



INVITATION TO NEGOTIATE

ITN11-35-38 - FOUR (4) SOUTHERN Highbush Blueberry Varieties

Florida Foundation Seed Producers, Inc. (FFSP) invites all interested parties to submit comments and/or proposals for the exclusive licensing opportunity disclosed in this announcement. For more information, please contact FFSP at beutt@ffsp.net.

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ITN Description and Specifications

- **ITN Title:** Four (4) Southern Highbush Blueberry Varieties
- **ITN No.:** ITN11-35-38
- **ITN Territory:** New Zealand
- **ITN Announcement Date:** Tuesday, November 8, 2011
- **ITN Proposal Due Date:** Friday, December 9, 2011
- **Cultivars:**
 - 11-35: Flicker™ 'FL96-43' ([U.S. Patent PP21,554](#))
 - 11-36: FLX-1 ([U.S. Patent PP19,342](#))
 - 11-37: Kestrel™ 'FL02-40' ([U.S. Patent PP21,719](#))
 - 11-38: Meadowlark™ 'FL01-173' ([U.S. Patent PP21,553](#))

What is an ITN?

Newly developed cultivars, experimental lines, and plant germplasm are routinely approved for release through UF's Florida Agricultural Experiment Station (FAES). Florida Foundation Seed Producers, Inc. (FFSP), a non-profit corporation and direct support organization of the University of Florida, is continuously seeking strategic production and marketing companies in commercialization of a diverse portfolio of newly developed plant cultivars. For certain crops, several companies may express interest in an opportunity for an exclusive license for an improved plant cultivar. The Invitation to Negotiate (ITN), implemented in 2006, is a process which enables FFSP to fairly and objectively evaluate all commercial proposals and comments to effectively identify superior companies to deliver new cultivars to the public. In return, licensed companies provide royalties back to FFSP for reinvestment in the breeding and development of new, improved cultivars at the FAES.

The ITN process encourages an open engagement of all interested companies and stakeholders. Companies submitting proposals and/or comments to an ITN will be evaluated consistently and fairly by a review committee comprised of staff members of FFSP and expert faculty advisors from FAES. The use of the ITN is triggered when a commercial entity communicates its wishes to engage in a new business opportunity for contracting plant germplasm or a plant cultivar by a limited exclusive license arrangement.

FFSP strives to secure the company/companies that best meet the needs of the State of Florida and its people, UF, and the breeding program. Responders to the ITN will be evaluated using a consistent methodology, allowing review committee members to weigh core elements and objectively evaluate multiple proposals. The ITN specifications objectively guide critical responses in a proposal and are designed to explore the project's commercial scope for a sustainable business, consistent with the necessity to deliver FAES plant breeding products and technology to the public. The ITN requires interested companies to describe their prior experience and current business model. Companies are asked to describe a plan of action concerning the new business opportunity. The ITN also requests details of marketing and production plans which will successfully deliver a sound commercial operation and ensure that sustaining royalties are returned to support the FAES breeding program. Initiation of an ITN and the participation by a company in an ITN process does not mean a license will be eventually awarded; only that responsive companies will receive consideration and a fair evaluation of proposals and comments submitted.

At the conclusion of the ITN process, it is everyone's hope that most details can be mutually agreed upon, resulting in an award of a license to a qualified and successful commercial enterprise.

Please refer to the terms and conditions of this ITN for specific specifications and instructions.

Instructions for Submitting Comments and/or Proposals

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

_____ **Step 1:** Carefully read the terms and conditions of this announcement.

_____ **Step 2:** Complete and sign the Acknowledgment Form(s) of this announcement and fax or email to: Florida Foundation Seed Producers, Inc., Attn: John Beuttenmuller, Fax: (877) 839-9162, Email: beutt@ffsp.net.

_____ **Step 3:** After FFSP receives the Acknowledgment Form(s), you will receive a sample questionnaire which you may use to submit your proposal(s). If you are only interested in commenting, please indicate such on your Acknowledgment Form(s), and submit your comments upon returning the Acknowledgment Form(s). All proposals and comments must be received by Florida Foundation Seed Producers, Inc. (By US Mail: PO Box 110200, Gainesville, FL 32611-0200, By Express Courier: 1059 McCarty Hall D, Gainesville, FL 32611-0200) prior to the ITN Proposal Due Date specified in the ITN Description and Specifications of this announcement.

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

- 1. What is good for the State of Florida and its people?**
- 2. What is good for UF/IFAS?**
- 3. What is good for the breeder and the breeding program?**

NOTICE: Late proposals and/or comments will not be accepted or considered.

Florida Foundation Seed Producers, Inc. (FFSP), a non-profit corporation and direct support organization of the University of Florida's (University) Florida Agricultural Experiment Station (FAES), an agricultural and natural resources research program, offers the following Invitation to Negotiate (ITN).

