

# Florida **PALM**

Planning, Accounting, and Ledger Management



# Executive Steering Committee Meeting

Department of Revenue  
Building 2, Room 1250  
May 10, 2017



# Roll Call and Opening Remarks

Facilitator: Robert (Budd) Kneip, Chair



# Florida PALM Project Update

Facilitators: Chasity O'Steen & Craig Wolff



# Florida PALM Project Update

## ITN Process

The agency may use an ITN when the agency needs to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate to receive the best value. § 287.057(1)(c), Fla. Stat. To select the vendor that provides the best value, the agency must:

evaluate replies against all evaluation criteria in the ITN to establish a competitive range of replies reasonably susceptible of award. The agency may select one or more vendors within the competitive range with which to commence negotiations. After negotiations are conducted, the agency shall award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state, based on the selection criteria.

§ 287.057(1)(c)4., Fla. Stat.



# Florida PALM Project Update

## What to Expect – Negotiation Team

- ▶ The negotiation team will be appointed by the agency head or designee to conduct negotiations. The negotiation team will include:
  - At least 3 people who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought;
  - At least one negotiator certified as a contract negotiator; and
  - At least one negotiator certified as a Project Management Professional by the Project Management Institute.





# Florida PALM Project Update

## What to Expect - Meetings

- ▶ Negotiators will participate in negotiations with respondents, negotiation strategy sessions, and public meetings.
- ▶ Negotiations with respondents and negotiation strategy meetings are not open to the public, but they are recorded and become public after the solicitation ends. In negotiation strategy meetings, the negotiation team strategizes about the solicitation and the approach to take as part of the process.
- ▶ Subject matter experts (SMEs) may be asked to attend negotiations and/or negotiation strategy sessions and provide factual information and clarifications in their respective areas of expertise.
- ▶ During public meeting(s) the negotiation team will discuss the replies and make a determination of which reply is the best value for the state.



# Florida PALM Project Update

## What to Expect - Negotiation Process

- ▶ The first thing for negotiators to do is read the amended ITN, information about the Florida PALM project (e.g., information available on the Florida PALM website), and the replies.
- ▶ Anyone involved in the ITN process should also re-read the ITN as amended. The language in the ITN guides the actions of the negotiation team, the Department, and the decision-making of the negotiation team.
- ▶ Before negotiations start, the negotiation team will have strategy meeting(s) to prepare for negotiations. The negotiation team will continue to have strategy sessions throughout the negotiation process as needed.
- ▶ The ITN is the framework for the procurement. Refer to it to answer any questions.

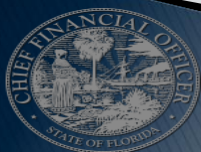




# Florida PALM Project Update

## What to Expect - Negotiation Team Support

- ▶ Florida PALM team members may be asked to provide administrative support during the procurement process. Examples of administrative support include, but are not limited to:
  - Developing detailed use cases for the negotiations;
  - Managing changes to the business requirements in the business requirements repository; and
  - Proof-reading contract-related documents.
- ▶ SMEs may be asked to provide information or documentation to individual negotiators or to the negotiation team in negotiations or strategy meetings.
- ▶ SMEs may be asked to participate in negotiations and strategy meetings as needed.



# Florida PALM Project Update

## What to Expect - Subject Matter Experts

- ▶ Have expertise in a particular subject matter;
- ▶ When appropriate, review parts of the ITN, replies, and other materials;
- ▶ When applicable, provide clarification about the ITN;
- ▶ Communicate with DFS' staff outside of negotiations as needed to clarify functional, technical, or other requirements;
- ▶ Communicate with negotiators in a negotiation or negotiation strategy sessions to clarify relevant information and provide factual information; and
- ▶ Communicate with a negotiator one-on-one as needed to clarify relevant information and provide factual information.
- ▶ Are not decision makers.
- ▶ Do not share opinions or attempt to influence a negotiator to select a particular respondent.



