INVITATION TO NEGOTIATE

ITN No.: 7333

Campus Beverage Vending
And
Pouring Rights Agreement

Refer ALL Inquiries to:

Purchasing Department
Florida A & M University
208 Foote-Hilyer Admin. Center
Tallahassee, FL 32307
(850) 599-3203
(850) 561-2160 (facsimile)
website:
www.famu.edu/about/admin/vpad/purchasing/solicitation.html
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Florida A&M University (hereinafter University or FAMU) intends to negotiate an agreement for the provision of beverages through campus vending machines and for the exclusive pouring rights for the Tallahassee, Florida Campus and College of Law in Orlando, Florida campus with certain named exceptions. The agreement will become effective August 1, 2006. It is our intent to grant the successful contractor exclusive rights (except the area under control of Galimore Lanes in the Student Union Building and the University Bookstore). The University is seeking a company with an established record of providing high quality beverage vending services in the higher education market and that has the financial ability to provide those services to an account the size of Florida A&M University while also being able to offer favorable commission rates to the University. At this time the University will offer a five (5) year contract for the vending services and pouring rights with a five-year agreement renewal option. In addition to the university’s normal contract oversight, this contract will undergo a formal review in its fourth year and, if applicable, ninth year by a University committee formulated by the Office of Business, Financial/Auxiliary Services.

UNIVERSITY PRIORITIES

The ITN response should address the following University priorities:

* A priority for the University is the financial return in the form of commissions on vending sales and commissions for the sole pouring rights on the campus. The pouring rights include all vending, food service, and convenience stores sales on the Tallahassee campus and Law School. Competitive product, even if donated, will not be permitted to be served at University events.

* A second priority is the ability to provide a variety of beverages including at a minimum regular soft drinks, diet drinks, athletic thirst quencher type drinks, juices, and bottled water. The beverages should also be offered in varied sizes, containers and forms, including but not limited to fountain and bottled.

* A third priority would be for the vendor to provide sponsorship and advertisement dollars to the University’s Intercollegiate Athletic programs.

* A fourth priority is to provide new and/or recently manufactured equipment, preferably utilizing signage identifying with the University and top quality maintenance and replenishment service. A minimum of 70% of the vending machines must be equipped to accept the Rattler card.

* A fifth priority would be for the vendor to establish an annual budget(s) for allocations of product supplied to specified University events.

FLORIDA A&M UNIVERSITY

Information about the University’s demographics may be obtained by visiting the Florida A&M University website at: www.famu.edu/about/admin/vpad/purchasing/solicitation.html

CURRENT BEVERAGE VENDING MACHINES

There are 96 beverage vending machines on the campus at a minimum. The University requires at least the same number of machines to be placed under the new contract and would evaluate proposals for additional locations.
BEVERAGE VENDING REVENUES

The table below shows revenues of the FAMU soft drinks for the past four years. These sales figures are for informational purposes. These are only vending revenues and do not include sales through the campus food service provider in its dining locations, convenience store, and bookstore. University does not warrant or represent that these sales will be achieved in future years and the University hereby disclaims any such warranties or representations.

<table>
<thead>
<tr>
<th></th>
<th>2001-02</th>
<th>2002-03</th>
<th>2003-04</th>
<th>2004-05</th>
<th>2005-06*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Sales</td>
<td>$93,380</td>
<td>$87,092</td>
<td>$86,682</td>
<td>$79,239</td>
<td>$72,742</td>
</tr>
</tbody>
</table>

* Reflect sales through April, 2006.

PROPOSALS

Response Format:

* Submit one (1) original and six (6) copies of your proposal. The original response shall contain the original manual signature of the authorized person signing the proposal. Failure to include the original and all signed copies may be grounds for rejection of your proposal without further evaluation.

* The original response shall be in a separate envelope, clearly marked original. Copies may be submitted in bulk.

* The outer carton of the response shall include the ITN number, name and due date.

* Your response shall include the information and required submittals described in the Content section, tabbed and numbered as shown below, with all information appearing in the Tab in which it was requested.

* Questions and requests for information may not be rearranged, regrouped, or divided in any way.

* All information and submittals requested shall be in hardcopy form and included in your written response. Responses shall not refer the University to electronic media such as websites; cd’s, disks, or tapes in order to obtain the required information or submittals.

* Information submitted that is not requested by the University may be considered to be supplemental, not subject to evaluation by committee members.

* If there is any information or required submittals which due to size or binding cannot be incorporated following the proper tab, you must provide information following the numbered tab, telling the evaluator where the information can be found in your response.

Response Content:

* Tab1: Completed and signed ITN acknowledgement form, completed and signed acknowledgement forms for any addenda issued.

* Tab 2: A one or two page executive summary of your proposal, including brief descriptions of your company’s expertise and experience dealing with a contract the size and scope of FAMU’s beverage vending program, and how you plan to address the University’s priorities.

