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Executive Director

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ADDENDUM NO. 1
SOLICITATION NO.: FDVA-ITB-20-003B
SOLICITATION TITLE: FDVA WEB-HOSTED PHARMACY SYSTEM

ISSUE DATE: SEPTEMBER 11, 2019

The following FDVA responses provide clarifications, as well as revisions to the requirements of the subject solicitation (No. FDVA-ITB-20-003B):

1. Vendor Question:

Timeline. In our view the proposed timeline is challenging but can be accomplished, provided FDVA supplies in full, and in a timely way, the resources identified in the project plan. It is our experience that projects such as this fail to meet their deadlines entirely due to lack of adequate (either in quantity or quality) resources on the part of the customer. Will you agree to add a clause to the Contract which provides a covenant by FDVA to provide the resources identified in the project plan in the Proposal in the times so identified and to ensure that all individuals who provide such resources on behalf of FDVA are fully trained, with Contractor to have the right to require replacement of any FDVA personnel for cause which shall mean lack of technical or training qualifications or quality of work. Further, will FDVA agree to amend the Contract to provide:

- a. that failure to provide supply those resources constitutes excusable delay on the part of the Contractor and that delay may exceed the period of the delay in providing those resources, due to scheduling issues; and
- b. that the Contractor shall not be obligated to provide FDVA with notice of delay caused by FDVAs' failure to supply such resources?

FDVA Response: No. FDVA will provide resources in accordance with the solicitation; solicitation language remains unchanged.

2. Vendor Question:

Payment. We note paragraph 15 of PUR 1000. Will FDVA amend the Agreement to specify that Contractor shall be entitled to suspend the provision of services, including the provision of pharmacy services pursuant to the SaaS application, on failure to pay or delay in payment by more than 15 days after notice is given of such failure?

FDVA Response: No. Solicitation language remains unchanged.

3. Vendor Question:

Newest Technologies. The phrase "utilizing the newest technologies" is inherently ambiguous. We will propose a solution which will identify the technology used in it but will not commit that this constitutes the "newest" technology. FDVA will need to assess its view of the technology as it reviews the Proposal. Will FDVA delete the phrase "utilizing the newest technologies" where it appears in the Contract?

FDVA Response: No, the purpose of this statement is to ensure FDVA is not acquiring a "legacy solution" that will be invalid within a year or two. Solicitation language remains unchanged.

4. Vendor Question:

Acceptance. A number of places in the Contract refer to acceptance testing being “to the full satisfaction and acceptance of FDVA and any applicable authorities having jurisdiction” (see, for example, the preamble and Paragraph 4.1.1.), “satisfactory performance evaluations as determined solely by FDVA” (see 4.1.1.), and “as determined solely by FDVA” (see 6.1.1.) and other similar references. We provide services that conform to the objective requirements of our Proposal not to a subjective evaluation by a FDVA. Will FDVA agree to change these references, and any other of similar import, to be references to “the service meeting the requirements of the Proposal and any other specific requirements of the Contract”.

FDVA Response: No. Solicitation language remains unchanged.

5. Vendor Question:

Support. Will FDVA agree to the incorporation into the Contract of a provision that support services will be provided in accordance with Contractor’s standard support services terms from time to time, and that the support terms will override any inconsistent provisions elsewhere in the Agreement? A copy of our existing terms can be found at <https://drive.google.com/file/d/0B9nkSV9zjTKjQjdyT2VvQzhNaGs>.

FDVA Response: No. Solicitation language remains unchanged.

6. Vendor Question:

Change to Laws. The Agreement requires that the Contractor comply with local laws that could bear on the provision of services under the Contract documents. Will FDVA agree that Contractor is obligated to ensure that the software conforms to those laws only if FDVA gives notice to the Contractor of any changes to those laws at least 60 days in advance of the change? Contractor will be responsible to pay for changes which are implemented generally in the United States; FDVA will pay the Contractor its reasonable fees for any changes to the Contractor’s software that are required to comply with those legal changes.

FDVA Response: No. The successful contractor shall have an attorney or compliance officer that will be responsible for this. Solicitation language remains unchanged.

7. Vendor Question:

Right to Inspect and Audit. Our books and records contain records on our arrangements with other customers, which are confidential to those customers. Will FDVA agree to change the words “which FDVA and its duly authorized representatives deem relevant to the purposes of this Agreement” in the fifth and sixth lines of 14.1.1. to read “which are required for compliance with the said constitution and statute, provided for greater certainty that nothing authorizes the examination of any information which is confidential to another customer of the Contractor”.

FDVA Response: No. Solicitation language remains unchanged.

8. Vendor Question:

Deliverables. In our view the description of the deliverables in Paragraph 5.1.1. is inaccurate, as it does not properly describe deliverables under a SaaS agreement. Will FDVA agree to change Paragraph 5.1.1. to read “The deliverables, as defined in the Agreement, are the provision to FDVA, for the Term, of access to the Web-Hosted Pharmacy System described in the Proposal, and the support services, installation and training described in the Proposal”?

