

Solicitation PRSS11113

EFT and Enhancement Software License, Custom Programming and Consultancy Service

State of Utah



State of Utah

Bid PRSS11113
EFT and Enhancement Software License, Custom Programming
and Consultancy Service

Bid Number **PRSS11113**
Bid Title **EFT and Enhancement Software License, Custom Programming and Consultancy Service**

Bid Start Date **Feb 3, 2011 3:30:44 PM MST**
Bid End Date **Feb 10, 2011 4:00:00 PM MST**

Bid Contact **Pamela B Rugg**
Purchasing Agent
State of Utah
prugg@utah.gov

Contract Duration **5 years**
Contract Renewal **2 annual renewals**
Prices Good for **See Specifications**

Bid Comments **No bids will be accepted. All comments are to be sent to prugg@utah.gov**

Item Response Form

Item **PRSS11113--01 - EFT and Enhancement Software License, Custom Programming and Consultancy Service**
Quantity **1 job**
Unit Price
Delivery Location **State of Utah**
No Location Specified

Qty 1

Description

No bids will be accepted. All comments are to be sent to prugg@utah.gov



State of Utah

Request for Information

Legal Company Name (include d/b/a if applicable)			
Company Address	City	State	Zip Code
Company Contact Person			
Telephone Number (include area code)	Fax Number (include area code)		
Company's Internet Web Address	Email Address		

REQUEST FOR INFORMATION – INSTRUCTIONS AND GENERAL PROVISIONS

1. SUBMITTING THE RESPONSE: (a) The Utah Division of Purchasing and General Services (DIVISION) prefers that requested information to be submitted electronically. Electronic responses may be submitted through a secure mailbox at BidSync (formerly RFP Depot, LLC)(www.bidsync.com) until the date and time as indicated in this document. It is the sole responsibility of the supplier to ensure their response reaches BidSync before the closing date and time. There is no cost to the supplier to submit Utah's electronic responses via BidSync. (b) Electronic response may require the uploading of electronic attachments. The submission of attachments containing embedded documents is prohibited. All documents should be attached as separate files. (c) If the supplier chooses to submit the response directly to the DIVISION in writing: The response must be delivered to the Utah Division of Purchasing, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061 or faxed to (801) 538-3882 by the due date and time. The "Solicitation Number" and "Due Date" must appear on the outside of the envelope or on the fax cover page. (d) The DIVISION will consider faxed responses. Faxed responses are submitted at the sole option and risk of the supplier. Access to the DIVISION fax machine is on a "first come first served" basis and the DIVISION does not guarantee the supplier's access to the machine at any particular time.

2. QUOTATION PREPARATION: This solicitation will not result in a contract award. The purpose of the request is to gather information that may, or may not be used in a future Request for Proposal or Invitation for Bids.

3. SOLICITATION AMENDMENTS: All changes to this solicitation will be made through written addendum only. Answers to questions submitted through BidSync shall be considered addenda to the solicitation documents. Bidders are cautioned not to consider verbal modifications.

4. PROTECTED INFORMATION: Suppliers are required to mark any specific information contained in their response which they are claiming as protected and not to be disclosed to the public or used for purposes other than the evaluation of the response. Each request for non-disclosure must be made by completing the "Confidentiality Claim Form" located at <http://www.purchasing.utah.gov/contract/documents/confidentialityclaimform.doc> with a specific justification explaining why the information is to be protected. All material becomes the property of the DIVISION and may be returned only at the DIVISION's option. Responses submitted may to be reviewed and evaluated by any persons at the discretion of the DIVISION.

5. SAMPLES: Samples of item(s) specified in the RFI, when required by DIVISION, must be furnished free of charge to DIVISION. Any items not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the supplier's expense.

6. GOVERNING LAWS AND REGULATIONS: All State purchases are subject to the Utah Procurement Code, Title 63 Chapter 56 U.C.A. 1953, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board. These are available on the Internet at www.purchasing.utah.gov. By submitting a bid or offer, the bidder/offeror warrants that the bidder/offeror and any and all supplies, services equipment, and construction purchased by the State shall comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.

(Revision date: 13 JULY 2010 – RFI Instructions)

Notice of Proposed Sole Source Procurement

State of Utah
Division of Purchasing
3150 State Office Building, Capitol Hill
Salt Lake City, UT 84114-1061
Telephone (801) 538-3026
Fax (801) 538-3882
www.purchasing.utah.gov



Notice Number: **PRSS11113**

Date Posted: February 3, 2011

Due Date for
Comments: February 10, 2011 3:00PM

The Utah Procurement Code provides that a procurement may be made without competition when there is only one source for the required supply or service. Therefore, a "sole source" procurement is justified if there is only one product or service that can reasonably meet the state's need and there is only one vendor who can provide the product or service.