* Tab 3: Contact name(s) and titles of the individual(s) responsible for the company’s proposal and negotiation during this process.

* Tab 4: The financial statements of the company(s) for the past three (3) years.

* Tab 5: A listing of all the company’s current higher education clients that generate more than $500,000 in annual vending sales. This list should include the name, address, telephone, and email of the client contract administrator.
Tab 6: Based on the information presented above submit a plan for your company’s beverage vending program at FAMU. Include any marketing plans, additional proposed locations, service and maintenance benchmarks, and number of routes planned to service the account.

Tab 7: Submit a financial proposal for commissions and pouring rights. These should be delineated separately. Commissions should be stated as a percentage of the sale of particular beverages. The company should propose an annual minimum commission guarantee and/or percentage commissions from sales, whichever is greater. Pouring rights fees should be stated as an annual payment.

EVALUATION PROCESS

The University must be satisfied that the successful proposer has the necessary technical expertise, experience and resource capabilities to satisfactorily perform the requisite services stated in this ITN. An award will be made to a responsible proposer whose proposal, conforming to the ITN, will be most advantageous to the University, price and other factors considered.

Proposals will be evaluated by the University’s ITN Evaluation Committee to determine which written responses best address the University’s priorities, as previously stated. One or more companies may be selected for further negotiations. Based upon negotiation sessions, the company(s) may be asked to submit a best and final offer prior to the Committee’s selection and award recommendation. The recommendation of the Evaluation Committee will be based upon the initial written response and if necessary, the best and final offer. That recommendation will be submitted to the Vice President of Fiscal Affairs for a review and thereafter submitted to the University President for approval. Once the selection has been approved, the successful company and the University will prepare a final contract document.

Criteria for Evaluation

The Evaluation Committee will evaluate the responses to the ITN taking into consideration points from 1(low) to 100 (high) as shown below.

Point Distribution

The following point system is established for scoring the proposals:

<table>
<thead>
<tr>
<th>Point Value</th>
<th>1. Proposer Financial Plan</th>
<th>50</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2. Proposer Operational Plan</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>3. Compliance to ITN Preferred Conditions and Requirement</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>(Failure To Conform to ITN’S Mandatory Conditions and Requirements will result in Rejection of Proposal)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. Proposer Expectations and Requirements</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>5. Proposer Experience Qualifications</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>6. Contract Management</td>
<td>5</td>
</tr>
<tr>
<td>Total Assigned Points</td>
<td>____________</td>
<td>100</td>
</tr>
</tbody>
</table>

PROPOSAL SUBMITTAL

In order to be considered, all proposals shall be submitted in a sealed envelope clearly marked with "ITN NO. #7333, CAMPUS BEVERAGE VENDING AND POURING RIGHTS AGREEMENT", Date and Time of Opening and the Company Name, on or before 2:30 p.m. on July 14, 2006. Proposals shall include the Competitive Solicitation Acknowledgement Form (Appendix A), signed by a representative who is authorized to contractually bind the proposer. Failure to submit an executed Competitive Solicitation Acknowledgement Form shall be grounds for rejection of the proposal.
Proposals submitted shall be **one (1) original, so identified, and six (6) complete copies** of the written proposal.

Proposals Shall Be Submitted To:

Florida A&M University  
Purchasing Department  
Foote-Hilyer Administrative Center, Rm. 208  
Tallahassee, FL 32307  
Intent to Negotiate No. #7333  
Opening Date and Time: July 14, 2006, 2:30 P.M.  
Attn: Herman Barker, Jr., Purchasing Director

ALL PROPOSALS MUST BE RECEIVED IN THE PURCHASING DEPARTMENT ON OR BEFORE THE ABOVE TIME AND DATE. The responsibility for submitting the proposal to the Purchasing Department on or before the above stated time and date is solely that of the proposer. The University will in no way be responsible for delays in mail delivery or delays caused by any other occurrence or proposals delivered to any location other than the FAMU Purchasing Department. LATE PROPOSALS WILL NOT BE ACCEPTED.

All proposals must be in writing. Proposals deemed to be non-responsive shall be rejected without further consideration by the University. The signer of the proposal must declare that the proposal is in all respects fair and in good faith without collusion or fraud and that the signer of the proposal has the authority to bind the principal proposer.

Confidentiality: From the date of issuance of this ITN, until a proposal is made, the proposer must not make available or discuss its proposal, or any part thereof, with any employee or agent of the University, unless permitted by the Purchasing Director, in writing, for purposes of clarification only, as set forth herein.

Proposer Expense: All proposals submitted in response to this ITN must be submitted at the sole expense of the proposer, whether or not any agreement is signed as a result of this ITN. Proposers will pay all costs associated with the preparation of proposals, presentations and necessary visits to campus.

