Accelerate Progress for Students

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SUPERINTENDENT

DATE: 12/20/2024
RFP NUMBER: 25-044 SC
RFP TITLE: Instructional Materials and Digital Curriculum
ADDENDUM NUMBER: 3

See questions and answers submitted by due date and time.

27. Throughout the Request for Proposal documents, some of the refences to "days" specifically refer to calendar days, while most others do not specify whether the mean business days or calendar days.

A. If no reference is made to calendar vs business days, please utilize calendar days for the purpose of this RFP.

28. In the Terms and Conditions section, Section 12.A regarding the Contractor's rights to terminate the services contract between APS and the Contractor ("Contract") give the Contractor only the right to terminate the Contract for cause. While we do not anticipate there being any problems between APS and Contractor, it would be beneficial for the Contractor to have the right to unilaterally terminate the Contract without cause, at least during the first year of the contract term while each party determines whether the arrangement is a good fit. Would it be acceptable to modify Section 12.A to permit the Contractor to terminate the Contract without cause, perhaps on at least thirty (30) or sixty (60) calendar days' written notice, or to make APS' right to terminate for convenience under Section 12.B .2 reciprocal?

A. APS does not allow termination for convenience from vendors for this procurement.

29. Please confirm whether the Automotive Liability insurance requirements in Section 14 of the Terms and Conditions applies where the Contractor has no physical presence in New Mexico and provides its services (including training) online.

A. This is our standard insurance policy. APS may review insurance requirements during negotiations to determine what insurance requirements will be necessary.

30. Regarding the Additional Terms and Conditions:

   A. Section 3's non-discrimination requirements do not take into account the recognized rights of religiously affiliated educational institutions in employment-related

matters. As a religiously affiliated university, we are committed to diversity, equity, and inclusion in the workplace, and promoting the recruitment, training, and retention of underrepresented groups. We also are committed to implementing these efforts in ways that are consistent with, and do not sacrifice, our religious beliefs and practices, as permitted under federal and state law.

In establishing extensive anti-discrimination requirements and practices, Section 3 does not consider the recognized rights of religiously affiliated institutions, particularly with respect to the religious exemptions granted by law concerning many of Section 3's requirements and practices. Accordingly, we suggest that Section 3 be revised to simply state: "The Contractor will comply with all applicable federal and state anti-discrimination laws." This seems to be the simplest way of establishing the Contractor's duty to not engage in unlawful discrimination while respecting the employment-related rights of religiously affiliated educational institutions.

B. Please confirm which parts of the rest of the Additional Terms and Conditions apply to the RFP in light of the following:

1. 2 CFR Part 200, Appendix II applies to contracts made by a non-federal entity under a federal award. Is the RFP being made under a federal award?

2. In Section 1, the provision regarding APS' "right to institute legal proceedings in a court of competent jurisdiction seeking monetary damages, court costs and litigation expenses, as applicable" contradict the mandatory arbitration provisions

3. In Section 2, the provisions regarding the APS' rights to terminate the Contract for cause and convenience differ from Section 12.B of the Terms and Conditions:

- Section 2's grounds for for-cause termination appear to be broader than under Section 12.B.1.a;

- Section 2 refers to the Contractor's "reasonable opportunity to cure" its noncompliance before the Contract can be terminated for cause, while Section 12.B.1.b does not mention the Contractor's ability to cure;

- Section 2 allows APS to "immediately" terminate the Contract for convenience, while Section 12.2.a. requires APS to give at least 10 days' advance notice of termination.

- Section 2 states that if APS terminates the Contract for convenience, "[t]he compensation due the Contractor . . . shall be a reasonable amount" based on such factors as "the percentage of work or services performed by the Contractor and accepted by [APS] as of th e date of termination, the contract price and any unit prices specified in the contract, as applicable." However, Section 12.B.2b requires that the Contractor be paid (i) "for completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination"; and (ii) "for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract document in connection with uncompleted work."

4. Section 4 incorporates the requirements of the Davis-Bacon Act, which applies to contracts for the construction, alteration, or repair of public buildings or works that are federally funded or assisted and exceed $2,000.

5. Section 5 incorporates the requirements of the Copland Anti-Kickback Act, which prohibits contractors and subcontractors from inducing employees to give up any part of their compensation on federally funded construction projects.

6. Section 6 incorporates the requirements of the Contract Work Hours and Safety Standards Act, which covers hours and safety standards in federal service contracts and federally assisted construction contracts worth over $100,000.

7. Section 7 incorporates the requirements of 37 CFR Part 401, which concerns inventions made by nonprofits and small business firms working on research activities sponsored by federal government grants, contracts, and cooperative agreements.

8. Section 8 incorporates the requirements of the Clean Air Act and the Federal Water Pollution Control Act, which do not appear to apply to the types of education-related services to be provided pursuant to the RFP;
   Section 8 will only apply where applicable.

9. Section 9 incorporates the requirements of 2 CFR Part 180 and 2 CFR Part 3000, which establish rules and guidance for federal agencies on how to implement government wide debarment and suspension systems for non-procurement programs and activities;

10. Section 10 incorporates the requirements of the Solid Waste Disposal Act, which concerns the procurement of items (goods) and requires that they be “composed of the highest percentage of recovered materials practicable” and does not appear to apply to the education-related services to be provided pursuant to the RFP;

11. Section 11 requires the Contractor to give the Federal Emergency Management Agency (“FEMA”), the U.S. Comptroller General, and their designees access to the Contractor’s records, even though these federal parties do not appear to have any relation to the RFP;

12. Section 12 prohibits the use of the Department of Homeland Security’s (“DHS”) logos, crests, etc., even though the DHS does not appear to have any relation to the RFP;

13. Section 13 requires the Contractor to comply with FEMA policies, procedures and directive, even though FEMA does not appear to have any relation to the RFP;

14. Section 14 incorporates 31 U.S.C. Chap 38, which concerns administrative remedies for false claims made to federal agencies, which do not appear to have any involvement in the RFP.

Answer for Question 30 (Section A and B).

This procurement does not anticipate Federal funding, ADDITIONAL TERMS AND CONDITIONS FOR COMPLIANCE WITH 2 C.F.R. PART 200, APPENDIX II. Shall not apply unless funding source changes. Where there is a contradiction between applicable terms or conditions, the more restrictive term and or condition will apply.

**** Please note: Albuquerque Public School will be closed for holidays from 12-23-2024 to 1-1- 2025.**

ACKNOWLEDGE ADDENDUM WITH SUBMITTED PROPOSAL:
Addenda not signed and returned may consider the RFP non-responsive and may be rejected.

_____
COMPANY/FIRM NAME

_____
SIGNATURE

_____
DATE