

EXCLUSIVE RESEARCH AGREEMENT OPPORTUNITY

“Development of a Uniform Seeded Turf Bermudagrass”

On behalf of the Florida Agricultural Experiment Station, an agricultural and natural resource program of the University of Florida, Florida Foundation Seed Producers, Inc. is announcing this Invitation to Negotiate (ITN) for an exclusive research agreement opportunity for the development of seeded bermudagrass cultivars with improved uniformity.



Florida Foundation Seed Producers, Inc. (FFSP) invites all interested parties to submit comments and/or proposals in consideration of this exclusive research agreement opportunity by following the instructions contained in this packet. The deadline for FFSP receipt of all required materials is Friday, January 30, 2009 at 5pm Eastern Standard Time. For more information, please contact John Beutenmuller, Intellectual Property & Licensing Director of FFSP at beutt@ffsp.net.

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SCOPE OF WORK

Introduction

On behalf of the Florida Agricultural Experiment Station (FAES), an agricultural and natural resource research program of the University of Florida's Institute of Food and Agricultural Sciences (UF/IFAS), Florida Foundation Seed Producers, Inc. (FFSP) is seeking a commercial sponsor to collaborate on the development of seeded bermudagrass cultivars with improved uniformity. The FAES is attempting to obtain grant funds from the USDA Specialty Crops Research Initiative (SCRI) to conduct research to develop strategies that would result in increased uniformity (decreased segregation) of seeded turf-type bermudagrass cultivars. The USDA-SCRI granting program requires matching funds; therefore, the collaborative commercial sponsor will need to be willing to provide financial support of this project. Sponsor provided financial support will serve as match and provide the sponsor an exclusive first right of refusal of potential cultivars that might result from the described research. In addition to financial support, the commercial sponsor will be an active component of the research and development process through evaluation of developed experimental material for adaptability to seed production regions and seed production characteristics.

Description

The UF/IFAS turfgrass breeding program seeks to develop methods that will result in non-segregating experimental lines of bermudagrass. The collaborative commercial sponsor will then evaluate experimental lines for flowering behavior and seed production, in accordance with a Materials Transfer Agreement. Promising lines will then be utilized to develop turf-type cultivar(s) of seeded bermudagrass with no potential for segregation. For the duration of the research agreement, the sponsoring company will have exclusive first right of refusal to released cultivars.

The general characteristics of the elite germplasm lines to be utilized for this project reflect a better adaptability to Florida's unique environment and improved performance when exposed to:

Seasonal wet and dry patterns
Long-term cloudy weather
Poor nutrient and moisture retention sandy soils
Mole crickets
Sting nematodes

Information

Because an exclusive license to released cultivars may be offered, the award of this collaborative research agreement will be handled through our Invitation to Negotiate (ITN) process (See <http://ffsp.net/7.html> for more information). All interested parties are encouraged to submit comments and/or a proposal for a **Research Agreement** (see next page for instructions) to Mr. John Beuttenmuller (beutt@ffsp.net, Phone 352-392-9446, Fax: 352-392-4965). **The deadline for submitting a complete ITN proposal is Friday, January 30, 2009.**

Questions concerning the turfgrass breeding program should be directed to Dr. Kevin Kenworthy (kenworth@ufl.edu, Phone: 352-273-3415).

EXCLUSIVE RESEARCH AGREEMENT 3 OPPORTUNITY

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INSTRUCTIONS FOR SUBMITTING COMMENTS AND/OR PROPOSALS

If you or your company is interested in commenting on this exclusive research agreement opportunity and/or submitting a proposal, please complete the three steps on this checklist:

_____ **Step 1:** Carefully read the terms and conditions on the next two pages (pages 4 and 5) of this packet.

_____ **Step 2:** Complete and sign the Acknowledgement Form on page 6 of this packet, and fax it to Florida Foundation Seed Producers, Inc. ATTN: John Beutenmuller, at 352-392-4965.

_____ **Step 3:** After FFSP receives the Acknowledgment Form, we will send your company a sample questionnaire which you may use to submit your proposal. If you are only interested in commenting, please indicate such on your Acknowledgement Form and submit your comments upon returning the Acknowledgment Form. All proposals and comments must be e-mailed, faxed, or mailed back to Florida Foundation Seed Producers, Inc. **before Friday, January 30, 2009 at 5pm EST.** Contact information can be found on the questionnaire.

All proposals will be objectively and confidentially evaluated. FFSP is committed to evaluating proposals using the following three (3) principles of the ITN process:

1. What is good for the Breeder and their program?
2. What is good for UF/IFAS?
3. What is good for the State of Florida?