PROPOSAL MODIFICATION

Proposals submitted prior to the proposal opening date may be modified or withdrawn only by written notice to the University. Such notice must be received by the Purchasing Office prior to the time designated for opening of the proposal. Proposer may change or withdraw the proposal at any time prior to proposal opening; however, no oral modifications will be allowed. Only letters, or other formal written requests for modifications or corrections of a previously submitted proposal, which are addressed in the same manner as the proposal, and are received prior to the scheduled proposal opening time will be accepted. The proposal, when opened, will then be corrected in accordance with such written requests, provided that the written request is contained in a sealed envelope, which is plainly marked "Modification of Proposal".

Withdrawn proposals may be resubmitted up to the time designated for the receipt of proposal provided that they are then fully in conformance with the requirements of the ITN.

QUESTIONS

All questions concerning this Request for Proposals shall be submitted in writing to Mr. Buddy Barker, Purchasing Department, via fax at (850) 561-2160 or email at herman.barker@famu.edu. All telephone conversations are considered unofficial responses and will not be binding. Questions regarding the ITN shall be submitted in writing no later than the date shown in the Calendar of Events as the last day to submit questions. Written responses to all questions shall be the University's official response. All questions and answers asked by all registered Proposers will be will be posted on line at www.famu.edu/about/about/admin/vpad/purchasing/solicitation.html on or before the date shown in
the Calendar of Events. At all times it shall remain the responsibility of the company participating in the ITN to check the website for postings of addenda or short list or award decisions. No further notice will be given.

No negotiations, decisions, or actions shall be initiated or executed by the responders as a result of any discussion with any University employee. Only those communications that are in writing from the Florida A&M University Purchasing Office shall be considered as a duly authorized expression on behalf of the University. Also, the University will recognize only communications from responders that are signed and in writing as duly authorized expressions on behalf of the responder.

ADDENDUM

Any addendum issued to Proposers prior to the proposal opening date shall include an addendum acknowledgment form. Since all addenda become a part of the proposal, all addenda must be signed by an authorized Proposer representative and returned with the proposal on or before the proposal opening date. Failure to sign and return any and all addendum acknowledgments may be grounds for rejection of the proposal.

RIGHT OF REJECTION

Any response that fails to meet the minimum requirements stated in the ITN shall be rejected. Any response that does not comply with functional or contractual requirements in the ITN shall be rejected.

The University reserves the right to waive minor irregularities in responses, providing such action is in the best interest of the University. Minor irregularities are defined as those that have no adverse effect on the University’s interest, will not affect the amount of the proposal and will not give a proposer an advantage or benefit not enjoyed by another proposer.

The University, in its absolute discretion, may reject any proposal of any proposer that has failed, in the opinion of the University, to complete or perform a University contracted project in a timely fashion or has failed in any other way, in the opinion of the University, to perform a prior contract in a satisfactory manner.

The University reserves the right to evaluate and or reject any and all responses, in whole or in part, to utilize any applicable state contracts in lieu of or in addition to this proposal and/or to accept the proposal that in its judgment will best serve the interest of the University.

The University specifically reserves the right to reject any conditional proposal and will normally reject those that made it impossible to determine the true amount of the proposal.

The University shall be the sole judge of the response and the resulting agreement that is in its best interest and its decision shall be final.

http://www.famu.edu/about/admin/vpad/purchasing/solicitation.html and will remain posted for a period of seventy-two (72) hours.

Negotiations:

The University reserves the right, however, to negotiate this ITN with all qualifying Proposers on the short list. The University reserves the right to negotiate concurrently or separately with short listed Proposers. The University reserves the right to accept portions of a competing proposer’s response and merge such portions into one project, including contracting with the entities offering such portions. A partial list of negotiable items is referenced in Attachment 1.

Before award, the University reserves the right to seek clarifications, to request reply revisions, and to request any information deemed necessary for proper evaluation of responses from all qualifying Proposers.
After review of written responses, site visits, and reference checks, the short list soft drink partners may be required, at the sole option of the University, to make an oral presentation or provide written clarifications. Such presentations or clarifications will provide an opportunity for the dining services partner to clarify their proposal response. Oral presentation hand-outs and written clarifications will be affixed to the Contractor’s ITN proposal and become a part of same as if originally submitted. The Director of Purchasing or designee will initiate and schedule a time and location for any presentations, which may be required.

Following these steps the Committee will interview the management team the company is proposing to bring to the FAMU account. After site visits, negotiations, and management team interviews have been completed, companies will be given a deadline for submission of a “best and final” offer. The negotiation process will stop upon submission of the “best and final” offers and companies will not be allowed to make further adjustments to their offer or communicate further with the university, except to respond to requests for clarification from the Committee.

The focus of the negotiations will be on achieving the solution that provides the best value to the University.