GENERAL CONDITIONS:

ITN FORM. All proposals should be submitted after submitting the FFSP ITN 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 (as stated on Acknowledgment Form), and company name. All ITN responses must be executed and submitted in a sealed envelope. (DO NOT INCLUDE MORE THAN ONE ITN RESPONSE PER ENVELOPE)

1. EXECUTION OF ITN. The ITN Acknowledgment Form must contain a manual signature of an authorized representative in the space provided. ITN proposals must be typed or printed in ink. Use of erasable ink or pencil is not permitted. All corrections made by Proposer must be initialed. All ITN proposals are subject to the conditions specified herein and those which do not comply are subject to rejection.

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

3. ITN DELIVERY. If ITN proposals are 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. ITN OPENING. Proposals shall be opened after the closing date and time specified on the ITN Acknowledgment Form. Proposers shall be responsible to assure that the ITN response is delivered at the proper time and place prior to the ITN closing. ITN responses, which for any reason are not so delivered, will not be considered. NOTE: ITN Notice of an unspecified award may be posted electronically at <http://FFSP.net> listed as ITN.

5. PROPOSAL WITHDRAWAL. A Proposer may withdraw a submitted proposal at any time up to the ITN closing. To withdraw a proposal, the Proposer must submit a written request, signed by an authorized representative, to FFSP before the ITN closing. After withdrawing a previously submitted proposal, the Proposer may submit another proposal at any time up to the ITN closing.

6. INQUIRIES. All changes, if necessary, shall be made by written addendum to the ITN. Any explanation desired by Proposers must be requested of 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 submitted an Acknowledgment Form to FFSP. 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. FFSP is not liable for any costs or actions resulting from the Proposer accepting verbal direction.

7. ERRORS. 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 shall 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 conflicts of interest. All Proposers must disclose with their ITN the name of any officer, director, or agent who is

also an employee of FFSP or University 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 Proposer an agent or representative of FFSP for any purposes in any manner whatsoever. Proposer 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 as a direct support organization of the University 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 ITN proposals or waive any minor irregularity or technicality in ITN 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 University is under no obligation to award a contract as a result of this ITN.

17. CANCELLATION. FFSP, by written notice, may terminate this ITN 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 FFSP. Inquiries must reference the date of ITN closing and the ITN 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 ITN 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 ITN proposal, 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 use of the FFSP licensed 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 FFSP sufficient sound samples as instructed. If no instructions are received from FFSP, the Proposer shall give fifteen (15) days notice to destroy all commodities to FFSP. After fifteen (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. FFSP retains 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 patents, plant variety protection (PVP), copyrights, trademarks, and other intellectual property rights. No one is permitted to file for IP protection, except University, FFSP or their designees. FFSP is enabled by University to file for IP protection and to contract out all forms of IP to commercial entities. Breeding, selection, or modifications to the plant materials and IP supplied are prohibited.

26. CONFLICT BETWEEN DOCUMENTS. If any terms and conditions contained within the documents that are a part of this ITN or resulting contract that are in conflict with any other terms and conditions contained therein, then the various documents comprising this ITN 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 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 and necessary visits to FFSP 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, cooperater, firm, vendor, company, and contractor are used synonymously in this ITN unless otherwise indicated.

30. 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 you or your company is interested in commenting on and/or submitting a proposal for this exclusive licensing opportunity, please complete and sign this Acknowledgment Form agreeing to the terms and conditions of the ITN and fax it back to Florida Foundation Seed Producers, Inc. FFSP will then send your company a sample questionnaire which may be used for submission of your proposal.

SUBMIT ITN RESPONSE AND COMMENTS TO:
 FLORIDA FOUNDATION SEED PRODUCERS, INC.
 ATTN: John C. Beuttenmuller
 1059 McCarty Hall D
 PO Box 110200
 Gainesville, FL 32611-0200
 Fax: (877) 839-9162

Acknowledgment Form



ITN Close; Deadline for Proposal/Comment Submission: Friday, December 9, 2011, 12 PM EST

INVITATION TO NEGOTIATE

ITN NO.:	
ITN TITLE:	
PROPOSER NAME/COMPANY NAME:	PROPOSER CONTACT (NAME):
PROPOSER'S MAILING ADDRESS (Phys.):	CITY – STATE – ZIP CODE - COUNTRY:
TELEPHONE NO.:	EMAIL:
ALTERNATE TELEPHONE NO.:	WEBSITE:
FAX NO.:	

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

If no, what method should be used? _____

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

SIGNATURE

DATE

NAME (TYPED), TITLE

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NAME (TYPED), TITLE