida Polytechnic University welcomed an Inaugural Class of 554 student on August 25, 2014.

More information can be obtained by visiting <http://floridapolytechnic.org>

## **2.0 METHOD OF AWARD**

The evaluations of each response to this ITN will be based on the proposer's proposal, profile, past performance and experience, and references. The award shall be made to the responsive and responsible proposer whose proposal is determined to be the most advantageous to the University, taking into consideration the following evaluation criteria listed in Section 4.0 "Proposal Information and Evaluation Criteria". Pricing may also be a criterion. However, the University is under no obligation whatsoever to select as most responsive the proposal that demonstrates the lowest pricing.

The resulting contract with the successful proposer will consist of this ITN, the proposal with any and all revisions, award letter, purchase order, and the signed agreement between the parties, as stated in that agreement.

Proposers whose proposals are not accepted will be notified after a final selection has been made by public posting of the successful proposer. This public posting functions as the rejection of all other proposals. This posting will be made to the University's website:

<http://floridapolytechnic.org/>

## 2.1 ITN Schedule

The University anticipates the following schedule for the ITN process. The University reserves the right at its sole discretion to revise the schedule and other aspects of the ITN by issuing addenda to the ITN at any time. The University will post addenda on its Website, <https://floridapolytechnic.org/about/current-competitive-solicitations>. Only those Proposers that have submitted the Registration Form attached herein as Exhibit A will receive notification. It is the sole responsibility of the proposer to check the University website for postings and/or notifications relating to this ITN.

Release of ITN	October 8, 2015
Deadline for proposer questions (Inquiry Deadline Date)	October 23, 2015
Addendum posted with answers	October 30, 2015
ITN Proposals due (Response Due Date)	November 6, 2015 at 2:00PM EST
Short-listing meeting to elevate proposers to presentations	TBD
Short-listed proposers' presentations	TBD
Selection of proposer	TBD

## 2.2 Special Accommodations

If special accommodations are needed in order to attend a proposal opening, contact the Authorized University Representative in Section 3.1 three (3) business days prior to the Response Due Date.

## 3.0 PROCESS

### 3.1 Authorized University Representative / Proposer's Submission of Proposal

The "Authorized University Representative" for this competitive solicitation is:

Ms. Melek H. Yazici  
Purchasing Coordinator  
Florida Polytechnic University  
c/o Wellness Center Mail Room  
4700 Research Way  
Lakeland, Florida 33805-8531

Phone: (863) 874-8583  
Email: [myazici@FLPoly.org](mailto:myazici@FLPoly.org)

ANY PARTY INTERESTED IN SUBMITTING A RESPONSE SHALL REGISTER

VIA E- MAIL WITH THE REPRESENTATIVE LISTED ABOVE BY SUBMITTING THE REGISTRATION FORM ATTACHED HEREIN AS EXHIBIT A.

University communications regarding this opportunity will be made via email, and posted on the website. The proposer must submit its sealed proposal to the attention of the Authorized University Representative at the address stated immediately above. Only those communications that are in writing from the Authorized University Representative shall be considered as duly authorized expressions on behalf of the University.

### **3.2 Proposer Communications and / or Inquiries**

The proposer shall review this competitive solicitation in its entirety to determine whether the University's objective, scope of services, conditions and requirements are clearly stated. If the proposer has any questions regarding this competitive solicitation, the proposer must submit such inquiries and requests for clarification via email only to the Authorized University Representative at [myazici@FLPoly.org](mailto:myazici@FLPoly.org). These inquiries or requests for clarification must provide the questions along with the relevant Section(s), Subsection(s), Paragraph(s), and page number(s) of the competitive solicitation being questioned by the proposer.

The University will consider only those communications and/or inquiries submitted via email and received by the Authorized University Representative on or before October 23, 2015 ("Inquiry Deadline Date"). The University will consider the proposer's failure to communicate inquiries, or request clarifications by the Inquiry Deadline Date to constitute the proposer's acceptance of all of the conditions and requirements as stated in this ITN and any amendments thereto. Unless the Authorized University Representative specifically requests the proposer to provide additional communications, or to participate in negotiations the University will not accept or consider any of the proposer's written or other communications and/or inquiries received between the Inquiry Deadline Date and the posting of an award, if any, under this competitive solicitation.

To the extent the University determines, in its sole discretion, to respond to any communications, inquiries or requests for clarification prior to the Inquiry Deadline Date, the University's response will be made in an addendum to this ITN and posted on the website.

### **3.3 Restricted Proposer Communications**

Proposers are required to conduct the preparation of their proposals with professional integrity and free of lobbying activities. From the date of issuance of this ITN until the University takes final agency action, the proposer must not communicate with, directly or indirectly, about this competitive solicitation with any employee, officer, director, or trustee of the University, or any University advisors or agents, except as provided herein or as expressly requested by the Authorized University Representative. Violation of this restriction may result in rejection of the proposer's proposal.

### **3.4 Addenda**

The Authorized University Representative or designee will distribute any addenda via email, and will also post the addenda on the website at <https://floridapolytechnic.org/about/current-competitive-solicitations>

The proposer's authorized representative must sign and date the cover page of each addendum, if any, and include the cover page of each addendum in the proposer's proposal. All proposers, and known interested proposers, are solely responsible for checking the website for addenda in order to verify whether any changes have been made to the ITN or whether any meetings are scheduled to take place. The University reserves the sole discretion over the conduct of any meetings and the extent, if any, that those attending may participate in such meetings.

The University will consider a proposer's failure to communicate inquiries, or request clarifications on the addenda by the Inquiry Deadline Date to constitute the proposer's acceptance of all of the conditions and requirements as stated in the competitive solicitation documents.