REMINDER: All materials must be received before **Friday, January 30, 2009 at 5pm EST**. Late proposals and/or comments will not be accepted or considered.

GENERAL CONDITIONS:

INVITATION TO NEGOTIATE FORM - All proposals should be submitted after submitting the FFSP Invitation to Negotiate Acknowledgment Form. All proposals should be submitted with one (1) complete original proposal and three (3) complete photocopies in a sealed envelope, with the following information on the outside of the envelope: ITN number, date and time of ITN closing (January 30, 2009, 5 PM), and Company name, in order to be considered in the award. All ITN response sheets and this form must be executed and submitted in a sealed envelope. (DO NOT INCLUDE MORE THAN ONE ITN RESPONSE PER ENVELOPE)

1. **EXECUTION OF I.T.N.:** The I.T.N. Acknowledgment Form must contain a manual signature of authorized representative in the space provided. I.T.N. proposals must be typed or printed in ink. Use of erasable ink is not permitted. All corrections to financial considerations made by Proposer must be initialed. All I.T.N. proposals are subject to the conditions specified herein. Those, which do not comply with these conditions, are subject to rejection.

2. **NO I.T.N. SUBMITTED:** If not submitting an I.T.N., respond by returning only this I.T.N. Acknowledgment Form, marking it "NO I.T.N. RESPONSE", and explain the reason in the space provided along with any comments. Failure to respond 3 times in succession without justification may be cause for removal of your company's name from the I.T.N. mailing list. **NOTE:** To qualify as a respondent, Proposer must submit a "NO I.T.N. RESPONSE", and it must be received no later than the stated I.T.N. closing date and hour.

3. **ITN DELIVERY** - If this ITN will be mailed through the U. S. Postal Service as regular mail, address the proposal to the PO Box as shown on the Invitation to Negotiate Acknowledgment Form.; or if the ITN proposal will be delivered by a service other than the U. S. Postal Service regular mail, i.e., Federal Express, Airborne, United Parcel Service, Courier, U. S. Postal Express Mail, etc., address the proposal to the Building and room number as shown on the ITN Acknowledgment Form.

4. **I.T.N. OPENING:** Shall be after the closing date and time specified on the I.T.N. Acknowledgment Form. It is the Proposer's responsibility to assure that the I.T.N. response is delivered at the proper time and place of the I.T.N. opening. I.T.N. responses, which for any reason are not so delivered, will not be considered. **NOTE:** I.T.N. Notice of an unspecified Award may be posted electronically at (e.g. <http://FFSP.net>) listed as I.T.N.

5. **PROPOSAL WITHDRAWAL** - A Proposer may withdraw a submitted proposal at any time up to the deadline for submitting proposals. To withdraw a proposal, the Proposer must submit a written request, signed by an authorized representative, to the ITN contact before the deadline for submitting proposals. After withdrawing a previously submitted proposal, the Proposer may submit another proposal at any time up to the deadline for submitting proposals.

6. **INQUIRIES** - All changes, if necessary, shall be made by written addendum to the ITN. Any explanation desired by Proposer's must be requested of the FFSP in writing, and if an explanation is necessary, a reply shall be made in the form of an addendum, a copy of which will be forwarded to each Proposer who has received a set of the ITN documents from the FFSP. The FFSP will not give verbal answers to inquiries regarding the specifications, or verbal instructions prior to or after the award of this ITN. A verbal statement regarding same by any person shall be non-binding. The FFSP is not liable for any costs or actions resulting from the Proposer accepting verbal direction. Proposers obtaining ITN documents from any other source must notify the FFSP of their name, address, telephone, and facsimile numbers in order to receive any addenda. Direct all inquiries to the Intellectual Property & Licensing Director of FFSP.

7. **ERRORS** - The FFSP is not liable for any errors or misinterpretations made by the Proposer in responding to this ITN.

8. **AMENDMENT AND CLARIFICATION** - FFSP reserves the unilateral right to amend this ITN in writing at any time. FFSP reserves the right to cancel or reissue the ITN at its sole discretion. Proposers will respond to the final written ITN and any exhibits, attachments, and amendments.

9. **ITN INTERPRETATION** - Interpretation of the wording of the ITN document submitted by the Proposer will be the responsibility of FFSP and that interpretation will be final and binding.

10. **PROPOSAL REJECTION:** FFSP shall have the right to reject any or all ITN proposals and in particular to reject a proposal not accompanied by data required by the ITN or in any way incomplete or

irregular, including omission of financial considerations. Conditional ITN proposals will not be accepted.