The award recommendation of the Evaluation Committee will be based upon the initial written response, site visits if any, management team interviews and best and final offers. That recommendation will be submitted to the Vice President for Fiscal Affairs for review before submitted to the University President for approval. Once the contract award is determined, the successful contractor and the FAMU will prepare a final contract document.

In its sole, discretion, the University reserves the right to withdraw this ITN either before or after receiving responses, to reject any and all responses either in whole or in part, with or without cause or waive any ITN requirement informalities, deficiencies, in any response, and determine the qualifications and acceptability of any party or parties submitting responses to this ITN, if the University determines such action is in the best interest of the University. The University reserves the right to waive minor irregularities in replies to the solicitation.

**CONTRACT AWARD**

There is no obligation on the part of the University to award the contract to the Proposer with the lowest prices. The University reserves the right to award the contract to the proposer submitting a responsive proposal with a resulting negotiated agreement which is most advantageous and in the best interest of the University. The University further reserves the right to award to different Proposers to respectively provide individual components of the general services. There is no obligation on the part of the University to award a contract.

The University shall incorporate the successful proposer's proposal into a contract. Failure of a proposer to accept this obligation may result in the cancellation of any award.

The selected proposer will be required to assume responsibility for all services offered in the proposal. The University will consider the selected proposer to be the sole point of contact with regard to contractual matters, including payment of any or all charges.

**PROPOSER'S RESPONSIBILITIES**

The Proposer must thoroughly examine and will be held to have thoroughly examined and read the entire ITN document. Failure of the Proposer to fully acquaint himself with existing conditions or the amount of work involved will not be a basis for requesting extra compensation after the award of the ITN. It is understood and the Proposer hereby agrees that it shall be solely responsible for all services that it proposes, notwithstanding the detail present in the ITN.

**ITN INTERPRETATION**

Interpretation of the wording of this document shall be the responsibility of the University and that interpretation shall be final.
ERRORS AND OMISSIONS

The Proposer is expected to comply with the true intent of this ITN taken as a whole and shall not avail itself of any errors or omissions to the detriment of the services. Should the Proposer suspect any error, omission, or discrepancy in the specifications or instructions, the Proposer shall immediately notify the University, in writing, and the University shall issue written instructions to be followed. The Proposer is responsible for the contents of its proposal and for satisfying the requirements set forth in the ITN. The University is not liable for any errors or misinterpretations made by the proposer in responding to the ITN.

PERIOD OF FIRM OFFER

Prices, terms and conditions must be kept firm for at least 90 days after the last time specified for submission of proposals. If no period is indicated by the Proposer in the proposal, the price will be firm for 90 days and continued thereafter until written notice to the contrary is received from the Proposer, unless otherwise specified in this proposal. Firm proposals for periods of less than 90 days may be considered non-responsive.

PROPOSER PRESENTATIONS

The University reserves the right to require that each respondent provide a formal presentation of its proposal at a date and time to be determined. If required by the University, it is anticipated that such presentation will not exceed two (2) hour.

GENERAL TERMS AND CONDITIONS OF THE CONTRACT:

1. ENTIRE AGREEMENT

A proposer’s written submission in response to this ITN shall be considered as the proposer’s formal offer. The content of the ITN, the proposer’s submission in response to the ITN and any resulting contract shall be considered the entire agreement between the successful proposer and the University. It is understood and agreed that nothing herein or in the resulting contractual agreement is intended, or should be construed, as constituting the Vendor as the agent or representative of the University for any purpose or in any manner whatsoever. The Vendor is, and shall remain, an independent contractor operating in accordance with the terms and conditions of the agreement as a result of this ITN.

The successful company/proposer more specifically acknowledges that: neither the company nor its agents or employees will be eligible to participate in any employee benefit maintained by the University; will not be covered by the University’s workers’ compensation insurance; and will be solely and exclusively responsible for payment of all federal and state income, social security, unemployment and disability taxes due in respect of all compensation and/or other consideration paid by the University to the selected firm hereunder.

The successful company/proposer shall supply competent and physically capable employees. The FAMU BOT may require the successful company/proposer to remove an employee it deems careless, incompetent, or insubordinate, or otherwise objectionable and whose continued employment on FAMU BOT, is not in its best interest.

The University will not be liable for any fees or charges not detailed as a part of this proposal in the SOFT DRINK SERVICES COST PROPOSAL form.
2. **PARTIES TO THE CONTRACT**
   Parties to the contract will be the University and the successful proposer. Payment will only be made to the successful proposer and in the name as it appears on the proposal submitted and the resulting contract.

3. **AMENDMENTS**
   Any amendments, alterations or modifications to the contract resulting from this ITN must be signed or initialed and approved by all signatories noted on the contract. The Laws of the State of Florida, the Florida Administrative Code and the Florida Board of Governors and University regulations shall govern the validity, construction, and effect of the contract. The University, as an agency of the State of Florida, is entitled to the benefits of sovereign immunity including immunities for taxation.