The Division of Purchasing has received a request to make the following sole source procurement.

Requesting Agency: **Utah State Department of Technology Services**

Product and/or service to be purchased: **EFT and Enhancement Software Licenses, custom programming and consultancy services**

Proposed Sole Source Supplier: **RI-2 LLC**

Sole Source Justification: **A new contract for 5 years and 2 2-year renewals with RI-2 LLC covers only those elements that SAP will no longer code. The existing POS & EFT software is provided via a Sole Source contract with SAP. SAP also provides ongoing maintenance and support for the POS software. Future EFT software, support and enhancement must be obtained from a SAP approved business partner.**

If for any reason any party does not agree with the proposed sole source procurement, please email **Pam Rugg** in the Utah Division of Purchasing at **prugg@utah.gov** prior to the "Due Date for Comments" indicated above.

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, equipment, and construction furnished under this contract will comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation for Bids nor to the Multi-Step Process.

5.1 Status Verification System

1. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with UCA Section 63G-11-103.
2. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with Section 63G-11-103 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
3. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.
4. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-11-103.

5.2 Indemnity Clause for Status Verification System

1. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
2. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
7. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
8. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the acts or negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence. The parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.
9. **EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age;

- and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
10. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
 11. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.
 12. **DEBARMENT:** The Contractor certifies 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 department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
 13. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
 14. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
 15. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is 11736850-010-STC, located at <http://purchasing.utah.gov/contract/documents/salestaxexemptionformsigned.pdf>. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
 16. **WARRANTY:** The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the Contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The Contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
 17. **PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, and may be available for distribution. Contractor gives the State express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor also agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
 18. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
 19. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.

20. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. All payments to the Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card).
21. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
22. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
23. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
24. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
25. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).
26. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. Attachment A: State of Utah Standard Terms and Conditions; 2. State of Utah Contract Signature Page(s); 3. State Additional Terms and Conditions; 4. Contractor Terms and Conditions.
27. **ENTIRE AGREEMENT:** This Agreement, including all Attachments, and documents incorporated hereunder, and the related State Solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

(Revision date: 2 Aug 2010)

ATTACHMENT C**UTAH DEPARTMENT OF TECHNOLOGY SERVICES (DTS)****AND INFORMATION SECURITY****DEPARTMENT STANDARD TERMS AND CONDITIONS**

1. **NOTICE:** Wherever under this contract one party is required to give formal notice to the other, such notice shall be deemed given upon delivery, if delivered by hand (in which case a signed receipt shall be obtained), or three days after date sent if sent by registered or certified mail, return receipt requested. Formal Notices to the Contractor and to the State shall be addressed as follows:

Contractor:	State of Utah:
Contact Person and Contractor Address as	Contracts Manager
Indicated on Signed State of Utah	Department of Technology Services
Contract (Cover) Page of this Contract	1 State Office Building, 6 th Floor
	Salt Lake City, Utah 84114

2. **WAIVER:** The waiver by either party of any provision, term, covenant or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant or condition of this Contract.

3. **REDUCTION OF FUNDS:** (N/A to Open-Ended Contracts): The maximum amount authorized by this contract shall be reduced or contract terminated if required by Federal/State law, regulation, or action or there is significant under utilization of funds, provided the Contractor shall be reimbursed for all services performed in accordance with this contract prior to date of reduction or termination. If funds are reduced, there will be a comparable reduction in amount of services to be given by the Contractor. The Department will give the Contractor thirty (30) days notice of reduction.

4. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State the need to suspend the work, but not terminate the contract, this will be done by written NOTICE, which meets the NOTICE requirements of this contract. The work may be reinstated upon advance written NOTICE from the State, to recommence as mutually agreed between the parties. The State understands any such suspension of the work may affect both the time of performance and price to complete the work when reinstated.

5. **WORKERS' COMPENSATION:** The Contractor shall take out, furnish proof, and maintain during the life of this contract workers' compensation insurance for all its employees employed at the site of the project in Utah, and in the event any work is subcontracted, the Contractor agrees to require any of its Subcontractors to similarly provide and furnish proof of workers' compensation insurance for all the latter's employees employed on any site of the project in Utah.

6. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** In addition to the provisions of State T&C Clause 5, the Contractor certifies, through the execution of the contract, that no person in the State's employment, directly or through subcontract, will receive any private financial interest, direct or indirect, in the contract. The CONTRACTOR will not hire or subcontract with any person having such conflicting interest.