# Florida PALM Project Update

## What to Expect - Negotiation Progression

- ▶ Throughout the negotiations, documents may change, replies may be amended, and the solution may be modified. Negotiators, SMEs, and Florida PALM team members may have action items to address outside of meetings.
- ▶ Negotiators are not bound by the evaluation scores, but they can consider any information from the evaluation. Negotiators may consider any information that they learn during negotiations.
- ▶ The ITN allows the negotiation team to use any ideas from any reply. Negotiators should be aware that some ideas may be trade secrets. Thus, a negotiator should ask the Program Lead before discussing an idea that is redacted by a respondent.
- ▶ It is okay during negotiations for the negotiators to ask a respondent to add something or to approach something in a different way. Recent case law suggests agencies have a lot of flexibility during negotiations and the ITN language was written to provide that flexibility.
- ▶ This is a fluid process for the Department to learn about the solutions offered and determine what solutions will provide the best value for the state, which will require the time and effort of all involved.



# Florida PALM Project Update

## What to Expect – Selecting a Respondent

- ▶ The negotiation team will recommend awarding “the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state, based on the selection criteria.” § 287.057(1)(c)4., Fla. Stat.
- ▶ Best value “means the highest overall value to the state based on factors that include, but are not limited to, price, quality, design, and workmanship.” § 287.012(4), Fla. Stat.
- ▶ The minimum selection criteria to be considered are listed in section 4.3.4 of the ITN. The ITN permits the negotiation team to modify or add to the selection criteria as long as the modifications are disclosed to respondent(s) engaged in negotiations. Negotiators may find as they hear from different respondents that additional considerations may be valuable.
- ▶ The entire negotiation process is working towards determining best value. Throughout the process, negotiators will be learning about the solutions and how they fit the Department’s and the state’s needs.



# Florida PALM Project Update

## What to Expect – Selecting a Respondent

- ▶ The negotiation team may continue negotiations as needed to gain the information necessary to determine best value.
- ▶ The negotiation team may request clarification and revisions to replies (including IRRs, BAFOs, and/or revised BAFOs).
- ▶ When the negotiation team is ready, the team will schedule one or more public meetings to discuss best value to the state.
- ▶ In a public meeting, the negotiation team will determine which reply provides best value to the state. Negotiators will have a full and open conversation about best value and the reasons for the decision.
- ▶ The ITN explains that the negotiators will not numerically score respondents or their replies. The final decision of which respondent will be recommended for award may be made by a majority vote of the negotiation team members.
- ▶ Members of the public will have an opportunity to give public comment at the beginning of the meeting in which best value is determined. The Department and negotiators are not required to directly respond to the comments.



# Florida PALM Project Update

## What to Expect – Recommendation and Intent to Award

- ▶ Once the negotiation team votes to recommend a respondent for award, a memorandum will be prepared and presented to the Department's agency head or designee for consideration.
- ▶ The decision of the Department agency head or designee will be documented in a notice of intent to award.
- ▶ The notice of intent to award will be posted on the Vendor Bid System.





# Florida PALM Project Update

## What to Expect – After Award

- ▶ Once the notice of intent to award is posted, respondents have 72 hours in which to file a notice of protest before the Department can proceed with contract execution.
- ▶ If a notice of protest is filed, the protester will have 10 days from the notice of protest filing to file the formal written protest and protest bond. If there is a formal written protest, a stay of the contract award will be imposed.
- ▶ If there is a protest, negotiators will likely be called for depositions and to testify at a hearing. It is possible that anyone from the Florida PALM team or SMEs could also be called to testify.
- ▶ DFS legal counsel will provide further instructions and information if a protest occurs.



# Florida PALM Project Update

## Sunshine Law

- ▶ The negotiation team is subject to the Sunshine Law
  - All communications between negotiators about the procurement must take place in a public meeting or in a properly recorded “shaded” meeting. A shaded meeting is a meeting that can take place without admitting the public, but the meeting must be recorded and the recording becomes public after the notice of intent to award is issued.
  - Negotiations are shaded meetings. All discussions in negotiations must be recorded.
  - **Negotiation team members cannot communicate with other negotiation team members about the procurement outside of a public or shaded meeting. This includes in person, by phone, by email, text messages, through another person, or by any other means.**



# Florida PALM Project Update

## Public Records

- ▶ Most documents relating to this procurement are public records pursuant to chapter 119, Florida Statutes (the Public Records Act). This includes:
  - Hard copies of documents;
  - Electronic copies of documents (including documents in SharePoint or any other collaborative tool)
  - Emails;
  - Recordings; and
  - Text messages.
- ▶ All requests for documents or information related to the procurement, including replies, will be forwarded to the Purchasing Agent as soon as possible.