4. **RISK**
   Applicable provisions of all federal, State of Florida, county and municipal statutes, laws, ordinances, rules and regulations shall govern any proposal submitted hereto and any resulting contract. Lack of knowledge by any proposer shall not constitute a cognizable defense against the legal effect thereof. Disputes arising from, or in connection with, the contract shall be determined before a Florida court of competent jurisdiction or through an applicable administrative proceeding in Leon County, Florida, whichever is appropriate to the circumstances under Florida law in the event that either party is required to obtain any permit, license or authorization as a prerequisite to performing its obligation under the contract, the cost shall be borne by the party required to obtain the permit, license or authorization.

5. **NEGOTIATIONS**
   In the event services are required to be performed or equipment required to be purchased that are not set out in the ITN, but are within the general scope of the requirements, the University and the successful proposer hereby reserve the right to negotiate the terms covering the required services or equipment.

6. **ADDITIONS, DELETIONS AND SUBSTITUTIONS**
   The University reserves the right to add to or to delete any item from this ITN on a periodic basis as necessary when deemed in the best interest of the University. The vendor is responsible for submitting requests on a timely basis with sufficient documentation to allow evaluation of the request.

   The University will consider changes to contract items provided revisions are in accordance with the conditions and specifications contained in this ITN. The University reserves the right to accept or reject changes proposed by the vendor.

7. **INSURANCE**
   The successful Proposer shall not commence any work until he has obtained all the following types of insurance and the University has approved such insurance, nor shall the successful proposer allow any subcontractors to commence work on his subcontract until all similar insurance required for the subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida, and with an A.M. Best rating of no less than A.X. The University shall be furnished proof of coverage of insurance by certificates of insurance accompanying the agreement and shall name the Florida A&M University and their Board of Trustees as an additional name insured. The insurer shall provide 30 days written notice to the certificate holder if a policy is to be cancelled before the expiration date thereof.

   The successful proposer shall be required to furnish a public liability policy of insurance protecting the public against bodily injury and property damage, worker’s compensation coverage and commercial blanket bond in accordance with the following schedule and conditions:

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Limits of Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Bodily Injury Liability</td>
<td>$1,000,000 each accident</td>
</tr>
<tr>
<td>B. Property Damage Liability</td>
<td>$1,000,000 aggregate operations</td>
</tr>
</tbody>
</table>
(other than automobile) $1,000,000 aggregate protective  
$1,000,000 aggregate contractual

C. Worker’s Compensation  
Limit of liability as provided by Worker’s Compensation Law, State of Florida

The contractor shall secure and maintain during the life of this agreement, Worker’s Compensation Insurance for all his employees connected with the work of this project and in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Worker’s Compensation Insurance for all the latter’s employees unless such insurance shall comply fully with the Florida Worker’s Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under Worker’s Compensation statute, the Contractor shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the purchaser, for protection of his employees not otherwise protected. If there is an instance where the Contractor is subcontracting the required services with a vendor who is not required by Florida Statute to cover their employees by Worker’s Compensation, the Contractor must obtain prior approval of the subcontractor by the Florida A&M University.

D. Commercial Auto Liability  
$1,000,000 combined single limit

E. Commercial Blanket Bond  
$500,000

F. Fidelity Bond  
$500,000 per claim

The successful proposer shall supply a Commercial Blanket Bond, which covers loss occasioned by theft and the hazards customarily covered by such bonds and a Fidelity Bond for faithful service. Such policy is to cover the losses by identifiable employees. The Florida A&M University may request higher limits if the exposure to loss increases.

The University shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the bidder and/or subcontractor providing such insurance.

The public liability policy shall be properly endorsed with the “Hold Harmless Agreement” to save Florida A&M University and their Board of Trustees, State officials and employees harmless and to indemnify Florida A&M University for any claim or liability to benefits under the Worker’s Compensation Law of Florida (Chapter 440, Florida Statutes) occasioned by an accidental injury to temporary help by Florida A&M University.

Such policy or policies of insurance shall contain an endorsement giving the Florida A&M University Purchasing Department thirty (30) days written notice in advance of any material alteration or cancellation of the policy. Such policy or policies should contain a 3rd party rider showing the Florida A&M University and their Board of Trustees as additional named insured. Such policy is to be submitted to the Florida A&M University, Purchasing Department for approval no less than ten (10) days prior to the commencement of the term of the agreement.

8. **APPLICABLE STATE LAW**  
Any contract resulting from this ITN shall be governed by the laws of the State of Florida, the Florida Administrative Code and Board of Governors and University Regulations; Florida Board of Governors Regulation 6C-18.030 and University Regulation Chapter 6C3-6, are the specific sections, which apply to university procurement.