### **3.5 Protests**

This ITN creates no property rights or procedural due process rights. Any person wishing to protest must comply with the Florida BOG Regulation 18.002, which is hereby incorporated by reference. The written protest must be sent to the University Authorized Representative identified in Section 3.1. The protest must be accompanied by a protest bond in the amount of \$25,000, pursuant to section 255.0516, Florida Statutes.

Failure to timely file a protest or failure to timely deliver the required bond or other security in accordance with the Florida BOG Regulations 18.002 and 18.003 shall constitute a waiver of protest proceedings.

### **3.6 Delivery and Labeling of Sealed Proposals**

The proposer's proposal to this competitive solicitation shall be prepared in accordance with Section 4 "Proposal Information and Evaluation Criteria". The proposer's sealed proposal must be received by the Authorized University Representative on or before November 6, 2015 at 2:00 PM EST (the "Response Due Date") according to the time clock at the University. A proposer may not submit a proposal, or amendments to its proposal via telephone, facsimile, electronic mail, or telegraph.

If the proposer elects to mail in its proposal, the proposer must allow sufficient time to ensure the Authorized University Representative's receipt of the proposal by the Response Due Date. Regardless of the form of delivery, it is the proposer's responsibility to ensure that the proposal arrives at the Authorized University Representative's address (see below) no later than 2:00 P.M. on the Response Due Date. The proposer may not include more than one proposal (along with the copies) per sealed envelope. The mailing address is:

Ms. Melek H. Yazici

Purchasing Coordinator  
Florida Polytechnic University  
Wellness Center Mail Room  
4700 Research Way  
Lakeland, Florida 33805-8531

The University will accept proposals up to, and no proposal may be withdrawn after, the Response Due Date. Proposals must be delivered in sealed envelopes with the following information clearly provided on the front of the envelope: The Authorized University Representative's name and address as provided above. The proposals must be submitted with one (1) original and six (6) copies. The document containing the original signature must be marked "ORIGINAL." In addition, the proposer is asked to submit one (1) courtesy copy of the proposal on CD or PC compatible disk, preferably in .pdf format.

### **3.7 Economy of Presentation**

The proposer must use sections and tabs that are clearly identified and also must number and label all parts, pages, figures, and tables in its proposal. The proposer should prepare its proposal simply and economically, providing a straightforward, concise description of the proposer's capability to satisfy the conditions and requirements of this competitive solicitation. (Fancy bindings, colored displays, and promotional material are not desired). The proposer's emphasis should be on completeness and clarity of content. To expedite the University's evaluation of the proposal, it is mandatory that the proposer follow the instructions contained herein. The University is not liable for any costs incurred by the proposer in responding to this competitive solicitation including, without limitation, costs for any oral presentations requested by the University.

### **3.8 Proposals Must be in Ink or Typed**

The proposer's proposal must be typed or printed in permanent ink.

### **3.9 Proposer's Signature**

Where the proposer's signature is required, the proposer's proposal must contain the proposer's authorized representative's manual signature, in permanent ink, in the space provided. In addition, the proposer's authorized representative must initial all of the proposer's handwritten corrections (additions or deletions) in its proposal.

### **3.10 Complete Proposals Required**

The proposer must complete and execute this competitive solicitation document, including any addenda, appendices, exhibits, attachments, requested information and proposal forms and submit them with and as a part of the proposer's proposal.

### **3.11 Use of Forms**



If this competitive solicitation includes forms for the submission of information, the proposer must submit the requested information on the forms, attaching additional pages if necessary, or the University may reject the proposer's proposal.

### **3.12 Errors or Omissions**

The proposer should examine its proposal carefully for any errors prior to submission. The proposer is solely responsible for the accuracy and completeness of its proposal. The proposer's errors or omissions, if any, are solely at the risk of the proposer and may be grounds for the University's finding that the proposer's proposal is non-responsive. In case of the proposer's errors in extensions, the unit price will prevail.

### **3.13 Proposal Validity Period**

The proposer's proposal shall, in its entirety, remain valid for 180 calendar days after the Response Due Date.

### **3.14 Proposal Opening**

The proposals shall be delivered no later than 2:00 PM. EST on November 6, 2015, to the Authorized University Representative at the address stated in Section 3.1. At that time the University will open all timely submitted proposals for the sole purpose of recording the names of the proposers submitting proposals. If special accommodations are needed in order to attend a proposal opening, contact the Authorized University Representative in Section 3.1 three (3) business days prior to the Response Due Date.

### **3.15 Government in the Sunshine**

The University is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of the proposals. Accordingly, except as provided below, proposers should not label proposals as confidential or proprietary or trade secret protected. Any proposer that determines that it must divulge such information as part of its proposal must provide one electronic redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

The proposal will be a public document subject to release under the Government in the Sunshine laws unless an exemption from disclosure exists and is properly asserted and preserved by the proposer. Proposers should prepare the proposal with the understanding that it may become available to the public at some time.

ANY CLAIM OF EXEMPTION FROM DISCLOSURE MUST BE MADE EXPRESSLY AND CONSPICUOUSLY IN THE PROPOSAL, and cite the statutory basis of the claimed exemption. Failure to claim exemption will result in waiver of any exemption that may have existed. See, e.g., *Sepro Corp. v. Fla. Dep't of Env'tl. Protection*, 839 So.2d 781 (Fla. 1st DCA 2003).

Proposals will be temporarily exempt from inspection as a public record for a limited time pursuant to section 119.071, Florida Statutes (2012). It is not necessary for proposers to

claim this temporary exemption.

Negotiation strategy sessions and negotiations with proposers will not be public but will be recorded pursuant to section 286.0113, Florida Statutes (2012).

