



SOLICITATION ADDENDUM

Date: **6/30/16**
Subject: **Mailroom Equipment**
Solicitation Number: **6100038642**
Due Date/Time: **7/7/16 12:00pm**
Addendum Number: **3**

To All Suppliers:

The Commonwealth of Pennsylvania defines a solicitation “Addendum” as an addition to or amendment of the original terms, conditions, specifications, or instructions of a procurement solicitation (e.g., Invitation for Bids or Request for Proposals).

List any and all changes:

The bid is being extended until 7/14/16 12:00pm
Mailroom Equipment Software Licensing Agreement has been added to bid.
Statement on Mailroom Equipment Software Licensing Agreement added to SOW
Vendors are to fill out the Bidders Workbook with the percentage off of list when bidding.
Bidding guide should be downloaded and completed before uploading into bid.
Attaching Bids Guide added to bid documents
Bidding Guide added to bid documents

Vendor Questions and Answers:

1. Terms & Conditions, page 12, Section II.4 Reciprocal Limitations Act- Due to the high volume and complexity of the product offering, will the Commonwealth consider the ability for the Contractor to submit the required State of Manufacture Chart within 10 business days of the IFB award? If no, any extended time period?

The bid has been extended over 2 weeks since this question was asked. Vendors should have ample time to submit timely.

2. Terms & Conditions, V.18 Post-Consumer Recycled Content: There is a link in this section that when clicked on, the site states, “under Construction”. Can the Commonwealth provide the correct link so compliance can be confirmed?

Current EPA site is <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#directory>

3. The “terms and conditions 2” document contains language allowing the Contractor to assign leases or use a third party leasing company to lease the equipment. As we look at equipment financing options, would the Commonwealth please confirm that it is ok for us to share the leasing provisions contained in “terms and conditions 2” with a potential third party leasing company?

This IFB and the terms and conditions contained therein are publically available and can be shared.

4. Specification Document. Item 1 of the Specification document states that this contract includes “dedicated software for the operation of [Various mailroom equipment]”. It is an industry standard to issue a software license for that dedicated software. Would the State prefer that we attach the software license to our RFP response for your review, or would we attach it to each individual purchase or lease transaction?

Bidder may not attach its own software license to the bid response. The Commonwealth has provided a Mailroom Equipment Software License Agreement that may be used by Contractors. *See Appendix X to this Solicitation Addendum No. 3.* This Agreement applies to any software solely dedicated to the operation of the mailroom equipment. The covered software may be either software that is self-contained within the equipment or software that is loaded onto a computer solely dedicated to the operation of the mailroom equipment. No other license agreement will be signed by using agencies.

5. Specification Document. Item 1 specifically excludes “software not required for the operational function of the machine.” Would the state consider striking the words “software” and replacing it with the word “items”?

No

6. Specification Document. We have historically included dedicated software which helps the Commonwealth, as well as other states, with its mailroom management and to operate its equipment more efficiently, and with respect to other States, such software is subject to standard software license terms and conditions. A significant state agency population has present contracts utilizing these software applications to meet their operational needs to comply with present USPS requirements, realize significant operational cost-savings, and better support its internal customers. As the needs of the mail center operators has evolved the past several years, it is critical that these software products and the license terms, which protect both the Commonwealth and vendor community, be incorporated into the DGS contract award or be permitted to enter into an individual license agreement with the end-user. It is our interest in providing these software products to the Commonwealth and ask for your consideration of the following:

- o Is it preferable to the Commonwealth to include software in the current RFP response with attached software license for DGS review and approval with the award, or would we attach the license terms for software items, incorporated in the DGS contract, to each individual purchase or lease transaction?

See response to Question 4.

7. Addenda 2, V.5, d. Definitions, Developed Works or Developed Materials, - Contractor does not intend to produce any Developed Works or Developed Materials (including software) under this Contract, if awarded Contractor status. Developed Works and Developed Materials do not appear to be used in any part of the Addenda. Can we intentionally omit this Definition?

