

ADDENDUM NO. 4

February 22, 2023

RE: **Bid #056.23.B6**, RFP – Evaluation Service

FROM: **Purchasing Office
Howard County Public Schools
10910 Clarksville Pike
Ellicott City, MD 21042
(410) 313-6723
(410) 313-6789 fax**

TO: APPROVED PROSPECTIVE BIDDERS

This addendum forms a part of the Contract Documents and modifies the Original Bidding Documents as noted below. Acknowledge receipt of this Addendum in the space provided on the Bid Price Sheet/Form of Proposal. Failure to do so may subject the Bidder to disqualification. This Addendum consists of six (6) pages.

A. RFP REVISIONS

The above referenced solicitation is hereby amended as follows. Language being added is bolded with double underlines, like this: **bolded with double underlines**. Language being deleted has a double strikethrough like this: ~~double strikethrough~~.

1. SECTION II - TERMS AND CONDITIONS

2.6 **RESPONSIBILITY FOR CLAIMS AND LIABILITY**

The Offeror shall be responsible for any personnel injury, loss of life, and damage to, or loss of property arising from or related to Offeror's activities or those of its subcontractors, agents, or employees in connection with the goods and/or services required under this agreement. The Offeror shall indemnify and save harmless HCPSS, its elected officials, officers, agents and employees from and against all claims, suits, demands, judgments, expenses, actions, damages and costs of every name and description, including but not limited to **reasonable** attorney's fees arising out of or resulting from its negligent or wrongful performance or failure of performance of the services of the Offeror under this agreement or the activities conducted or required to be conducted by the Offeror under this agreement, including its subcontractors, agents, or employees.

2.7 **INSURANCE**

The Offeror has in force, or shall obtain, and will maintain insurance for the full term of the contract (including any executed renewals) in not less than the amounts specified and accordance with the requirements contained in APPENDIX H, INSURANCE REQUIREMENTS.

The awarded bidder shall reimburse, indemnify, and hold harmless the Board for all losses to the Board, including **reasonable** attorney's fees and cost resulting from negligence of the

contractor in the performance of this contract, and for all losses to the Board resulting from non-performance thereof, except those losses otherwise specifically excluded by the Board.

2.8 SUBCONTRACTING OR ASSIGNMENT

It is mutually understood and agreed that awarded bidder(s) shall not assign, transfer, convey, sublet, or otherwise dispose of their contract or their rights, title or interest, therein, or their power to execute such contract in whole or in part to any other person, firm, or corporation, without the previous written consent of the HCPSS' Purchasing Director, but in no case shall such consent relieve the contractor from their obligation, or change the terms of the contract or purchase order.

Assignment or subcontracting without the written approval of HCPSS will be cause for termination.

In the event that some or all of the services and/or goods under this solicitation are permitted to be subcontracted, the bidder shall identify all proposed subcontractor/sub-consultant who will be furnishing services and/or under the terms of this solicitation. Subcontractor/sub-consultants shall conform in all respects to the applicable provisions specified for the prime contractor and shall be subject to approval by HCPSS. If a subcontractor/sub-consultant is **reasonably** determined to be unacceptable by HCPSS, the contractor shall substitute an acceptable subcontractor/sub-consultant with no change in any contract unit prices or overall contract sum. If a firm fails, within a timely manner, to propose another subcontractor/sub-consultant to which HCPSS has no **reasonable** objection, HCPSS reserves the right to reject the proposal. The contractor will use only those subcontractor/sub-consultants approved by HCPSS. All subcontractor/sub-consultants shall comply with all federal and state laws and regulation which are applicable to the services covered by the subcontractor and shall include all terms and conditions set forth herein which apply with equal force to the subcontractor/sub-consultant, as if they were the contractor referred to herein. The contractor is responsible for the contract performance, whether or not subcontractor/sub-consultants are used.