#### **4.0 PROPOSAL INFORMATION AND EVALUATION CRITERIA**

Proposals will be evaluated based upon the proposer's ability to meet the University's needs. Evaluation of the proposer's information will be based on the proposer's submitted proposal to the information requested below.

The evaluation will be based on the information provided in the ITN, any additional information requested by the University, information obtained from references and independent sources, technical and financial data, and oral presentations, if requested.

Specific consideration will be given to the following proposals in no particular order or weighting:

- Vendor organization, account team, accessibility, and resource commitment
- Experience of company with contracts of similar size and scope, reference information from current or former clients, and breadth of services
- Quality of approach, portfolio and services proposed
- Ability to provide best value to the Florida Polytechnic University
- Pricing

#### **4.1 Required Proposal Format**

To facilitate the University's analysis of the proposer's proposal, the proposer must prepare its proposal in accordance with the instructions provided in this competitive solicitation. If the proposer's proposal deviates from these instructions, such proposal may, at the University's discretion, be rejected.

Proposals must be prepared in at least 12-point font size on 8.5" x 11" white paper, with pages sequentially numbered. Some of the sections described below have page limitations; the University may disregard information not complying with these page limitations.

*The University may presume that any proposal is a best-and-final offer.*

#### **4.2 Proposal Requirements**

Each proposal contents shall be separated by sequentially numbered tabs as follows (and the supplied electronic copy shall be indexed in a similar manner).

Each proposer shall organize its proposal to provide the following information in order to assist the University in the selection, evaluation and award process.

**Tab 1** Completed and signed Proposal Submittal Form (Exhibit B), along with

completed and signed addendum cover pages, if any.

**Tab 2**

Firm Background - Provide a one page executive overview, including firm's area of expertise, introduction to and resumes of the proposed account manager(s), and any significant growth, downsizing, mergers, and/or restructuring that have taken place in agency within the last three years or that are anticipated to take place within the next three years.

- a) Please also provide contact name(s) and title(s) of the individual(s) responsible for the company's proposal and negotiation during this ITN process. Include the Organizational Chart beginning with the firm's account management team through the CEO of the company.
- b) Provide the resume(s) of the team leader(s) that will have the primary responsibility of managing the day-to-day oversight of this account.
- c) Would any process or tactic have to be "outsourced" from the agency? If so, provide a list of companies upon which the agency relies to provide services that the firm anticipates will be required.
- d) Describe the mission and philosophy which distinguish the agency from its competitors. Please explain how the agency is uniquely qualified to work with Florida Polytechnic University.

**Tab 3**

Include the following information regarding their ESL program proposal:

**Detailed Description-** provide a detailed description of the programs/services offered to Florida Polytechnic University. Including hours of instruction, days of instruction and number of sessions to be conducted throughout the year.

**Program History-** provide a detailed description of Proposers expertise in providing resources to meet the goals of this project. Proposers shall include availability to provide the services required at the time required as well as the resources with relevant skills for this project.

**Timeline-** Proposers shall provide a timeline with specific dates for completion of milestones such as analyses, design plans, test sessions, deliverables, etc.

**Quality measures-** Proposers shall include a detailed description of their standards of quality) i.e. quality assurance and evaluation, including methodology).

**Program Promotion-** Proposers shall describe efforts used in designing and promotion Program and Special Programs for international students and for the benefit of the University.

**General Space Requirements-** Proposers shall describe in detail the space required to adequately meet the needs of the program proposed (office space, classroom space, test taking lab space requirements, etc.). The University has allotted 5,000 square feet of space at the Florida Poly South campus for the ESL Services.

**International Requirements Resources-** Proposers shall describe in detail international recruitment resources offered to the University.

**Marketing Resources-** Proposers shall describe in detail marketing resources offered to the University.

**Matriculations-** Proposers shall include estimates of resulting matriculations.

**Dedicated Space-** Proposers shall describe in detail their requirements for classroom and office space.

**University Academic Expectations-** Proposers shall describe in detail all proposed academic/admissions expectations for graduates of the ESL program.

**Student Housing-** Proposers shall describe in detail their requirements for student housing (room and boarding).

**Tab 4**

Proposer's Past Performance and Experience: Provide the following information regarding your firm:

1. Past Performance:
  - a) Describe the firm's past performance and experience in providing ESL services.
  - b) Describe the firm's past experience in working with public agencies such as state universities, local government, etc...
2. Comparable Project:

Provide a detailed description of two (2) projects (similar in scope of services to those requested herein) which the proposer has either ongoing or completed within the past three (3) years. Make sure to include relevant details such as what challenges the firm faced and how those were overcome. What was the outcome? The description should identify for each project:

1. Client Requirements
2. Challenges, goals, and objectives
3. Outcome
4. Contact person and email address for reference

**Tab 5**

References:

Current Customers: Provide name, phone number, and email address of up to 3 references that would be capable of explaining and confirming your firm's capacity to successfully complete the scope of work listed in your service category.

**Tab 6** Provide a template of your proposed billing structure.

**Tab 7** Portfolio Sample Work: Provide any media, advertising, photographs, self-promotional materials about your firm and your service category.

**Tab 8** Exhibit C and D, completed, signed and dated.

### **4.3 Proposal Cost**

The University is not liable in any manner or to any extent for any cost or expense incurred by any proposer in the preparation, submission, presentation, or any other action connected with proposing or otherwise responding to this ITN. Such exemption from liability applies whether such costs are incurred directly by the proposer or indirectly through the proposer's agents, employees, assigns or others, whether related or not to the proposer.