FDVA Response: 5.1.1 The deliverables, as defined in the Agreement, are the installation of a new, secure and fully operational web-hosted pharmacy system (including data conversion and migration, implementation, and training) and subsequent monthly system access (including subscription, technical support, maintenance, and training).

9. Vendor Question:

Role of Service. We believe it important that users of the service understand the role of the service in pharmacy operations. Will FDVA agree to the addition of the following clause in the Agreement:

“Medical Diagnosis and Treatment. FDVA acknowledges that the Service provides information based on the data entered, but that it does not make final clinical or other decisions and is not a substitute for competent, properly trained and knowledgeable staff who bring professional judgment and analysis to the information presented by the Service. FDVA acknowledges the desirability of establishing and maintaining reasonable quality control procedures to ensure the accuracy of input. FDVA further acknowledges that its employees will be obliged to consider for reasonableness and accuracy the information presented by the Service in light of other information available to them, and will be able to disregard information produced by the Service in the performance of their functions for FDVA. In particular, FDVA acknowledges that:

- (i) the appropriateness of medications produced from the order entry function of the Service must be the subject of professional judgment, including, without limitation, the appropriateness of the medication given the patient's age, allergies and other conditions or incompatibilities, and that the person exercising that judgment must be aware that the information entered into the Service may not be complete, accurate, or appropriate; and
- (ii) medication dispensing advice provided through the Service must be checked for correctness against the original order at order entry time or otherwise appropriately assessed for correctness and for appropriateness whether or not there has been a change in conditions; and
- (iii) financial information and management information produced by the Service must be tested for reasonableness and accuracy before any actions are taken or reliance placed on it.

FDVA agrees to review this Section with all of the Permitted Users, to ensure that they are advised of the role of the Service in relation to the exercise of their duties for FDVA.”

FDVA Response: The above language, as specified in Vendor Question No. 9, is now incorporated into the solicitation as written.

10. Vendor Question:

Protection of IP. We are of the view that it is important that FDVA acknowledge the value of the intellectual property in our service and agree to protect it to the extent reasonable. Will FDVA agree to add the following to the Agreement in that regard?

~~“Viruses. FDVA shall not access, store, distribute or transmit any Viruses, or any unlawful material, during the course of its use of the Service.~~

Use of Service. FDVA shall not:

- (i) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (a) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (ii) access all or any part of the Service or Documentation in order to build a product or service which competes with the Service and/or the Documentation; or

- (iii) use the Service and/or Documentation to provide services to third parties; or
- (iv) attempt to obtain, or assist third parties in obtaining, access to the Service and/or Documentation, other than as provided under this clause 3.

Unauthorized Use. FDVA shall use all reasonable endeavors to prevent any unauthorized access to, or use of, the Service and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify the Contractor.”

FDVA Response: The above language, as specified in Vendor Question No. 10, is now incorporated into the solicitation as written, with the exception of the deleted (strike through) language.

11. Vendor Question:

Limitation of Liability. It is unclear which limitation of liability would apply to this Contract and we would not agree to a limitation of liability equal to two times the entire amount which might ever be paid under the Contract. Would FDVA agree that the first sentence of the first paragraph in paragraph 20 of PUR 1000 be changed to read “Limitation of Liability. For all claims against the Contractor under any Contract or purchase order, and regardless of the basis on which the claim is made, the Contractor’s liability under the Contract or purchase order, taken as a whole for the entire Contract and all purchase orders issued under it, shall be limited to two times the annual services fees payable by FDVA to the Contractor for the then current calendar year, and for the 2019 calendar year shall be limited to the total installation fees payable by FDVA to the Contractor in that year”?

FDVA Response: No. Solicitation language remains unchanged.

Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Any protest concerning this FDVA decision must be timely received by FDVA Agency Clerk at: Florida Department of Veterans’ Affairs, Office of the General Counsel – Agency Clerk, The Capitol, Suite 2105, 400 South Monroe Street, Tallahassee, Florida 32399-0001.

REMINDER: Make sure to fully execute and include Solicitation No. FDVA-ITB-20-003B Form “3” Addendum Acknowledgment with complete bid submission. Failure to do so may result in Respondent being considered nonresponsive. Solicitation No. FDVA-ITB-20-003B is modified to the extent specifically amended by this Addendum No. 1. All other terms, conditions, and provisions of Solicitation No. FDVA-ITB-20-003B shall remain unchanged and in full force and effect.

As specified in Solicitation No. FDVA-ITB-20-003B, Respondent response shall be delivered:

- **Prior To:**

3:00 pm (local time), on Tuesday, September 24, 2019

- **Directly To:**

Tim Shaw, FCCM
Contracting Administrator
Florida Department of Veterans’ Affairs
Mary Grizzle State Office Building
11351 Ulmerton Road, Suite 311-K
Largo, FL 33778-1630

Addendum No. 1 Issued By:

Tim Shaw, FCCM
Contracting Administrator
Florida Department of Veterans’ Affairs