Any software requirements for this procurement are commercial off-the-shelf software packages that specifically operate certain mailroom equipment. V.5 Contract-004.1a (d) is not applicable to this procurement and is hereby deleted.

8. Addenda 2, V.12, Ownership Rights - Contractor has unique Intellectual Property protected by US patent, copyright or trademark protection, and issues a license for use to its clients. Please clarify that the State would abide by the terms of use outlined in any Contractor license agreement, particularly for reproduction or distribution of software.

See response to Question 4.

9. The Commonwealth of PA terms and conditions, V. 2, refer to Installment Purchase and Lease Additional Term and Conditions (V. 47 and V. 48, respectively). Would the Commonwealth consider adopting additional leasing terms and conditions? If yes, would the Commonwealth consider 2 sets of additional Lease terms and conditions for one Vendor price book, one for a captive lease company and one from a designated third party lender (limited to a certain product offering in the price book)?

No.

10. Would the Commonwealth consider several different lease rates, one for a captive lease company and one from a designated third party lender (limited to a certain product offering in the price book)?

Only one discount from list may be submitted.

11. When the Contractor assigns an Installment Purchase or Lease to an Initial Assignee (described in V. 47 and V. 48) can the Commonwealth confirm if any lease payment can be paid directly to the Initial Assignee (a third party)?

Upon submittal of proper assignment documentation, payments can be made to the assignee.

12. When the Contractor assigns an Installment Purchase or Lease to an Initial Assignee, please confirm whether the State is willing to pay two parties, one for the lease and one for service?

Upon submittal of proper assignment documentation, payments can be made to the assignee for the lease payments and to the supplier for service.

13. Sections V. 47 and V. 48 state that: (i) Full Term Intention (V. 47 and 48, B. Payments)– “The Purchaser shall continue payment for the full Installment Purchase term, unless the Purchaser terminates the Installment Purchase, either for Contractor default as set forth in the Default provision of the Contract or for non-appropriation of funds as specified in this section. And (ii) (V. 47 and 48 - Installment Purchase/Lease options)“To the extent that there is a conflict between the other terms and conditions of the Contract and these Installment Purchase/Lease Terms and Conditions, these Installment Purchase/Lease Terms and Conditions shall prevail to the extent that the Purchaser has elected an Installment Purchase/Lease.” **Please confirm that the Termination for Convenience provision does not apply for the Installment Purchase and Lease options described in V. 47 and V. 48, and that termination only applies in cases of Contractor default or the Commonwealth’s non-appropriations.**

For installment purchases and leases, Termination for Convenience as set forth in V.31 Contract-023.1a does not apply.

14. Page 44 Section V.49, Contract-043.1b, Rented Equipment: In this section – is this “rented equipment only”? See under Section A, it states, “Terms of Lease” – please clarify what you mean in the section – rented or lease? Or is this written this way in case there is a lease you can have rental and leased items together?

The only rentals permitted under any contract resulting from this procurement are for the postage meters and those rentals shall be subject to the applicable rules and regulations established by the United States Postal Service. V.49 Contract-043.1b is hereby deleted in its entirety.

15. Page 25, Termination for Cause: Would the Commonwealth consider a thirty (30) cure period?

Depending upon the particular circumstances, the using agency may include a cure period prior to a termination for cause.

16. Can the method of service call request be in the form of a web-initiated request to accommodate the 6am-8am portion of the “specified normal business hours” requirement?

Maintenance requirement will be changed from 6 am to 5 pm and is now 7am to 5 pm.

17. What are the “procedures on the Equipment Maintenance Program [EMP]?”

Agencies with purchased equipment are required to contact the EMP vendor to have service in place prior to the expiration of the initial one year warranty. If the EMP vendor states in writing they cannot provide the maintenance then the agency may look for service elsewhere.