2.11 REMEDIES AND TERMINATION

- A. Set-Off** - HCPSS may deduct from and set-off against any amounts due and payable to the awarded bidder(s) any **reasonable** back-charges or damages sustained by HCPSS by virtue of any breach of this agreement by the awarded bidder(s) to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the awarded bidder(s) of liability for additional construction and design or other **reasonable** costs, expenses, and damages resulting from a failure to satisfactorily perform the services. Nothing herein shall limit the liability of the awarded bidder(s) for **reasonable** damages and HCPSS may affirmatively collect **reasonable** damages from the awarded bidder(s).
- B. Termination for Cause** - If the awarded bidder(s) fails to fulfill its obligations under this contract properly and on time, otherwise violates any provision of the contract, HCPSS may terminate the contract by providing thirty (30) days' written notice to the awarded bidder(s). The notice shall specify the acts of omissions relied on as cause for termination. All finished or unfinished supplies and services provided by the awarded bidder(s), shall at HCPSS's option, become HCPSS property. HCPSS shall pay fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of **reasonable** damages caused by awarded bidder's breach.

2.18 OWNERSHIP AND USE

All materials, including but not limited to training documents, program and software, diagnostic equipment and energy information systems furnished by Offeror to HCPSS in connection to this Program shall remain the property of the School System. No materials will be returned to the Contractor at the end of the contract period including any that are copyrighted. HCPSS shall have the right to continue using all and any control equipment and document materials for as long as the School System desires to do so.

All documents, materials or data developed as a result of this contract shall be the property of HCPSS. Therefore, HCPSS has the right to use and reproduce any documents, materials, and data, including confidential information, used in or developed as a result of this contract. HCPSS may use this information for its own purposes or use it for reporting to state or federal agencies. The awarded bidder(s) must keep confidential and warrants **to the best of its professional information, knowledge or belief** that it has title to or right of use of all documents, material, or data used or developed in connection with this contract. **Offeror shall retain a royalty-free, nonexclusive, nontransferable, irrevocable license to reproduce, publish and prepare derivative works of the work product. Any and all intellectual property or other proprietary data owned by the Offeror prior to the effective date of the Agreement ("Pre-existing Information") shall remain the exclusive property of the Offeror even if such Pre-existing Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Offeror hereby provides HCPSS with a royalty-free, nonexclusive, nontransferable, irrevocable license to the Pre-existing Information.**

2.25 INDEMNIFICATION

The Awarded Bidder(s) shall be responsible for any loss, personal injury, expense, death and/or any other damage which may occur by reason of its acts, negligence, willfulness, or failure to perform any of its obligations under this agreement. Furthermore, any acts on the part of any agent, director, partner, servant or employee of the Contractor are deemed to be the Contractors acts.

Contractor agrees to indemnify and hold harmless the Howard County Public School System and its Board, employees, agents, representatives, and students from any claim, damage, liability, expense, and/or loss, including defense costs and **reasonable** attorney fees, arising directly or indirectly out of the Contractor's performance under this agreement. The indemnification obligation of the Contractor shall include but shall not be limited to injuries to individuals and property of individuals who are not parties to the contract. In addition, the indemnification obligation of the Contractor shall cover the acts or omissions of any permitted subcontractors hired by the Contractor. Furthermore, the indemnification obligation of the Contractor shall survive termination of the contract for any reason.

2.32 ANTI-BRIBERY

Awarded bidder(s) warrants **to the best of its professional information, knowledge or belief that** neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the federal government.

2. Appendix B - Student Data Sharing Agreement

L. Rights and License: All goods, products, materials, documents, reports, writings, video images, photographs, papers and intellectual property of any nature including software or computer images prepared by the VENDOR (or subcontractors) for the CLIENT or from CLIENT-provided material will not be disclosed to any other person or entity and remains the property of the CLIENT. **Any and all intellectual property or other proprietary data owned by the VENDOR prior to the effective date of the Agreement (“Pre-existing Information”) shall remain the exclusive property of the VENDOR even if such Pre-existing Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Offeror hereby provides CLIENT with a royalty-free, nonexclusive, nontransferable, irrevocable license to the Pre-existing Information.** All student-produced work remains the property of the CLIENT or that eligible student. The VENDOR has a limited, nonexclusive license to the data described herein solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give VENDOR any rights, implied or otherwise, to CLIENT Data, content, or intellectual property, except as expressly stated in the Agreement, including any right to sell or trade CLIENT Data. VENDOR will not use CLIENT’s NAME or CLIENT DATA in any publications, without prior and specific writing authorization from the CLIENT. No part of this clause will prevent the VENDOR from sharing its open educational resources developed for public distribution on its platform.