9. **TERMINATION**  
If the Contractor fails to fulfill any of its obligations under this Contract, or otherwise, through no fault of the University, such failure shall be considered a default and shall entitle, but not obligate, the University to suspend performance under or to terminate this Contract, in whole or in part, at the University’s discretion, if the Contractor fails to cure such default within thirty (30) days after receipt of a written
notice thereof from the University. Furthermore, the University shall have the right to terminate this Contract, in whole or in part, without the Contractor being in default there under. Termination shall be effected by delivery to the Contractor of a written notice specifying whether termination is for the default of the Contractor or for the University's convenience, the extent to which services under this Contract are to be terminated, and the date upon which such termination becomes effective. After receipt of such written notice, and except as otherwise directed in writing by the University, the Contractor shall promptly stop work under this Contract on the date and to the extent specified in the notice, terminate all subcontracts to the extent that they relate to the performance of services terminated by the notice, and complete performance of such services as shall not have been terminated by the notice.

In the event of termination for convenience, the University shall pay the Contractor (i) the full amount due for goods satisfactorily delivered and/or services satisfactorily rendered; (ii) approved costs and expenses incurred which remain unpaid at the time of such termination, and (iii) such other costs of termination, if any, as may be mutually agreed by the parties. The University shall have the right to set off against amounts otherwise owed the Contractor all amounts owed by the Contractor to the University under this Contract or otherwise.

10. USE OF SUB-CONTRACTORS
If you intend to use sub-contractors to perform any portion of the work described in this request for proposal, you must clearly state so in your response. Your response must include a description, of which portion(s) of the work will be sub-contracted out, and the names and addresses of potential sub-contractors.

11. INSPECTION OF PROPOSER'S FACILITIES
The right is reserved to inspect and investigate thoroughly the establishment, facilities, equipment, business reputation and other qualifications of any Proposer and their subcontractors and to reject any bid irrespective of price, if it shall be administratively determined the Proposer is deficient in any of the essentials necessary to assure acceptable standards of performance. The University reserves the right to continue this inspection procedure throughout the life of this contract.

12. ASSIGNMENT
Under no circumstances shall the successful proposer assign to a third party any right or obligation of the successful proposer pursuant to this ITN without prior written consent of the University. If the successful proposer is, or during the term of the contract resulting from this ITN, becomes an individual on the payroll of the State of Florida, the successful proposer represents that he or she has complied with all applicable provisions in the Florida Statutes and Florida Administrative Code regarding outside or dual employment and compensation.

13. PUBLIC ACCESS

The successful proposer shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by him/her in conjunction with the contract resulting from this ITN. Refusal by the successful proposer to allow such public access shall be grounds for cancellation of the contract by the University. SOLE POINT OF CONTACT

The University’s sole point of contact for all matters relating to this ITN is:
Herman “Buddy” Barker, Purchasing Director
Purchasing and Receiving
Florida A&M University
204 Foote-Hilyer Administration Center
Tallahassee, FL  32307
Phone: (850) 599-3203
Fax: (850) 599-2160
Email: Herman.Barker @FAMU
Any individual associated with the company participating in this ITN who contacts any other university employee and/or Evaluation Committee member regarding any aspect of this ITN, who attempts to discuss the ITN with any representative of FAMU other than the person designated as the sole point of contact, whether such contact be in person, telephone, or through electronic or written correspondence, may be determined to have violated the terms and conditions of this solicitation. If that determination is made, any proposal received from such an individual OR his or her company may be rejected as non-responsive, not subject to evaluation. If there are any changes or additions to the sole point of contact information at any time in the process, participating companies will be notified via an addendum to the ITN.

INTERPRETATIONS / DISPUTES

Any questions concerning conditions and specifications shall be directed in writing to the FAMU Purchasing Department, to the attention of the person designated as the sole point of contact, by the date and time outlined in the Calendar of Events. No interpretation shall be considered binding unless provided in writing by the University in response to requests in full compliance with this provision. Any person who is adversely affected by the University’s decision or intended decision concerning a solicitation or contract award and who wants to protest such a decision shall file a protest in compliance with Section 120.57(3)(b), F.S. Failure to file a protest within the time prescribed in Section 120.57(3) (b), F.S., and the bond required under Florida Board of Governor’s Regulation 6C-18.055(3) shall constitute a waiver of proceedings.

POSTING OF FINAL AWARD

The final award will be posted for review by interested parties in the Office of Purchasing, Florida A&M University, 2nd Floor, Foote Hilyer Administrative Center, Tallahassee, Florida 32307, during regular business hours (8:00 a.m. to 5:00 p.m. EDT), after July 28, 2006. Decisions will remain posted for a period of seventy-two (72) hours. Failure to file a protest within the time prescribed in Section 120.57(3) (b), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Protests are submitted to the address in this paragraph.