# Florida PALM Project Update

## Public Records

- ▶ Respondents' replies and the information in the replies, including materials provided during negotiations and any revised replies or BAFOs, are exempt from disclosure under the public records statutes until the Department provides notice of an intended decision or until 30 days after opening the final replies (which includes BAFOs), whichever is earlier.
- ▶ The recording of a shaded meeting and any records presented at a shaded meeting are also exempt from disclosure under public records statutes until the notice of agency decision or until 30 days after opening the final replies, whichever is earlier.
- ▶ Anyone who has access to the replies or information in the replies must keep the information confidential during the procurement.



# Florida PALM Project Update

## Public Records

Generally, personal notes are not public records if they are not shared with anyone. (Note that reading them to someone is sharing them even if the physical document is not provided.) Personal notes ARE, however, discoverable in a bid protest, i.e., litigation.



# Florida PALM Project Update

## Public Records

Some information is confidential and may not be disclosed to the public at all. This includes information that an entity labels as trade secret and confidential. A trade secret is:

- ▶ any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be
  1. Secret;
  2. Of value;
  3. For use or in use by the business; and
  4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
- ▶ when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

§ 812.081(1)(c), F.S.





# Florida PALM Project Update

## Public Records

- ▶ Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure is exempt from disclosure under the public records statutes, as is agency-produced data processing software that is “sensitive.” (§ 119.071(1)(f), F.S.)
- ▶ Data processing software includes the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs. (§ 119.011(6), F.S.)
- ▶ The software, including specifications and documentation, is sensitive when it is used to: 1) collect, process, store, and retrieve information that is exempt from section 119.07(1); 2) collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or 3) control and direct access authorizations and security measures for automated systems. (§ 119.011(14), F.S.)



# Florida PALM Project Update

## Public Records

- ▶ In recorded strategy meetings or negotiations, if any confidential information is going to be discussed, the recording must be stopped and that portion of the meeting will be taped separately and will be labeled confidential.
- ▶ If a meeting is stopped to discuss confidential information, negotiators will be instructed to label their notes CONFIDENTIAL for the confidential portions of the recording.



# Florida PALM Project Update

## Correcting Common COTS Misperceptions

- ▶ The COTS software itself is just one piece of the implementation
  - other pieces include:
    - Contract preparation, negotiation, and ongoing management and administration
    - Project office establishment and fit-out
    - Allocation of project responsibilities and risks
    - Identification of relevant Customer standards and policies
    - Creation of testing data, use cases and scripts
    - Requirements fit-gap analysis
    - Identification of interfacing systems and technical specifications
    - Execution of various types of testing and training



# Florida PALM Project Update

## Correcting Common COTS Misperceptions

- ▶ It is very rare for a complex COTS software to meet all of the Customer's requirements through configuration alone
  - Some degree of customization is generally required
  - Business process reengineering is also generally required



# Florida PALM Project Update

## Correcting Common COTS Misperceptions

- ▶ There are multiple parallel work streams and participants including:
  - COTS software licensor
  - Related software licensors [often]
  - Integrator
  - Customer
  - Customers of the Customer
  - Oversight entities
  - Funding entities



# Florida PALM Project Update

## Licensing Considerations

### ▶ Licensed Software

- Confirm that all relevant products and modules are included and identified
- Obtain clear descriptions of the functions and features they provide – not just names
- Consider the implications of embedded or bundled third-party software, which may be:
  - Proprietary
  - Open Source
- Lowest common denominator issue: constraints may be imposed on the Customer's use of COTS software by the license terms for included third-party software
- Arrange for source code to be provided (or, if not, to be escrowed)





# Florida PALM Project Update

## Licensing Considerations

- ▶ Licensor of the COTS software – manufacturer or integrator
  - Will the Customer have the right to negotiate commercial and license terms directly with the licensor?
  - If not, does the integrator have authority to negotiate on behalf of the licensor?