S. Limitation of Liability: VENDOR shall be liable for damages and **reasonable** attorneys' fees, where recoverable by law, which CLIENT may incur as a result of proven claims, suits and judgments against CLIENT which arise out of any breach of this Agreement of the VENDOR, its employees, servants, representatives or agents under the term of this Agreement.

3. SECTION V – TECHNICAL PROPOSAL FORMAT

J – Cost Proposal

In a separate email from the Technical Proposal, the Offeror shall submit in pdf the Price Proposal.

~~Under separate sealed cover from the Technical Proposal, the Offeror shall submit an original unbound copy and an electronic version in Microsoft Word or Microsoft Excel of the Price Proposal. The Price Proposal shall contain all price information in the format specified in the Section VII **Appendix C – Cost Proposal.**~~

B. QUESTIONS AND ANSWERS

1. There are inconsistencies in the instructions on how to submit the proposal. We intend to submit our Technical and Cost proposals electronically, via email. Can you please confirm that hard copy is not required in addition to the emailed PDF files?

Answer: Hard copy submission is optional.

2. Can you confirm that we are to address Section III Scope of Work: **3.1 Contractor Requirements in Tab E Offeror Response to RFP Requirements** and Section III Scope of Work: **3.2 Offeror Qualifications and Experience** is to be addressed in **Tab F Experience and Qualifications of Proposed Staff** (with the complete **Appendix A Qualification/Experience Affidavit**)?

Answer: That is correct.

3. Can you clarify if **Attachment B Student Data Sharing Agreement** is for informational purposes and only to be signed upon award of a contract?

Answer: This is correct.

4. Can resumes be submitted as an appendix or should we include within **Tab F**?

Answer: Please include resumes within Tab F.

5. In section J. Cost Proposal on page 26 of the RFP, Howard County asks bidders to “submit an original unbound copy and an electronic version in Microsoft Word or Microsoft Excel of the Price Proposal. The Price Proposal shall contain all price information in the format specified in the Section VII.” Section VII is not part of the RFP. Will Howard County please share it?

Answer: Please see revised change A.3.J above. Cost Proposal is Appendix C.

6. Appendix C – Information and Cost Proposal has a line for an hourly billing rate only. Where are bidders supposed to state their total price (hourly billing rate x the total number of hours) for the scope of work?

Answer: The hours is not listed as the number of hours will vary by project.

7. The RFP states that the evaluator must be registered to do business in Maryland. Will we be considered for award if our registration status is in progress.

Answer: An Offeror must be fully registered with the State of Maryland in order to receive a contract award.

8. One page 25, of the RFP. Sections A through F are aligned to TABS A through F. But then Section G is labeled Tab H, which then propagates forward such that all remaining tabs are misaligned their section Letter. In our response, should we match what is stated in the RFP (such that there will be no Tab G), or consecutively letter the Tabs?

Answer: Please match what is stated in the RFP.

9. On page 28 (appendix A. qualifications/experience affidavit), it asks for project performances in the past 5 years with at least one within the past 24 months. We are expecting an outcome of a recent bid this month; however, as a company we do not have past performances. Will this affect our rating? Are we eligible to respond to the bid?

Answer: Offerors may receive lower rating for no past performances. As stated in Appendix A- Qualifications/Experience Affidavit, HCPSS may consider relevant individual experience of key personnel when assessing the responsibility of the Offeror, therefore Offerors with no past experience/performance are eligible to bid.