11. **PRICES, TERMS:** Proposers are expected to examine the project scope, specifications, schedule, proposed terms and all instructions pertaining to the ITN. Failure to do so will be at Proposers' risk. Prices proposed will govern in the award, however, Fees, Royalties and Price are not the only considerations in selection for the award.

12. **CONFLICT OF INTEREST:** Proposers must disclose with their proposal any actual or potential conflict of interest. All Proposers must disclose with their I.T.N. the name of any officer, director, or agent who is also an employee of FFSP or the University of Florida or any State Employee. Further, all Proposers must disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Proposer's firm or any of its branches.

13. **PERFORMANCE INVESTIGATIONS** - As part of the proposal evaluation process, FFSP may make inquiries and investigations, including verbal or written references from Proposer's customers, to determine the ability of the Proposer to offer service.

14. **INDEPENDENT CONTRACTOR** - Nothing herein is intended or shall be construed as in any way creating or establishing the relationship of co-partners between the parties or in any way making the firm an agent or representative of FFSP for any purposes in any manner whatsoever. Firm is, and shall remain, an independent contractor with respect to all services performed under any License or Research Agreement awarded as a result of this ITN.

15. **SELECTION:** As the best interest of FFSP acting on behalf of the Florida Agricultural Experiment Station may require, the right is reserved to make selections by individual item, group of items, all or none, or a combination thereof; to reject any and all I.T.N. proposals or waive any minor irregularity or technicality in I.T.N. proposals received. Proposers are cautioned to make no assumptions of acceptance, until receiving written notice and that Fees, Royalties and Price are not the only consideration in the award.

16. **AWARD:** Award shall be made to the responsive Proposer whose proposal is determined to be the most advantageous to FFSP. Price, although a consideration, will not be the sole determining factor. FFSP or UF/IFAS is under no obligation to award a contract as a result of this ITN.

17. **CANCELLATION** - FFSP by written notice may terminate this I.T.N. without penalty or cause, in whole or in part, when such action is deemed by FFSP to be in the best interest of FFSP.

18. **INTERPRETATIONS/DISPUTES:** Any questions concerning conditions or negotiation considerations shall be directed in writing to the Intellectual Property & Licensing Director of FFSP. Inquiries must reference the date of I.T.N. closing and the I.T.N. number. No interpretations shall be considered binding unless provided in writing by the FFSP in response to requests in full compliance with this provision.

19. **LEGAL REQUIREMENTS:** This ITN and any contract resulting from this ITN, and any disputes thereunder, shall be construed exclusively in accordance with the laws of the State of Florida and enforced in the courts of the State of Florida. FFSP and Proposer hereby agree that venue shall lie exclusively in Alachua County, Florida. Applicable provision of all federal, state, county and local laws, and of all ordinances, rules and regulations shall govern development, submittal and evaluation of all proposals received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting an I.T.N. response hereto and the FFSP, by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any proposer shall not constitute a cognizable defense against the legal effect thereof.

20. **ADVERTISING:** In submitting an I.T.N, the Proposer agrees not to use the results therefrom as a part of any commercial advertising.

21. **ASSIGNMENT:** Any contract issued pursuant to this ITN and the monies, which may become due hereunder, are not assignable except with the prior written approval of FFSP.

22. **LIABILITY AND INDEMNITY** - The Proposer shall indemnify and hold FFSP, the University of Florida Board of Trustees, the Florida Board of Governors, and their respective employees, directors, officers, and agents harmless from all costs, expenses, claims, damages, penalties and losses (including without limitation reasonable attorneys' fees and experts' fees) arising out of, relating to or resulting from any contract awarded as a result of this ITN and from the Proposer or third persons planting or use of the FFSP materials.

23. **FACILITIES:** FFSP reserves the right to inspect the Proposer's facilities at any time with prior notice.

24. **TERMINATION:** Upon termination of the project, FFSP shall give notice with instructions for return of sound samples, which include shipping authorization and name of carrier. Upon receiving a written request from FFSP, Proposer agrees to return to FAES sufficient sound samples as instructed. If no instructions are received from FFSP, the Proposer shall give 15 days notice to destroy all commodities to the FFSP Intellectual Property & Licensing Director. After 15 days, the entire supply of commodities shall be destroyed by the Proposer, without exception for other options or hold backs.