7. **THIRD PARTY CLAIMS INDEMNIFICATION:** Contractor agrees to indemnify the State against third party claims for infringement for materials created and furnished by Contractor, for claims for death, bodily injury, or tangible property damage.

8. **INVOICES:** Each invoice must contain a unique invoice number and a customer account number, detail of work completed (e.g. time x rate) on the contract. The State reserves the right to correct invoices not in accordance with this Contract.

9. **PAYMENT BY THE STATE / INTEREST ON LATE PAYMENTS:** Payments to the Contractor shall generally be made within thirty (30) days of receipt by the State of an accurate invoice and receipt in Finance of the responsible State Project Manager's certification of acceptable completion of work, presuming receipt by the State of a correct, detailed invoice from the Contractor. Utah's Prompt Payment Act, UCA §15-6-2 requires payment within 60 days after receipt of the invoice covering the delivered items or services. If the State's payment is more than 60 days late, interest shall accrue and be charged on payments overdue starting on the 61st day that the State's payment may be overdue, until paid, unless this is a disputed payment. UCA §15-6-3 allows late payment interest at 2% above the rate paid by the IRS on refund claims.

The State's payment of invoices shall be sent via mail, or may be paid electronically at the discretion of the State.

10. **EMPLOYMENT PRACTICES OF CONTRACTOR:** In addition to Employment Practices Clause requirements stated in State T&C Clause 8, the following equal opportunity provisions apply to this contract. The Contractor agrees to abide by the provisions of:

Section 188 of the Workforce Investment Act of 1998 (WIA) (29 USC 2938), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against discrimination to beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I-financially assisted program or activity; and

Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.), as amended, which prohibits discrimination on the basis of sex in education programs.

11. **COPYRIGHT:** The contractor agrees that any and all Deliverables prepared for the Department, to the extent to which it is eligible under copyright law in any country, shall be deemed a work made for hire, such that all rights, title and interest in the work and Deliverables reside with the Department. The Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal or State Government purposes, such software, modifications and documentation. To the extent any work or Deliverable is deemed not to be, for any reason whatsoever, work made for hire, Contractor agrees to assign and hereby assigns all right title and interest, including but not limited to copyright patent, trademark and trade secret, to such work and Deliverables, and all extensions and renewals thereof, to Department. Contractor further agrees to provide all assistance reasonably requested by Department in the establishment, preservation, and enforcement of its rights in such work and Deliverables, without any additional compensation to Contractor. Contractor agrees to and hereby, to the extent permissible, waives all legal and equitable rights relating to the work and Deliverables, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications.

12. **LIABILITY INSURANCE:** The Contractor agrees to provide and to maintain during the performance of the contract, at its sole expense, a policy of liability insurance. The limits of the policy shall be no less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate. The Contractor further agrees to provide the Contracts Manager for the Department of Technology Services with proof of adequate insurance coverage, in accordance with the NOTICE provisions of this contract.

It shall be the responsibility of the Contractor to require any of their Subcontractor(s) to secure the same insurance coverage as prescribed herein for the Contractor. Evidence of the subcontractor's insurance coverage shall also be provided to the Contracts Manager for the Department of Technology Services, also in compliance with the NOTICE provisions of this contract.

13. CITING DEPARTMENT IN ADVERTISING / PUBLICITY: The Contractor agrees to give credit to the Department of Technology Services (DTS) and the Utah Department of Workforce Services for funding in all written and verbal advertising or discussion of this program such as brochures, flyers, informational materials, talk shows, etc. All formal advertising or public information programs will be coordinated with the DTS Public Information Officer. Any publicity given to the project or services provided herein shall identify the Department of Technology Services as sponsoring agency and shall not be released without prior written approval by the DTS Project Manager.

14. STATE AGENCY WEB SITE BRANDING: The Contractor agrees to allow the Department of Technology Services to utilize its DTS logo, or a newer version if replaced in the future, on websites produced under terms of this contract. Contractor further agrees to allow state agencies that DTS is ultimately providing consulting services for, such as DEPARTMENT, Workforce Services, Tax Commission, etc. to also utilize their own Department web site branding and logo, if requested by that state agency.

15. DRUG-FREE WORKPLACE: The Contractor understands that the Department provides a drug-free workplace in accordance with all federal and state laws and regulations. The Contractor agrees to abide by the Department's drug-free workplace policies while on State of Utah premises and the Department of Technology Services will provide the Contractor with a copy of these written "drug-free workplace policies".