### **4.4 Pricing and/or Revenue Proposal**

Proposers shall indicate pricing and/or revenue offers in the appropriate spaces and/or areas provided in this ITN. Proposers shall ensure that any departure from this condition results in an offer that is clearly cross-referenced to the applicable sections within this ITN. For any material departure from this condition, proposers shall provide clear and unambiguous explanations how the departure relates in detail to the applicable sections within this ITN. If the proposer responds with an "All or None" proposal, it shall be clearly and unambiguously marked as such.

The University may presume and hold as the proposer's final offer all pricing and/or revenue offerings, whether stated as amounts or percentages, and/or whether or not offered on an all-or-none basis, if not specified by the proposer. The University may accept or reject in part or entirely the proposer's pricing and/or revenue offerings when such offerings are not on an all-or-none basis. The University prohibits the changing of pricing and/or revenue proposals after the ITN closing date and time. Unless otherwise specifically proposed by the proposer, the University reserves the right to hold such pricing and/or revenue proposal as effective for the entire intended contract term. The University may prescribe the manner and method by which pricing and/or revenue offerings shall be communicated in the proposer's proposal. The University may reject any proposal in which the pricing and/or revenue offering does not conform to such prescribed manner and method.

### **4.5 Attention to Terms and Conditions**

Proposers are cautioned to thoroughly understand and comply with all matters covered under the Terms and Conditions section of this ITN. The successful Proposer is expected

to enter into a form of agreement. The University agreement terms and conditions included in this ITN are intended to be incorporated into this agreement. Proposals that are contingent upon any changes to these terms and conditions may be deemed to be non-responsive and may be rejected.

## **5.0 SELECTION COMMITTEE, SELECTION PROCESS AND EVALUATION OF PROPOSALS**

### **5.1 Responsiveness and Responsibility**

The University will initially review each proposal for: (a) minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content; and (b) conformance to the ITN instructions regarding organization and format. Proposals that are deemed non-responsive to this ITN will be excluded from any further consideration. The University reserves the right to waive any minor non-conformance.

Proposals may be excluded from further consideration and the proposer will be so advised. The University may, in its sole discretion, also exclude from consideration any proposer whose proposal contains a material misrepresentation. The University may, in its sole discretion, request clarifications of the information submitted, and may also rely upon any information obtained from any source that pertains to the issue of a proposer's integrity and capability to perform.

### **5.2 Evaluation Criteria and Selection Process**

Proposals will be evaluated in accordance with this section and all applicable Florida Polytechnic University Purchasing Policies and Regulations.

The University shall appoint an Evaluation Committee that will be responsible for evaluating and scoring/ranking the proposals in accordance with this ITN.

The University's evaluation of each proposal will be based upon the information provided in the Proposal, additional information requested by the University, information obtained from references and independent sources, and formal presentations, if requested. The university evaluation committee will evaluate proposals in accord with the requirements and criteria set forth in the solicitation, including any Addenda issued. The University may award the Contract to the Successful Proposer determined to be the most advantageous to the University.

Primary Criteria Include:

- Proposer Qualifications
- Program Plan - Services Defined
- References and Past Experience
- Financial Proposal

Secondary Criteria Include:

- Optional Services

### **5.3 Tie Proposals**

When multiple proposals are equal in all respects, the University will give preference to the proposals in the following order: Proposals from proposers that include commodities manufactured in Florida, then from proposers that are Florida businesses, then proposers who have a drug-free workplace program, and then proposers who are foreign manufacturers located in Florida, in determining the award, or if those conditions do not exist or are equivalent between two or more proposals, the award will be determined by the toss of a coin.

#### **5.4 Award of Agreement**

The University intends to award an agreement resulting from this competitive solicitation to the proposer whose proposals represents the best value to the University. The University is not obligated to make an award under or as a result of this competitive solicitation.

#### **5.5 Posting of Intent to Award**

The intent to award an agreements to a proposer, if any, will be posted on the website for review by interested parties, and will remain posted for a period of seventy-two (72) hours; excluding weekends, federal holidays, and University holidays.

#### **5.6 Selection, Negotiation, Additional Information**

Although the University reserves the right to negotiate with any proposers to arrive at its final decision and/or to request additional information or clarification on any matter included in the proposal, it also reserves the right to select the most responsive of proposers without further discussion, negotiation, or prior notice. The University may presume that any proposal is a best-and-final offer.

#### **5.7 Pre-Award Negotiations**

The University reserves the right to negotiate prior to award with qualified proposers for purpose of addressing the matters set forth in the following list, which may not be exhaustive.

- Resolving minor difference and typographical errors
- Terms and conditions
- Clarifying necessary details and responsibilities
- Emphasizing important issues and points
- Receiving assurances from Qualified Proposers
- Obtaining the lowest and best pricing and/or Agreement

#### **5.8 Pre-Award Presentations**

The University reserves the right to require presentations from any and all proposers, in which they may be asked to provide or they may provide information in addition to that provided in their proposals.

#### **5.9 Price Adjustments**

Prices will be locked for the three year term of the initial contract. In the event the University elects to utilize one or two of the possible renewals, price change requests shall be in writing, submitted at least sixty (60) days prior to the end of the current agreement period, and shall be supported by written evidence of increased costs to the successful proposer. The University will not approve unsupported price increases that will merely increase the gross profitability of the successful proposer at the expense of the University. Price change requests shall be a factor in the agreement extension review process. The University shall, in its sole opinion, determine whether the requested price increase or an alternate option is in the best interest of the University.