25. **RESERVATION OF RIGHTS - UF or FFSP shall retain sole rights, titles and ownership of the supplied Intellectual Property (IP), including all plant material and associated information provided in performance of the project and all current and future plant patents, plant variety protection (PVP), copyrights and trademarks. No one is permitted to file for IP protection, except UF, FFSP or their designees. FFSP is enabled by UF/FAES to file for Intellectual Property protection and to contract out all forms of IP to commercial entities. Breeding or selection or modifications to the plant materials and IP supplied by employees of UF are prohibited.**

26. **CONFLICT BETWEEN DOCUMENTS:** If any terms and conditions contained within the documents that are a part of this I.T.N. or resulting contract that are in conflict with any other terms and conditions contained therein, then the various documents comprising this I.T.N. or resulting License or Research Agreement, as applicable, shall govern in the following order of precedence: amendment, contract and addendum(s), addenda to invitation to negotiation, special conditions, general conditions, invitation to negotiate.

27. **EXPENSE – All proposals submitted in response to the 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 and necessary visits to campus and other required site visits.

28. **NO WARRANTIES. FFSP MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE MATERIALS, INCLUDING, WITHOUT LIMITATION, (I) THAT THE USE OF THE MATERIALS DOES NOT OR WILL NOT INFRINGE ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, OR (II) THAT THE USE OF THE MATERIALS IS SAFE AND WITHOUT HAZARD. FFSP IS UNDER NO OBLIGATION TO OBTAIN OR PROVIDE LICENSES THAT MAY BE REQUIRED FOR THE USE OF THE MATERIALS BY PROPOSER.. IN ADDITION, PROPOSER SHALL ASSUME ALL RISKS RELATING TO, RESULTING FROM OR ARISING OUT OF THE USE OF THE MATERIALS.**

SPECIAL CONDITIONS:

29. **USE OF TERMS -** The terms proposer, cooperator, firm, vendor, company, and contractor are used synonymously in this ITN unless otherwise indicated.

30. **MISCELLANEOUS –** FFSP encourages free competition for the award. Any persons who may have a direct or indirect economic or business interest with any Proposer responding to the solicitation, is obligated to notify the Intellectual Property & Licensing Director of FFSP prior to accessing the ITN package contents and information and may be denied participation and access to the ITN. Any contract awarded as a result of this ITN shall be construed exclusively under Florida law. The parties agree that venue shall lie exclusively in Alachua County, Florida.

31. **CONTRACT –** This ITN, the written proposal submitted, and modifications to terms as negotiated and agreed to by the parties shall be incorporated into the final contract for consideration.

If your company is interested in commenting and/or proposing for this exclusive research opportunity, please complete and sign this Acknowledgement Form agreeing to the terms and conditions of the ITN process (pages 4 and 5) and fax it back to John Beuttenmuller, Florida Foundation Seed Producers, at (352) 392-4965. We will then send your company a questionnaire in which you submit your proposal.

SUBMIT I.T.N. AND COMMENTS TO:
 FLORIDA FOUNDATION SEED PRODUCERS, INC.
 ATTN: John Beuttenmuller
 1022 McCarty Hall D
 PO Box 110200
 GAINESVILLE, FL 32611 0200
 Phone: (352) 392-9446 Fax: (352) 392-4965



INVITATION TO NEGOTIATE

Acknowledgment Form

I.T.N. PROPOSAL IS DUE: Friday, January 30, 2009 at 5pm EST Proposal may not be withdrawn within <u>45</u> days after such date and time.		I.T.N. PROPOSAL NO. ITN 08-28
FFSP ANNOUNCED DATE: December 19, 2008	AGENT John Beuttenmuller	I.T.N. PROPOSAL TITLE: Exclusive Research Opportunity: Development of a Uniform Seeded Turf Bermudagrass
PROPOSER'S NAME		
PROPOSER'S MAILING ADDRESS (Phys)		
CITY - STATE - ZIP CODE		
AREA CODE	TELEPHONE NO.	E-Mail:
	TOLL FREE NO.	Website:
	FAX NO.	

Is it acceptable to send your ITN questionnaire via e-mail? _____ Yes _____ No

If no, what method should we use to send it? _____

I certify that this I.T.N. Proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting an I.T.N. Proposal for the same materials and is in all respects fair and without collusion or fraud. I agree to an I.T.N. proposal by all conditions of this I.T.N. Proposal and certify that I am authorized to sign this I.T.N. Proposal for the Proposer.

 AUTHORIZED SIGNATURE (Dated)

 AUTHORIZED SIGNATURE (TYPED),
 TITLE