NOTICE OF ITN PROTEST, BONDING REQUIREMENT

Any person or company/business who files an action protesting a decision or intended decision pertaining to the ITN solicitation administered by the FAMU BOT pursuant to Section 120.57(3)(b), Florida Statutes, shall post with the FAMU BOT at the time of filing the formal written protest, a BOND payable to the FAMU BOT in an amount equal to ten percent of the total volume of the contract or $10,000, whichever is less, which bond shall be conditioned upon the payment of all costs which may be adjudged against the protester in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. In lieu of a bond, the FAMU BOT may, in either case, accept a cashier's check or money order in the amount of the bond. FAILURE TO FILE THE PROPER BOND AT THE TIME OF FILING THE FORMAL PROTEST WILL RESULT IN A DENIAL OF THE PROTEST.

LEGAL REQUIREMENTS

All parties acknowledge that the validity, construction and effect of any resulting contract shall be governed by the laws of the State of Florida and the regulations and rules of the University and the Florida Board of Governors. Any provisions herein, in conflict therewith, shall be void and of no effect. This solicitation will be governed by the provisions of the University’s Regulations.

If any provisions of the contract should be declared illegal, void, or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect.

EMPLOYMENT OF ALIENS STATEMENT - The employment of unauthorized aliens by any successful company/Proposer is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the successful company/proposer knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the purchase order/contract.
SPECIAL ACCOMMODATIONS - Any person requiring a special accommodation, because of a disability, should call or email the Sole Point of Contact (Section 9), at least three (3) workdays prior to any activity in conjunction with this solicitation.

AVAILABILITY OF FUNDS - The performance of the FAMU BOT or boards of trustees or institutions of any of its obligations under the resulting contract shall be subject to and contingent upon the availability of funds appropriated by the Florida Legislature for the purposes of this agreement for the current and any future fiscal years.

PUBLIC ENTITY CRIMES - The FAMU BOT will not accept a competitive solicitation from or purchase commodities or contractual services from a person or affiliate who has been convicted of a public entity crime and has been placed on the State of Florida's convicted vendor list for a period of 36 months from the date of being added to the convicted vendor list.

USE OF FUNDS FOR LOBBYING PROHIBITED - The successful company/proposer agrees to comply with the provisions of Section 216.347, Florida Statutes, which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature or a state agency.

DISCREPANCIES - If there are discrepancies in the material or content between the original copy of the successful Proposer’s ITN response and the copies, the information contained in the original copy of the response shall prevail.

EMPLOYMENT OF PUBLIC EMPLOYEES - No employee of the FAMU BOT or any of the institutions, whose duties as such employee include matters relating to or affecting the subject of this contract, shall become or be an employee of the party or parties hereby contracting with the FAMU BOT, during the term of this contract.

USE OF MINORITY BUSINESSES - The State of Florida and the FAMU BOT encourage and promote the use of state certified minority businesses in state contracting/purchasing. Participating successful Proposers are encouraged to use state certified minority vendors/successful that may be able to provide supplies and services needed in conjunction with this project.

PRECEDENCE
In case of disputes and discrepancies, the parties agree that the University contract will have precedence. Further, the FAMU BOT ITN document and amendment(s) issued, if any, will have precedence over the successful proposer’s/company’s proposal, terms and conditions.

If there should be any terms of this agreement that conflict with federal, state, FAMU BOT rules, regulations, and laws applicable to the FAMU BOT the applicable provision of the rule, regulation or law shall apply and take precedence.

CONFLICT OF INTEREST
The award hereunder is subject to the provisions of Chapter 112, F.S. All firms must disclose with their ITN the name of any officer, or agent who is also an employee or officer of the State of Florida, or any of its agencies. Further, all firms must disclose the name of any State employee who owns, directly or indirectly, an interest of five (5) percent or more in the firm's firm or any of its branches.

LIABILITY
The successful proposer shall hold and save the FAMU BOT, its officers, agents, and employees harmless against claims by third parties resulting from such firm's breach of this contract or negligence.
The University agrees to accept liability for the negligent acts or omissions of its employees, acting within the scope of their employment, to the extent permitted by law (Section 768.28, F.S). Nothing contained herein should be construed as a waiver by the FAMU BOT of any defense under a claim of sovereign immunity available to it.

**LIMITATION OF LIABILITIES/REMEDIES** – the University is not authorized to enter into a limitation of remedies agreement whereby the successful proposer’s liability for damages to the FAMU BOT for any cause and regardless of the form of action (with certain specified exceptions) is limited.

**DRUG FREE WORKPLACE**

The successful executive search firm shall comply the applicable Florida laws governing a drug free workplace.