## **6.0 UNIVERSITY RESERVED RIGHTS**

In connection with this procurement, the University reserves to itself all rights (which rights shall be exercisable by the University in its sole discretion) available to it under applicable law, including without limitation, with or without cause and with or without notice, the right to:

- (a) Develop the scope of work in any manner that it, in its sole discretion, deems necessary.
- (b) Cancel this ITN in whole or in part at any time prior to the execution by the University of an agreement, without incurring any cost obligations or liabilities.
- (c) Reject any and all proposals received at any time.
- (d) Modify all dates set or projected in this ITN.
- (e) At any time terminate consideration of proposals received.
- (f) Issue addenda, supplements, and modifications to this ITN.
- (g) Seek the assistance of outside technical experts and consultants in the procurement process and scope of services.
- (h) Require confirmation of information furnished by a proposer; require additional information from a proposer concerning its proposal; and require additional evidence of qualifications to perform the work described in this ITN.
- (i) Seek or obtain data from any source that has the potential to improve the understanding and of the proposals to this ITN.
- (j) Add or delete proposer responsibilities from the information contained in this ITN.
- (k) Waive administrative and otherwise immaterial deficiencies in a proposal, accept and review a non-conforming proposal, or permit clarifications or supplements to a proposal.
- (l) Disqualify any proposer who changes its proposal without University approval.



(m) Exercise any other right reserved or afforded to the University under this ITN or an applicable law.

This ITN does not commit the University to enter into an agreement, or to proceed with the ITN process described herein.

In no event shall the University be bound by, or liable for, any obligations with respect to the scope of work until such time (if at all) as an agreement, in form and substance satisfactory to the University, has been authorized and executed by the University, and, then, only to the extent set forth therein.

## **7.0 LEGAL AUTHORITY**

The University is part of the State of Florida's State University System, established by Article IX, Section 7, of the Florida Constitution and governed generally by the Florida K-20 Education Code, Chapters 1000 through 1013, Florida Statutes. The proposed structure of the engagement is authorized by Section 1013.171(1), Florida Statutes, which authorizes the University "to negotiate and enter into agreements to lease land...for the purpose of erecting thereon facilities and accommodations necessary and desirable to serve the needs and purposes of the university."

## **8.0 GENERAL TERMS**

The following are the Terms and Conditions that will become part of any agreement consummated between the University and the successful proposer. In the event of a conflict between any provisions contained in any of the documents governing this transaction, the following shall be the order of precedence: Agreement; Invitation to Negotiate; Proposal.

### **8.1 Actions of Successful Proposer**

The University is under no obligation whatsoever to be bound by the actions of any successful proposer with respect to third parties. The Successful proposer is not a division or agent of the University.

### **8.2 Americans with Disabilities Act**

The successful proposer shall comply with all applicable provisions of the Americans with Disabilities Act and applicable federal regulations under the act.

### **8.3 Discrimination**

Any entity or affiliate who has been placed on the discriminatory list may not submit a bid/proposal on a contract to provide goods or services to a public entity, may not submit a bid/proposal with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to a public entity, may

not award or perform work as a vendor, supplier, subcontractor or consultant under contract with any public entity, and may not transact business with any public entity.

#### **8.4 Payment Terms**

The University's obligation is payable only and solely from funds appropriated for the purpose of the agreement. Unless otherwise stated herein or in the agreement, the payment terms for the agreement are Net 30 days. **VENDOR OMBUDSMAN:** The University's vendor ombudsman whose duties include acting as an advocate for vendors may be experiencing problems in obtaining payment(s) from the University may be contacted at 863.583.9050.

#### **8.5 Price Adjustment**

Price changes will normally only be considered at the end of one agreement period and the beginning of another. Price change requests shall be in writing, submitted at least sixty (60) days prior to the end of the current agreement period, and shall be supported by written evidence of increased costs to the successful proposer. The University will not approve unsupported price increases that will merely increase the gross profitability of the successful proposer at the expense of the University. Price change requests shall be a factor in the agreement extension review process. The University shall, in its sole opinion, determine whether the requested price increase or an alternate option is in the best interest of the University.

#### **8.6 No Replacement of Defective Tender**

Every tender of goods must fully comply with all provisions of the agreement as to time of delivery, quantity, and the like. If a tender is made which does not fully conform, this shall constitute a breach and the successful proposer shall not have the right to substitute a conforming tender.

#### **8.7 Referencing of Orders**

For each order issued against an agreement resulting hereunder, the University intends in good faith to reference this ITN for pricing, terms and conditions, delivery location, and other particulars. However, in the event the University fails to do so, the University's right to such terms and conditions, and particulars shall not be affected, and no liability of any kind or amount shall accrue to the University.

#### **8.8 Right of Inspection**

The University shall have the right to inspect the facility before accepting it.

#### **8.9 Right of Offset**

The University shall be entitled to offset against any sums due the successful proposer, any expenses or costs incurred by the University, or damages assessed by the University concerning the successful proposers non-conforming performance or failure to perform

the agreement, or any other debt owing the University, including expenses, costs and damages described in the termination provisions contained herein.

#### **8.10 Insurance**

Insurance obligations will be specified in the Agreement.

#### **8.11 Software Warranty and Back Up**

If a proposer is providing software to the University, the proposer warrants that: (1) the media on which the product software is distributed is free from defects in materials and workmanship, and (2) the product performs the functions described in the documentation for the product. In addition, the University may create and retain a copy of the software and related documentation for back up and disaster recovery purposes and for archival purposes. This provision shall survive termination or expiration of the agreement.

#### **8.12 Safety**

The University seeks to furnish its students and employees with a place of study and work that is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and one that complies with occupational health and safety standards promulgated under Occupational Safety and Health Act of 1970 (OSH ACT). Therefore, the proposer is required to comply with the occupational safety and health standards and all rules, regulations, and orders issued pursuant to the OSH ACT while on the University's premises.

#### **8.13 Compliance with Laws and Regulations**

The proposer shall use its best efforts to assure that the proposer and its employees, agents and subcontractors comply with all applicable laws and the University's site regulations while performing the agreement.

