

March 7, 2023

**RFP # 23-065 RRR
TITLE: ELECTRIC FENCING AND MONITORING
ADDENDUM #2**

1. Section 4 - Assignment. Our company will need the ability to assign the contract without consent to one of its affiliates, to a purchaser of all or substantially all of its business or to a lender as collateral security.

Response: Your request to change section 4 has been denied.
APS requires written consent of APS to assign any contract.

2. Section 5 – No Minimum Guarantee. APS will need to sign a purchase order or other contract that commits it to pay a minimum of five years' worth of service fees whether or not it decides to terminate the contract sooner.

Response: Your request to change Section 5 has been denied.
APS is a local public body that follows the State of New Mexico Procurement Code. . APS intends to have an agreement for one year with four, one-year extensions and it will not agree to pay a five-year contract if it does not choose to extend.

3. Section 7 – Pricing Escalation. The initial service fee should increase by 5% at the end of every year of the initial 5-year term.

Response: APS will consider a price escalation of an average of 5% and PPI for the previous year.

4. Section 9 – Non-Appropriation. Our company needs a commitment from APS that it has appropriated sufficient funds to pay for five years of services.

Response: Your request to change Section 9 has been denied.

APS is a local public body that follows State of New Mexico procurement code. This contract are limited to renewal each fiscal year in which funds are appropriated.



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Charlotte Gensler, CPO

EXECUTIVE DIRECTOR OF PROCUREMENT & ACCOUNTS PAYABLE

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5. Section 12.B. – Termination by APS. Our company should have the right to cure a breach during the 10 days between notice thereof and termination. In connection with any termination prior to the fifth anniversary of the date the fence is installed, APS shall be required to pay an Early Termination Fee in the amount of the service fees required to be paid for the remainder of the five-year initial term.

Response: Your request to change 12.B has been denied. APS will not pay for early termination fees.

6. Section 13 – Indemnification. The indemnification provision should be replaced with the following: (requested changes have been omitted)

Response: Your required changes to Section 13 have been denied.

Additionally:

APS requires that contractor guarantee a minimum of service performance. Offerors should include in their proposals what their performance guarantees for the system they are proposing. Offerors should also include a reasonable time from the time a request entered for service technician for APS to the Contractors response to the request.

6. Section 15 Audit. Given the nature of the services provided under this Agreement, APS should not have an audit right. There is nothing in our records that has any impact on APS' obligation to pay us for our services.

Response: Your request to change Section 15 audit has been denied.

APS is a local public body that follows the State of New Mexico Procurement Code, which is subject to audits.

7. The terms and conditions need to clearly state that our company will own the fence at all times and is entitled to remove it after the termination of the contract for any reason.

Response: APS accepts that any vendor may remove at their expense any equipment not owned by APS that is owned by the contractor. The contractor will be responsible to repairing any damage to APS property at their own expense.



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Additional Terms and Conditions:

1. Section 2 – Termination for Cause and Convenience. See comments above about termination provisions.

ACKNOWLEDGE ADDENDUM WITH RFP SUBMITTAL:

Addendums not signed and returned may cause RFP to be non-responsive and may be rejected.

COMPANY/FIRM NAME

SIGNATURE

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