

## **APPENDIX A: STANDARD TERMS AND CONDITIONS**

By submitting a response to request for proposal, limited solicitation, or acceptance of a contract, the Vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

**HOLDBACKS:** Ten percent (10%) will be held back from each deliverable payment. One-half of the holdback (a total of 5% of each deliverable payment) will be paid upon completion of the statewide implementation. The remaining one-half (a total of 5% of each deliverable payment) will be paid upon completion of the one-year warranty agreement.

### **ACCEPTANCE/REJECTION OF PROPOSALS, OR LIMITED SOLICITATION**

**RESPONSES:** The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Proposals, and limited solicitation responses will be firm for 180 days, unless Stated otherwise in the text of the request for proposal, or limited solicitation.

**ACCESS AND RETENTION OF RECORDS:** In conjunction with 45 CFR 74.48(d) and 45 CFR 74.53 the Vendor agrees to provide the State, Legislative Auditor, or authorized agents, access to any records necessary to determine contract compliance. The Vendor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State or third party.

**ORDER OF PRECEDENCE:** In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a Vendor's response, the language contained in the State's original solicitation document will prevail. Should the State issue addenda to the original solicitation document, then said addenda, being more recently issued, would prevail against both the State's original solicitation document and the Vendor's proposal in the event of an inconsistency, ambiguity, or conflict.

Where there are discrepancies found between the solicitation document and the Contract, the ASSIST Implementation Contract terms and conditions will take precedence over those of this RFP, and the RFP terms and conditions will take precedence over those within the Vendor proposal.

**WORKMEN'S COMPENSATION INSURANCE:** The Vendor shall take out and maintain during the life of the Contract, Workmen's Compensation and Employers Liability Insurance (with a minimum liability limit of \$100,000) for all of Vendor's employees employed at the site of the project. In the event that any work is subcontracted, the Vendor will require each Subcontractor similarly to provide Workmen's Compensation Insurance for all of Subcontractor's employees employed at the site of the project, unless Subcontractor's employees are covered by the protection afforded by the Vendor.

**PUBLIC LIABILITY AND PROPERTY DAMAGE:** The Vendor will take out and maintain during the life of the Contract such Public Liability and Property Damage Insurance as will protect the Vendor and any Subcontractor performing work covered by the Contract, from claims for damage or personal injury, including accidental death, as well as from claims for property damages which may arise from operations under the Contract, whether such operations be by the Vendor or by any Subcontractor, or by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be as follows:

- **General Liability Insurance:** Bodily injury or death of any person in the minimum of one million dollars (\$1,000,000) for any one occurrence to be included on the comprehensive form of the policy; and
- **Automobile Liability Insurance:** Coverage against bodily injury or death of any person in the minimum of two hundred thousand dollars (\$200,000) per person and one million dollars (\$1,000,000) for any one occurrence and property damage in the amount of one hundred thousand dollars (\$100,000) for any one occurrence; and
- **Liability Insurance for Property Damages as well as First Party Fire Insurance:** Coverage must include contents coverage for all equipment and records maintained pursuant to the Contract, in the amount of five hundred thousand dollars (\$500,000).

**LIABILITY INSURANCE CERTIFICATES:** The Vendor will furnish the State, within ten days of contract signing, a certificate(s) evidencing that required insurance is in effect, for what amounts, and applicable policy numbers and expiration dates. The coverage as Stated will not be cancelled or changed until ten days after written notice of such termination or alteration has been sent by registered mail to the Department of Human Resources.

**HOLD HARMLESS/INDEMNIFICATION:** The Vendor agrees to hold the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Vendor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Vendor and/or its agents, employees, representatives, assigns, subcontractors, except for acts or omissions resulting from the sole negligence of the State, under this agreement.

**INSURANCE OF ASSUMED CONTRACTUAL RISK:** The Vendor may insure any portion of the risk assumed under the provisions of the Contract based upon the Vendor's ability (size and financial reserves included) to survive a series of adverse experiences, including withholding of payment by the State or imposition of penalties by the State. Express prior written approval from the State is required for any proposed program of self-insurance sought by the Vendor.

**PERIOD OF PERFORMANCE:** The effective date of the proposed contract will be the day the contract has been signed by the Vendor and all appropriate signature authorities of the State of Alabama. Notices of approval shall be furnished in writing by the Project Director. The start date for work under the Contract will be established as the date of full Contract execution as required by Alabama Law. The Contract shall expire at the completion of the warranty period,

which shall continue twelve (12) months beyond the date of the State's final acceptance of the system.

The State shall not be liable to the Vendor for any work performed by the Vendor prior to full execution of the Contract, and Vendor will expressly waive any and all claims for service performed in expectation of the Contract prior to its approval and execution.

**KEY PERSONNEL:** The Vendor will identify the key project personnel (as set out in Section 5.1.4.2 of this RFP) in the response to this RFP and will certify that these personnel are the persons to be actually assigned to the project. Key personnel commitments made by the Vendor shall not be modified or removed without prior written approval of the State unless due to resignation, military recall or activation, or death, in which case the State shall be notified as soon thereafter as is practicable. Replacements proposed by the Vendor for vacated key personnel positions must be presented to the State within 30 days of departure and are subject to the approval of the State. The State shall have the right to require the Vendor to remove any individual (whether or not key personnel) from assignment to this project, but only for cause and with reasonable notice. If the Vendor removes key personnel from the project without prior approval, penalties may be applied at a rate of \$25,000 per occurrence. The State may withhold payment of otherwise acceptable deliverables if the key positions as set out in Section 5.1.4.2 of this RFP remain vacant for more than 60 days.