#### **8.14 Parking**

The proposer shall ensure that all of its 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 Services Department properly displayed. The proposer, and the proposer's employees, agents and subcontractors shall observe all parking regulations. The failure to purchase parking permits, properly display them, and otherwise comply with all the University's parking regulations could result in the ticketing and/or the towing of the proposer's and/or the proposer's employees', agents', and subcontractors' vehicles. For additional parking information, contact the University's Department of Parking and Transportation.

#### **8.15 Public Entity Crimes**

In accordance with Florida Statutes §287.133(2)(a), a vendor who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal; may not perform work as a contractor, supplier, subcontractor, or consultant

under a contract with any public entity, including the University; and may not transact business with the University in excess of the threshold amount provided in Section 287.017, for Category Two for a period of 36 months from the date being placed on the convicted vendor list. By submitting a solicitation response, the proposer is certifying that the proposer is not on the convicted vendor list maintained by the Florida Department of Management Services, and the vendor is also certifying that any subcontractor listed in the vendor's solicitation response is not on the convicted vendor list.

#### **8.16 Waiver of Rights and Breaches**

No right conferred on the University by this competitive solicitation or resulting agreement, if any, shall be deemed waived and no breach of any such 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 breach shall not constitute a waiver or excuse of any other right or breach.

#### **8.17 Conflict of Interest**

The award of this competitive solicitation is subject to the provisions of Florida Statutes Chapter 112. The proposer must disclose in its proposal the name of any officer, director, or agent of the proposer who is also an employee of the University, or of the State of Florida or of any of its agencies.

Further, the proposer must disclose in its proposal the name of any University or State employee who owns, directly or indirectly, an interest of five (5%) or more of the proposer's company or any of its affiliates or branches.

In addition, in accordance with Section 112.3185, Florida Statutes, by submitting a solicitation response, the proposer certifies that, to the best of its knowledge and belief, no individual employed by the proposer or subcontracted by the proposer has an immediate relationship to any University employee who was or is directly or indirectly involved in any way in the drafting, evaluating, or awarding of this competitive solicitation.

Failure to disclose the required information or violation of Section 112.3185, Florida Statutes, shall be grounds for rejection of the proposer's proposal, cancellation of an intent to award, and/or cancellation of any agreement with the proposer.

#### **8.18 Covenant Against Commissions, or Brokerage and Contingent Fees**

By submitting a proposal, the proposer warrants that the proposer has not employed or retained any person or entity, other than a bona fide employee working solely for the proposer, to solicit or secure any award or agreement resulting from this competitive solicitation or to solicit or secure any other advantage related to this competitive solicitation. By signing an agreement with the University, the proposer warrants that the proposer has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the proposer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of the agreement. In the event of the proposer's breach or violation of this warranty, the University has the right to annul any agreement with such proposer

resulting from this competitive solicitation, without liability, and to deduct from any amounts otherwise payable to the proposer under such agreement the full amount of such fee, commission, percentage, gift, or other consideration, and to pursue any other remedy available to the University under such agreement, at law or in equity.

### **8.19 Disposition of Proposals**

All proposals become the property of the University, and the University shall have the right to use all ideas, and/or adaptations of those ideas, contained in any proposal received in response to this competitive solicitation. Any parts of the proposals, and any other material(s) submitted to the University with the proposals that are copyrighted or expressly marked as “confidential”, “proprietary”, or “trade secret”, will be exempt from the public records disclosure requirements of Chapter 119, Florida Statutes, only to the extent expressly authorized by Florida law. The University’s selection or rejection of a proposal will not affect this exemption.

### **8.20 Licensing Requirements**

To the extent applicable, the proposer shall have all appropriate licenses to conduct business in the State of Florida and Polk County at or prior to award of an agreement resulting from this competitive solicitation, and must provide proof of such to the University as a condition of award of an agreement.

### **8.21 Subcontractors**

If the proposer contemplates the use of subcontractors, as a further condition of award of an agreement, the proposer must certify in writing that all of its subcontractors will be appropriately licensed and are registered with the State of Florida in accordance with Florida Statutes Chapters 607 or 620, and such statement will include any subcontractors’ corporate charter numbers. For additional information on registering, the proposer should contact the Florida Secretary of State’s Office.

The proposer is fully responsible for all work performed under the agreement resulting from this competitive solicitation. No subcontract which the proposer enters into related to the agreement shall in any way relieve the proposer of any responsibility for performance of its duties under the agreement.

### **8.22 Small Business Program**

The University is an equal opportunity institution and, as such, encourages the use of small businesses, including women and minority-owned small businesses in the provision of goods and services. Small businesses should have a fair and equal opportunity to compete for dollars spent by the University. Competition ensures that prices are competitive and a broad proposer base is available. The proposer shall use good faith efforts to ensure opportunities are available to small businesses, including women and minority-owned businesses.

### **8.23 Equal Opportunity Statement**

The State universities have established equal opportunity practices which conform to both the spirit and the letter of all laws against discrimination and prohibit discrimination based on race, creed, color, sex, age, national origin, marital status or religion. To be considered for inclusion as a proposer under this agreement, the proposer commits to the following:

A. The provisions of Executive Order 11246, September 24, 1966, and the rules, regulations, and relevant orders of the Secretary of Labor are applicable to each order placed against this agreement regardless of value.

B. If the proposer expects to receive \$10,000 in orders during the first 12 months of this agreement, a completed Certificate of Non-Segregated Facilities, attached as Exhibit C, must be submitted in the proposer's proposal with Tab 7.