**PUBLIC RECORDS**

All materials submitted by a company in response to this solicitation, in whole or in part, are a public document pursuant to Section 119.07, Florida Statutes. This included any material that the company might consider confidential or a trade secret. Any reference to confidentiality or restrictions on circulation or release of all or part of any proposal submitted, whether such reference is submitted either purposely through intent or design or inadvertently appearing separately in transmittal letters, specifications, literature, price lists or warranties, it is understood and agreed the conditions as stated in this solicitation are the only conditions applicable to this ITN, and the authorized signature of the company representative affixed to the acknowledgement form attests to this.
INVITATION TO NEGOTIATE
ITN #7333
FLORIDA A&M UNIVERSITY
CAMPUS BEVERAGE VENDING
AND
POURING RIGHTS AGREEMENT

CALENDAR OF EVENTS

A. ITN issued and advertised
   Date: June 30, 2006

B. Last day for ITN participants to submit written questions to FAMU
   Date: July 6, 2006
   Time: 2:30pm EST
   Procedure: Questions must be submitted via email to:
   herman.barker@famu.edu

C. FAMU answers questions via an addendum posted to the FAMU website
   Date: July 10, 2006
   Time: 5:00pm EST

D. Written proposals due in the FAMU Purchasing Department
   Date: July 14, 2006
   Time: 2:30pm EST
   Location for delivery: FAMU Purchasing Department
   Foote-Hilyer Administration Center, Rm. 208
   Tallahassee, FL 32307
   Procedure: Responses delivered after 2:30pm EST or to any location other
   than the address shown above are subject to rejection without evaluation

E. Evaluation Committee meets to discuss written proposals and determine short list of companies
   Date: July 17, 2006
   Time: to be determined
   Location: to be determined

F. Negotiations conducted
   Date(s): July 24-25, 2006
   Time: to be determined
   Location: to be determined
   Note: dates shown are estimates for planning purposes and are subject to change

G. Best and final offers (if necessary) due in FAMU Purchasing Department.
   Date: July 26, 2006
   Time: 2:30pm EST

H. Evaluation Committee meets to discuss best and final offers and determine award
   recommendation to be advanced to Vice President of Fiscal Affairs.
   Date: July 28, 2006
   Time: to be determined
   Location: to be determined

I. Posting of award to successful company
   Beginning date and time: TBA
   Ending date and time: TBA

The University reserves the right to modify any of the cited dates upon notification to Proposers.
Attachment #1

Negotiation Items and Discussion

- Contract Terms
- Prices
- Licenses, permits, taxes
- Insurance
- Parking
- Athletic Enhancements Opportunities
- Athletic Booster Participation
- Industry Cluster Participation
- Internship/Co-op Participation
- Student Union/Activities
- Housing/Residence Life Activities
- Financial conditions
  - Guaranteed commission
  - Commission % of sales
  - Gifts-in-Kind
  - Scholarships and sponsorships
  - Capital investments
  - Amortization of investments
  - Renovation investments

- Accounting Period
  - Billing
  - Commission Payments due
  - Payment terms
  - Fiscal year for operation
  - Audited statements; profit/loss statements
SOLICITATION NUMBER    UNIVERSITY DATE OF ISSUE
7333                    JUNE 30, 2006

FLORIDA A&M UNIVERSITY
COMPETITIVE SOLICITATION
ACKNOWLEDGEMENT FORM

SOLICITATION TITLE
CAMPUS BEVERAGE VENDING AND POURING RIGHTS AGREEMENT

SUBMIT RESPONSES TO:
FLORIDA A&M UNIVERSITY
PURCHASING DEPARTMENT
208 FOOTE-HILYER
ADMINISTRATOR CENTER                                    TALLAHASSEE,
FLORIDA 32307

RESPONSES WILL BE OPENED AT
July 14, 2006 @ 2:30PM

Responses not received at the exact above location at the appointed hour and date will not be considered.

CORPORATE CHARTER NO.        F.E.I.D./S.S.NO.

REASON FOR NO RESPONSE:

POSTING OF BID TABULATION:
Bid tabulations with intended award(s) will be posted for review by intended parties at the location where the bids were opened and will remain posted for a period of 72 hours. Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

DELIVERY WILL BE            CASH DISCOUNT TERMS

PLEASE FILL IN COMPLETE VENDOR NAME AND ADDRESS

AREA CODE                      TELEPHONE NO.
FAX NO.                           TOLL FREE NO.

Email Address:________________________
Web Address:________________________

I certify that this response is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment or services and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this response and certify that I am authorized to sign this response for the responder and that the responder is in compliance with all requirements of the Competitive Solicitation, including but not limited to certification requirements. In submitting a response to the Florida A&M University, the responder offers and agrees that if the response is accepted, the responder will convey, sale, assign or transfer to this Florida A&M University all rights, one and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing related to the particular commodities or services purchased or acquired by the Florida A&M University. At the University’s discretion, such assignment shall be made and become effective at the time the University tenders final payment to the responder.

AUTHORIZED SIGNATURE (MANUAL)

AUTHORIZED SIGNATURE (TYPED) TITLE