16. OVERPAYMENT / UNDERPAYMENT AUDIT EXCEPTIONS / ADJUSTMENTS / DISALLOWANCES: The Contractor agrees that if during or subsequent to the contract performance, a CPA audit, or a State agency audit determines that payments were incorrectly reported or paid, the Department may adjust the payments. In contracts, which include a cost reimbursement budget, Contractor expenditures to be eligible for reimbursement must be adequately documented. The Contractor will, upon written request, immediately refund any overpayments determined by audit and for which payment has been made to the contractor, to the Department. The Contractor further agrees that the Department shall have the right to withhold any or all-subsequent payments under this or other contracts that the Contractor may have with the State until recoupment of overpayment is made. The Department agrees to promptly notify the Contractor in the event any underpayments on this contract are discovered.

17. OWNERSHIP, PROTECTION, AND USE OF STATE OF UTAH, STATE OF UTAH CLIENT, OR STATE OF UTAH EMPLOYEE RECORDS: Except for confidential medical records held by direct care providers, the State shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. The Contractor may not use, except in meeting its obligations under this contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the State. The improper use or disclosure by any party of any information concerning a State of Utah client, or a State of Utah employee for any purpose not directly connected with the administration of the Department, or the Contractor's responsibilities with respect to services purchased under this agreement, is prohibited except on written consent of the state agency employee, state agency client, their attorney, or their responsible parent or guardian. The Contractor will be required to sign a Confidential Information Certification form in situations where they will be given access to confidential computerized records. The Contractor agrees to maintain the confidentiality of records it holds as agent for the State as required by GRAMA, or other applicable federal or state law. The State of Utah shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by the Contractor under the Contract. The Contractor, and any subcontractors under its control, expressly agrees not to use confidential client, or confidential federal, state, or local government data furnished for purposes of contract

performance, without prior written permission from the Project Manager for the Department of Technology Services, and appropriate officials of the State Agency.

18. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES: The improper use or disclosure by any party of protected internal Federal or State business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by the Contractor, Contractor's employees, or their Subcontractors, unless prior written consent has been obtained in advance from the Project Manager for the Department of Technology Services.

19. OWNERSHIP, PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION: All documents and data pertaining to work required by this contract will be the property of the STATE and must be delivered to the STATE within 10 working days after termination or completion of the contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. Any State data that may be returned under provisions of this clause must either be in the format as originally provided, or in a format that is readily usable by the State or that can be formatted in a way that it can be used. Costs for all of these described items will be considered as included in the basic contract compensation of the work described.

20. CODE OF CONDUCT: The Contractor agrees to follow and enforce the Department of Technology Services Code of Conduct. If Contractor is working at facilities controlled by other State agencies, Contractor agrees to follow and enforce the Code of Conduct of these other State Agencies when Contractor is providing services at these facilities under provisions of this contract. The Contractor will assure that each employee or volunteer under Contractor's supervision receives a copy of such Code of Conduct, and a signed statement to this effect must be in each Contractor or Subcontractor employee's/volunteer's file and is subject to inspection and review by the Department monitors. Department of Technology Services agrees to provide Contractor with a copy of any applicable codes of conduct. If a Contractor or Subcontractor is working at any state agency which has a Code of Conduct applicable to this Contract, the Department of Technology Services Project Manager will provide Contractor with a copy in advance of Contractor's on-site contract services performance.

21. TERMINATION UPON DEFAULT: In the event this contract is terminated as a result of a default by the Contractor, the Department may procure or otherwise obtain, upon such terms and conditions as the Department deems appropriate, services similar to those terminated, and Contractor shall be liable to the Department for any and all damages arising there from, including, but not limited to, attorneys' fees and excess costs incurred by the Department in obtaining similar services..

22. CONTRACTOR'S RESPONSIBILITIES / QUALITY OF WORK: The Department will enter into contractual agreement with the Contractor only. The Contractor shall be responsible for all services as required by the RFP/bid. Contractor warrants that all services shall be performed in a professional and workmanlike manner consistent with best industry practice and in accordance with the Statement of Work.

23. PAYMENT WITHHOLDING: The Contractor agrees that the adequate reporting, record keeping, and compliance requirements specified in this contract are a material element of performance and that if, in the opinion of the Department, the Contractor's record keeping practices, compliance, and/or reporting to the Department are not conducted in a timely and satisfactory manner, the Department may withhold part or all payments under this or any other contract until such deficiencies have been remedied. This includes, but is not limited to, Contractors failure to timely provide to the Department of Technology Services Contracts Manager the Contractor's proof of adequate insurance coverage, or Contractor's failure to provide timely invoicing, and/or other requirements described elsewhere within this contract. In the event of the payment(s) being withheld, the Department agrees to provide ten (10) day advance NOTICE to the Contractor of the deficiencies that must be corrected in order to bring

about the release of withheld payment. Contractor shall have ten (10) days thereafter to correct the cited reporting or record keeping practice deficiencies.