**ACCESS TO STATE OF ALABAMA STAFF:** The Vendor's access to State of Alabama personnel will be as needed. However, the competency/sufficiency of State of Alabama staff will not be reason for relieving the Vendor of any responsibility for failing to meet required deadlines or for producing non-acceptable deliverables.

**PENALTY FOR LATE OR DEFICIENT DELIVERABLES:** The State shall impose the following penalty structure to assure the Contract's timely completion. If the Vendor fails to provide a deliverable within ten working days of established timelines, the State may begin to collect a penalty at a rate of \$2,000 per day and will continue to collect them until such deliverables are received from the Vendor and accepted by the State.

The State maintains the right to waive penalties at the State's sole discretion.

**LIMITED LIABILITY:** Damages incurred by the State as a result of the Vendor or any of its Subcontractors shall be limited to 150% of the total contract cost.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The Vendor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the State.

**AUTHORITY:** The following request for proposal, limited solicitation, or contract is issued under authority of Section 41-16-72 of the Alabama Code (Act 2001-956, 2001 3<sup>rd</sup> Sp. Sess., p 817, §1.) and 45 CFR 74.40 through 74.48.

**COMPLIANCE WITH LAWS:** The Vendor must, in performance of work under the contract, fully comply with all applicable Federal, State, or local laws, rules and regulations, including the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973 and Code of Federal Regulations 45 CFR 74.44 (b)(1) through (5). Any subletting or subcontracting by the Vendor subjects subcontractors to the same provision. The Vendor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the Vendor's expense.

**DEBARMENT:** The Vendor certifies, by submitting this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental State or agency. If the Vendor cannot certify this Statement, attach a written explanation for review by the State.

**DISABILITY ACCOMMODATIONS:** The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**FACSIMILE RESPONSES:** Facsimile responses will not be accepted for requested for proposals or limited solicitations.

**FAILURE TO HONOR PROPOSAL:** If a Vendor to whom a contract is awarded refuses to accept the award (contract) or, fails to deliver in accordance with the contract terms and conditions, the State may, in its discretion, suspend the Vendor for a period of time from entering into any contracts with the State.

**FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the Vendor's risk to assure delivery at the designated office by the designated time. Late proposals will not be

opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

**REGISTRATION WITH THE PURCHASING DIVISION:** Any business intending to transact business in Alabama must register with the Alabama Purchasing Division by completing the Vendor Disclosure Statement. A copy of the Vendor Disclosure Statement can be downloaded from the Purchasing website at [www.purchasing.state.al.us](http://www.purchasing.state.al.us).

**SEVERABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

**SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

**TERMINATION OF CONTRACT:** Unless otherwise stated, the State may, by written notice to the Vendor, terminate the contract in whole or in part at any time or any reason as determined by the State.

**UNAVAILABILITY OF FUNDING:** The State, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason.

**U.S. FUNDS:** All prices and payments must be in U.S. dollars.

**OWNERSHIP:** The Vendor agrees that in conjunction with 45 CFR 95.617(a, b), the State and ACF reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the products developed under this contract, and to authorize others to do so.

**PROTEST PROCEDURES:** Any Vendor filing a protest with regard to this procurement must lodge the protest within the timeframe prescribed in the Schedule of Events and strictly adhere to the procedures set out below:

1. Vendors protesting this procurement shall follow the procedure described herein. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Vendors under this procurement.
2. All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest with the specific and complete statements of the actions being protested. Protesting parties must demonstrate as part of their protest that they made every reasonable effort within the schedule and procedures of this RFP to resolve the basis of their protest during the acquisition process. A description of the relief or corrective action being requested must also be stated. All protests shall be addressed to the Planning/Procurement Specialist .
3. Only protests stipulating an issue of fact concerning a matter of bias, discrimination or conflict of interest, or non-compliance with procedures described in the RFP document or

Department policy shall be considered. Protests not based on procedural matters will not be considered.

4. In the event a protest may affect the interest of any Vendor, such Vendor(s) will be given an opportunity to submit its views and any relevant information on the protest to the Planning/Procurement Specialist.
5. Following notice of the apparent successful vendor, parties that have submitted a proposal are allowed three (3) business days to file a protest with the Department. Such protests may be regarding issues of award, but all issues regarding the structure of the RFP or anything described within the RFP must have been previously filed as described above. After three (3) business days, vendors waive the right to protest. Upon receipt of a protest, a review will be held by the Department to review the procurement process utilized. This is not a review of proposals submitted or the evaluation of scores received. The review is to ensure Department policy and procedures were followed, all requirements were met, and all Vendors were treated equally and fairly. The Department will then consider all the information available and render a written decision within ten (10) business days of receipt of the protest, unless additional time is required. If additional time is required, the protesting party will be notified of the delay. The filing of protest shall not prevent the Department from executing a contract with any other vendor.