18. “Named Vendor” offers full service maintenance for its equipment. If bid awarded to “named vendor”, then do the conditions of the EMP allow other vendors to deliver service on the “Named Vendor” equipment under the Equipment Maintenance Program [EMP]?

Maintenance on the lease will be through the vendor who is providing the equipment. EMP vendor will only have a chance to provide maintenance on purchased equipment after the initial one year warranty expires.



19. Would the Commonwealth of PA consider adding a waiver of consequential damages for Contractor as permitted under the PA Commercial Code Title 13 Section 2A503?"

No.

20. Terms and Conditions pg.18 section v.8 Document notes that delivery must be made within 30 days but in the SOW (page 3, item #6) you mention 45 days. Can you please clarify?

SOW takes precedence.

21. Terms and Conditions pg.20 section v.18-19 How does one obtain a waiver? The link doesn't seem to work.

Current EPA link <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#directory>

22. Terms and Conditions pg.21 section v.22a CW reserves the right to conduct further testing and inspection after payment and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specs. Would like clarification on what you mean by 'reject the service'. Is there an opportunity to cure?

If the equipment is not performing to specifications or is in constant need of repair, and this is impacting Commonwealth operations, the supplier will have had the opportunity to cure through service calls.

23. Terms and Conditions pg.25 section v.31 Does termination for convenience include PO's/leases?

See response to Question 13.

24. Terms and Conditions pg.25 section v.32b You require that MSDS's are provided with initial shipment. Our MSDS's are available online and accessible at any time. Is this sufficient?

This would suffice

25. Terms and Conditions pg.21 section v.22b "The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth." Can you please provide more information on this fee? Is it a percentage?

All transaction fees are determined by the vendors acquiring bank who issues their credit card processing terminal and not the card holding bank. Vendor would need to contact their credit card processing company to find out fees and rates.

26. SOW- Your requirement states that maintenance shall cover calls from 6 am to 5pm. Is it acceptable to provide coverage during standard business hours of 8am -5pm ?

Maintenance requirement will be changed from 6 am to 5 pm and is now 7am to 5 pm.

27. Section 5 of the SOW indicates that Contractors “shall” allow lease and installment purchase options, while the Rate Card has a Y/N question as to whether a vendor intends to offer leasing. Is this option mandatory or voluntary?

Vendor has the option to provide lease, purchases or both.

28. On page 17, Section V.5 (d) Developed Works or Developed Materials and page 19, Section V.12 Contract-009.1d Ownership Rights (Oct 2006) It states that the Commonwealth has the authority to redistribute, modify and use submitted reports, data, material and software or modifications that is designed or developed and delivered to the Commonwealth as part of the contract. These two items indicate that all of our products are considered a work for hire. Can you clarify if these above two clauses assume ownership over our intellectual property, proprietary software and trade secrets? We typically do not sell our software to clients and only issue a license for the software. In the past, Commonwealth had language to cover this type of situation and that seems to have been removed from the terms and conditions associated with this solicitation. If the situation is a work for hire, should we be awarded a contract, can we obtain an amendment that allows us to retain ownership over our software and intellectual property and provides the Commonwealth of PA with a license to use the software for as long as it owns or leases/rents the equipment?

See response to Question 7.

29 We notice that there is no cap on damages in the terms and conditions 2 document. Would the Commonwealth entertain adding a waiver of consequential damages provision to the terms and conditions?

No.

30. Section V.36 (2) (b)- We currently post our policies and code of conduct on-line. Is an on-line posting of the policy sufficient to meet this requirement in Section V.36 (2)(b)? Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

Yes, so long as those policies are known to employees and are easily accessible to employees.

Type of Solicitation: Electronic Bid (SRM) - Review the Questions section of your solicitation response to ensure you have responded, as required, to any questions relevant to solicitation addenda issued subsequent to the initial advertisement of the solicitation opportunity.

Except as clarified and amended by this Addendum, the terms, conditions, specifications, and instructions of the solicitation and any previous solicitation addenda, remain as originally written.

Respectfully,

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