# Florida PALM Project Update

## Licensing Considerations

- ▶ If all of the Customer's business and technical requirements cannot be accommodated by configuration of the COTS software, some customization of it will likely be necessary
- ▶ Sources of customization-related issues
  - Number and complexity of required customizations
  - Whether required customizations will be made by the COTS manufacturer or the integrator, and contractual accountability for them
  - Down-stream impacts on the Customer's ability to implement new releases and versions of the COTS software



# Florida PALM Project Update

## Licensing Considerations

- ▶ Estimated implementation period for the COTS
  - Will the Customer have to license the COTS and the outset and begin paying annual support fees even before going live?
  - If so, for how long?
  - Does the Customer have a right of acceptance/rejection of the COTS software when promised configurations and customizations have been completed?
  - If not, what recourse does the Customer have if problems with configurations and customizations delay or frustrate implementation?
  - When does the licensor's warranty period for the COTS software start running – upon delivery or upon the Customer going live?



# Florida PALM Project Update

## Licensing Considerations

- ▶ Customer's usage of the COTS software
  - Is its use restricted to certain countries, locations, platforms or machines?
  - Are dev/test and other non-production environments (and any associated fees) included?
  - Are back-up and disaster recovery locations (and any associated fees) included?
  - Who is permitted to access and use the software under the Customer's license?
    - Customer employees
    - Consultants and independent contractors
    - Personnel of the Customer's customers
    - Providers of outsourced services



# Florida PALM Project Update

## Licensing Considerations

- ▶ Software warranties
  - Absence of defects
  - Absence of malware
  - Interoperability
    - With the Customer's operating environment
    - With other interfacing systems
  - Title and non-infringement
  - Sufficiency of technical and user documentation
  - Sufficiency of source code
- ▶ Warranties provided by the software licensor vs. the integrator



# Florida PALM Project Update

## Licensing Considerations

- ▶ Licensor commitments - maintenance and support services
  - Does the licensor commit to support the licensed software for a reasonable minimum period of time?
  - Will the support provider agree to multi-year price protection?
  - Can the Customer reduce its support level over time if its usage of the software declines (and receive a corresponding cost reduction)?



# Florida PALM Project Update

## Customer's Business Needs

- ▶ Fit-gap analysis
  - Gap between the COTS software's out-of-the-box functionality and the Customer's requirements
  - Percentage of identified gaps that will be closed by:
    - COTS software configurations
    - COTS software customizations
    - Reengineering of the Customer's processes
- ▶ Documentation of interfacing systems
  - Number
  - Complexity
  - Interfacing specifications





# Florida PALM Project Update

## Customer's Business Needs

- ▶ Will the COTS software be used by multiple customer groups?
  - If yes, in what manner will their subject matter expertise and stakeholder input be obtained?
  - How will conflicting preferences be reconciled?
  - What criteria will be used to determine the implementation groupings and sequencing?



# Florida PALM Project Update

## Implementation Considerations

- ▶ Determine the extent to which relevant Customer data is readily accessible and in a format compatible with the COTS software
- ▶ Determine responsibilities of the Customer vs. the Integrator related to:
  - Data mapping
  - Data reformatting
  - Data cleansing
  - Data migration
  - Data integrity verification
  - Data masking and other prerequisite steps to create test data



# Florida PALM Project Update

## Implementation Considerations

- ▶ If the COTS software will replace legacy systems
  - How many years of historical data will be migrated to the COTS Software?
  - Will legacy systems need to be kept in operation as archival data sources for historical data not migrated to the COTS software?
  - Will any of the affected legacy systems go into 'end of life' status in the foreseeable future?
  - Will the integrator have any contractual responsibility for retiring or enabling the retirement of legacy systems replaced by the COTS software within a specific timeframe?
- ▶ Cost-layering implications of the need to continue operating legacy systems that could be replaced by the COTS software



# Florida PALM Project Update

## COTS implementation - a 'Turn-key' delivery, right?

- ▶ Even in a COTS implementation, the Customer typically has substantial retained responsibilities, which create integrator dependencies
  - Documentation of requirements / use cases
  - Identification of interfacing systems and associated technical requirements
  - Identification and characterization of source data
  - Data formatting, cleansing, and masking
  - Design and policy decisions
  - Membership and active participation in program governance and management committees
  - Development of legacy side of the interfaces to COTS software systems
  - Provision of subject matter experts – business and technical
  - Timely review and provision of feedback on integrator deliverables
  - Participation in UAT



# Next Meeting

Wednesday, May 24, 2017  
Building 2, Room 1250



# Contact Information

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