24. CONTRACTOR ACCESS TO SECURE STATE FACILITIES / CRIMINAL CONVICTION INFORMATION / FORMER FELONS: The Contractor shall provide (at its own expense) the Department with sufficient personal information about its agents or employees, and the agents and employees of its subcontractors (if any) who will enter upon secure premises controlled, held, leased, or occupied by the State during the course of performing this contract so as to facilitate a criminal record check, at state expense, on such personnel by the Department. "Sufficient personal information" about its agents or employees, and the agents and employees of its subcontractors (if any) means for the Contractor to provide to the State Project Manager, in advance of any on-site work, a list of the full names of the designated employees, including their social security number, driver license number and state of issuance, and their birth date. Thereafter, on their first site visit, each contractor employee expected to work on-site shall be fingerprinted by the State, and the State is authorized to conduct a federal criminal background check based upon those fingerprints and personal information provided. Contractor, in executing any duty or exercising any right under this contract, shall not cause or permit any of its agents or employees, and the agents and employees of its subcontractors (if any) who have been convicted of a felony and certain misdemeanors to enter upon any premises controlled, held, leased, or occupied by the Department. A felony and misdemeanor are defined by the jurisdiction of the State of Utah, regardless of where the conviction occurred.

25. CONFIDENTIALITY

Contractor, and anyone for whom the Contractor may be liable, must maintain the confidentiality of any non-public personal information it receives from the Utah Department of Technology Services or any other state or public office received during the course of this contract. This includes any personal information contained in any other database. The personal information may be, but is not limited to, names, social security numbers, birth dates, address, credit card numbers and financial account numbers. The Utah Department of Technology Services reserves the right to identify additional reasonable types or categories of information that must be kept confidential by the Contractor and anyone for whom the Contractor may be liable. This duty of confidentiality shall be ongoing and survive the term of this contract.

26. SECURE PROTECTION AND HANDLING OF DATA

1. **Network Security:** Vendor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Likewise vendor agrees to maintain network security that conforms to one of the following:
 - a. Those standards the State of Utah applies to its own network, as found at <http://www.dts.utah.gov> and elsewhere;
 - b. Current standards set forth and maintained by the National Institute of standards and Technology, includes those at: <http://web.nvd.nist.gov/view/ncp/repository/>; or
 - c. Any generally recognized comparable standard that Vendor then applies to its own network
2. **Data security:** Vendor agrees to protect and maintain the security of the State of Utah data with protection that is at least as good as or better than that maintained by the State of Utah. These security measures include maintaining secure environments that are patched and up to date with all appropriate security updates as designated, for example Microsoft Notification.
3. **Data Transmission:** vendor agrees that any and all transmission or exchange of system application data with the State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means, e.g. HTTPS or FTPS.

4. **Data Storage:** Vendor agrees that any and all State of Utah data will be stored, processed, and maintained solely on designated target servers and that no State of Utah data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless medium is in part of the Vendor's designated backup and recovery process.
5. **Data Encryption:** Vendor agrees to store all State of Utah backup data as part of its designated backup and recovery process in encrypted form, using no less than 128 bit key.
6. **Password Protection.** Vendor agrees that any portable or laptop computer that resides at any State of Utah facility has access to a State of Utah network, or stores any non-public State of Utah data is equipped with strong and secure password protection.
7. **Data Re-Use:** Vendor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in the Current Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Vendor. Vendor further agrees that no state of Utah data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by the State of Utah.
8. **Data Destruction:** The Vendor agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all State of Utah data from all non-state computer systems and backups, and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of an agent of the State of Utah, whichever shall come first.

27. NOTIFICATION AND DATA BREACHES

Vendor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information or other event requiring notification in accordance with DTS 500-1250-PR1 Computer Incident Reporting Procedure. In the event of a data breach of any Vendor's security obligations or other event requiring notification under applicable law (§ 13-44-202, etc.), Vendor agrees to assume responsibility for informing all such individuals in accordance with applicable laws and to indemnify, hold harmless and defend the State of Utah against any claims, damages, or other harm related to such Notification Event.

(Updated September 18, 2010)

Question and Answers for Bid #PRSS11113 - EFT and Enhancement Software License, Custom Programming and Consultancy Service

OVERALL BID QUESTIONS

**There are no questions associated with this bid. If you would like to submit a question,
please click on the "Create New Question" button below.**