C. If the proposer expects to receive \$50,000 in orders during the first 12 months of this agreement and employs more than 50 people, standard form 100 (EEO-1) must be filed prior to March 1 of each year.

#### **8.24 Vendor'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 vendor knowingly employs unauthorized aliens, such violation shall be cause for the University's unilateral cancellation of the agreement.

#### **8.25 Collusion Prohibited**

In connection with this ITN, proposer collusion with other proposers or employees thereof, or with any employee of the University, is prohibited. Any attempt by a proposer, whether successful or not, to subvert or skirt the principles of open and fair competition, may result in the proposer disqualification and/or cancellation of award. Such disqualification and/or cancellation shall be at no fault or liability whatsoever to the University. The Non Collusion Affidavit, attached as Exhibit D, must be submitted in the proposer's proposal with Tab 7.

#### **8.26 Anti-Kickback**

In compliance with FAR 52.203-7, the University has in place and follows procedures designed to prevent and detect violations of the Anti-Kickback Act of 1986 in its operations and direct business relationships

#### **8.27 Actions of Proposer**

The University is under no obligation whatsoever to be bound by the actions of any proposer with respect to third parties. The proposer is not a division or agent of the University.

#### **8.28 Advertising**

The proposer shall not advertise or publish information concerning the ITN or agreement without prior written consent of the University. The University shall not unreasonably withhold permission.

### **8.29 Drug Free Workplace**

The proposer agrees that in the performance of the agreement, neither the proposer nor any employee of the proposer shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity covered by the agreement. The University reserves the right to request a copy of the proposer's Drug Free Workplace Policy. The proposer further agrees to insert a provision similar to this statement in all subcontracts for services required.

### **8.30 Background Check**

All workers of the proposer and their employees who enter the University campus or premises must have passed an employer background check and must not be listed on the Florida or National Sex Offenders Registry.

### **8.31 Federal, State, and Local Laws and Regulation**

The proposer is solely responsible for complying with all laws, ordinances, and regulations including but not limited to, those relating to taxes, licenses and permits, as they may apply to any matter under this ITN. The proposer must demonstrate that they are duly licensed by applicable regulatory bodies during the performance of the agreement. Prior to the commencement of agreement, the proposer shall be prepared to provide evidence of such licensing as may be requested by the University. The proposer shall, at no expense to the University, procure and keep in force during the entire period of the agreement all such permits and licenses.

### **8.32 Inspection and Audit**

All books, accounts, reports, files and other records relating to the agreement shall be subject at all reasonable times to inspection and audit by Florida Polytechnic University.

### **8.33 Liens**

The proposer shall keep the University free and clear from all liens asserted by any person or entity for any reason arising out of the furnishing of services or materials by or to the proposer.

### **8.34 Modifications**

The ITN can be modified or rescinded only by a writing signed by both parties or their duly authorized agents, unless otherwise provided in this ITN.

### **8.35 Ownership of Documents**

All drawings, maps, sketches, documents, records, programs, data base, reports and other data developed or purchased, under this ITN shall be and remain the University's property, without restriction, reservation or qualifications. The proposers may retain

copies necessary for recordkeeping documentation and all such other business purposes related to the ITN.

### **8.36 Sales and Use Tax**

The proposer agrees to comply with and to require all of its subcontractors to comply with all the provisions of applicable law. The proposer further agrees to indemnify and hold harmless the University from any and all claims and demands made against it by virtue of the failure of the proposer or any subcontractors to comply with the provisions of any and all said laws. The University is exempt from state sales and use tax.

### **8.37 Sexual Harassment**

Federal law and the policies of the University prohibit sexual harassment of University employees or students. Sexual harassment includes any unwelcome sexual advance toward a University employee or student, any request for a sexual favor from a University employee or student, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive working environment for University employees, or a hostile or an offensive academic environment for University students, proposers, subcontractors and suppliers for this ITN are required to exercise control over their employees so as to prohibit acts of sexual harassment of University employees and students. The proposer's employees or agents or any person who the University, in its reasonable judgment, determines has committed an act of sexual harassment, agrees as a term and condition of the agreement to cause such person to be removed from the University premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

### **8.38 Smoking on Campus Policy**

Florida Polytechnic University campus only allows smoking in designated areas. The proposer is expected to respect this policy and fully comply with it.

### **8.39 Sustainability Preferences**

The University's purchasing directives support the purchase of products that will minimize any negative environmental impacts of our work. In order to facilitate a healthy market in sustainable products, all parties involved in the procurement and utilization of materials must engage in both waste recycling and the initial purchase of products containing recycled content. It is in the interest of public health, safety and welfare and the conservation of energy and natural resources to use and promote environmentally responsible products, as well as energy efficient fixtures, appliances and mechanical equipment used in new construction.

### **8.40 Assignment-Delegation**

No right or interest in the agreement shall be assigned or delegation of any obligation made by the proposer without written permission of the University. Any attempted assignment or delegation by the proposer shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.



#### **8.41 Assignment of Anti-Trust Overcharge Claims**

The parties recognize that in actual economic practice overcharges resulting from anti-trust violations are in fact borne by the ultimate purchaser; therefore, the proposer hereby assigns to the University any and all claims for such overcharges.

#### **8.42 Force Majeure**

In the event compliance with any obligation under this ITN is impractical or impossible due to any Event of Force Majeure, then the time for performance of such obligation shall be extended for a period equivalent to the duration of the Event of Force Majeure. The provisions of this section shall not operate to 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.

#### **8.43 Indemnification/Hold Harmless**

The proposer shall indemnify, defend, and hold harmless the Board of Trustees, Florida Polytechnic University, the State of Florida and the Florida BOG, and their officers, agents, and employees from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including attorneys' fees and/or litigation expenses, which may be brought or made against or incurred on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of Proposer, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of the Agreement. The Proposer's obligation under this provision shall not extend to any liability caused by the sole negligence of the Florida Polytechnic University, or its officers, agents, and employees. Such indemnification shall specifically include infringement claims made against any and all intellectual property supplied by the Proposer and third party infringement under the Agreement.

#### **8.44 Protection of Property**

The Proposer shall at all times guard against damage or loss to the property of the University or of others and shall be held responsible for replacing or repairing any such loss or damage. The University may bill the Proposer or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the Proposer or their agents. The Proposer shall provide all barricades and take all necessary precautions to protect University buildings, University premises, students, personnel, and visitors.

#### **8.45 Labor Disputes**

A Proposer shall give prompt notice to the University of any actual or potential labor dispute which delays or may delay performance of the Agreement.

#### **8.46 Laws and Regulations**

The Proposer is solely responsible for keeping themselves fully informed of and faithfully observing all laws, ordinances, and regulations and shall protect and indemnify the University, its officers and agents against any claims of liability arising from or based on any violation thereof.

#### **8.47 No Waiver of Right by the University**

No waiver by the University of any breach of the provisions of the Agreement by the Proposer shall in any way be construed to be a waiver of any future breach or bar the University's right to insist on strict performance of the provisions of the Agreement.

#### **8.48 Prior Course of Dealings**

No trade usage, prior course of dealings, or course of performance under other agreements shall be a part of any agreement resulting from this ITN; nor shall such trade usage, prior course of dealing, or course of performance be used in the interpretation or construction of such resulting Agreement.

#### **8.49 Public Records**

Except as provided in Section 4, all proposal information submitted and opened becomes subject to the Public Records Law set forth in Chapter 119 F.S.

Any resulting Agreement may be unilaterally canceled for refusal by the Respondent to allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119 F.S., and made or received by the Proposer in conjunction with the Agreement.

#### **8.50 Remedies and Applicable Law**

The Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the rule and regulations of the Florida BOG and the University. The University and the Proposer shall have all remedies afforded each by said law. The venue in any action or litigation commenced to enforce the Agreement shall be instituted in Lakeland, Florida.

#### **8.51 Termination**

##### **8.51.1 Convenience**

The University reserves the right to terminate the Agreement in whole or part at any time when in the best interests of the University without penalty or cause. Upon receipt of the written notice, the Successful Proposer shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all

further costs to the University. In the event of termination under this provision, all documents, data and reports prepared by the Successful Proposer under the Agreement shall become the property of and delivered to the University. The Successful Proposer shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of termination. Such compensation shall be the Successful Proposer's sole remedy against the University in the event of termination under this provision.

#### **8.51.2 Default**

The University reserves the right to terminate the Agreement in whole or in part due to the failure of the Successful Proposer to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement. The University shall provide written notice of the termination and the reasons for it to the Successful Proposer. Upon termination under this provision, all goods, materials, documents, data and reports prepared by the Successful Proposer under the Agreement shall become the property of and be delivered to the University on demand. The University may, upon termination of the Agreement, procure, on terms and in the manner that it deems appropriate, materials, or services to replace those under the Agreement. The Successful Proposer shall be liable to the University for any excess costs incurred by the University in re-procuring the materials or services.

#### **8.51.3 Gratuities**

The University may, by written notice to the Successful Proposer, cancel the Agreement if it is discovered by the University that gratuities, in the form of entertainment, gifts or other, were offered or given by the Successful Proposer, or any agent or representative of the Successful Proposer, to any officer or employee of the University with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such Agreement. In the event the Agreement is canceled by the University pursuant to this provision, University shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Successful Proposer in providing such gratuities.

#### **8.51.4 Insolvency**

The University shall have the right to terminate the Agreement at any time in the event Successful Proposer files a petition in bankruptcy; or is adjudicated bankrupt; or if a petition in bankruptcy is filed against Successful Proposer and not discharged within thirty (30) days; or if Successful Proposer becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; or if a receiver is appointed for Successful Proposer or its business.

#### **8.51.5 Suspension or Debarment**

The University may by written notice to the successful proposer immediately terminate the agreement if the University determines that the successful proposer has been debarred, suspended or otherwise lawfully prohibited from participating in any public

procurement activity, including but not limited to, being disapproved as a subcontractor vendor of any public procurement unit or other governmental body.

#### **8.52 Lack of Funds**

The Agreement may be canceled without further obligation on the part of the Florida Polytechnic University in the event that sufficient appropriated funding is unavailable to assure full performance of the terms. The Successful Proposer shall be notified in writing of such non-appropriation as soon as reasonably possible. No penalty shall accrue to the University in the event this cancellation provision is exercised. This cancellation provision shall not be construed so as to permit the University to terminate the Agreement in order to acquire similar equipment, material, supplies or services from another party.

#### **8.53 Continuation of Performance through Termination**

The Successful Proposer shall continue to perform, in accordance with the requirements of Agreement, up to the date of termination, as directed in the termination notice.

#### **8.54 Payment Card Industry Data Security Standard**

For e-commerce business and/or credit card transactions, the Proposer agrees to be bound by the requirements and terms of the rules of all applicable payment card associations, as amended from time to time, and be solely responsible for security and maintaining confidentiality of the payment card transactions processed by means of electronic commerce up to the point of receipt of such transactions by the bank. The Proposer is required to be in compliance with the requisites of the SAS 70 and/or payment card industry data security standard and provide written attestation of compliance annually.

#### **8.55 Warranties**

In addition to any implied warranties, the successful proposer warrants that the goods furnished will conform to the specs, drawings and descriptions listed herein and to the sample or samples furnished by the successful proposer.