II. RULES GOVERNING COMPETITION

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II.1 OVERVIEW

The purpose of competitive procurement is to secure the best solution to the project objectives at the best practical cost and avoid the possibility of improprieties. Competitive procurement is designed to benefit the California Department of Corrections and Rehabilitation (CDCR) and the public interest in general, and is not for the benefit of the Bidders. It is conducted to satisfy CDCR's requirements and acceptance by the CDCR of the most value-effective solution, as determined by the evaluation criteria contained in the solicitation.

Solicitations must provide a basis for full and open competitive bidding among Bidders on a common standard, free of restrictions that unnecessarily stifle competition. Solicitations must be specific and provide an environment where all competitors are evaluated on the same objectives.

II.2 PROPOSAL PROCESS

The Proposal Process will follow the dates and times indicated in RFP Section I.8, RFP Key Action Dates.

II.2.1 RFP Bidder's Conference

A mandatory RFP Bidder's Conference will provide Bidders the opportunity to gain further understanding of the RFP requirements prior to Proposal submission.

The Bidder's Conference agenda will include the following:

- Review of the RFP
- Provide answers to written Bidder questions previously submitted
- Address new Bidder questions

The RFP Bidder's Conference will be held on the date and time shown in RFP Section I.8, RFP Key Action Dates. Any questions regarding this conference must be directed to the Point of Contact (POC) identified in RFP Section I.7, Point of Contact.

II.2.2 RFP Package Clarification or Additional Information

II.2.2.1 Bidder Questions

Bidder questions regarding this RFP or requests to modify requirements must be documented and sent to the POC identified in RFP Section I.7, Point of Contact. Answers to initial written inquiries will be reviewed at the RFP Bidder's Conference and distributed in writing. Initial written questions are due to the POC by the date and time specified in RFP Section I.8, Key Action Dates.

Following the RFP Bidder's Conference, each Bidder will have the opportunity to submit additional questions and requests, as expeditiously as possible.

If a Bidder's question relates to a confidential aspect of its Proposal and the question would expose confidential information if disclosed to competitors, the Bidder may submit the question in writing, conspicuously marking it as "CONFIDENTIAL."

With the question, the Bidder must submit a statement explaining why the question is confidential. If the CDCR concurs that the disclosure of the question or answer would expose confidential information, the question will be answered, and both the question and answer will be kept in confidence. Any material that a Bidder considers as confidential, but does not meet the disclosure exemption requirements of the California Public Records Act, should not be included in the Bidder's Proposal, as it may be made available to the public.

If the CDCR does not concur regarding the confidential nature of the question, the question will not be answered, and the Bidder will be notified of the decision.

If a Bidder submitting a Proposal believes that one or more of the RFP requirements is onerous or unfair, or that it unnecessarily precludes less costly or alternative solutions, the Bidder may submit a written request that the RFP document be changed. The request must set forth the recommended change and Bidder's reasons for proposing the change. Any such request must be submitted to the POC by the Proposal due date and time listed in RFP Section I.8, RFP Key Action Dates.

All requests for additional information or clarification of information in this RFP shall be submitted to the POC using the form provided in RFP Appendix C, Form 2.1, Form for Submission of Questions and Requests.

II.2.2.2 Ambiguity, Discrepancies, Omissions

If a Bidder submitting a Proposal discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP package, the Bidder shall immediately provide the CDCR with written notice of the problem to the POC and request that the RFP be clarified or modified. Without disclosing the source of the request, the CDCR may modify the RFP package prior to the Proposal due date by posting the addendum to the cphcs.ca.gov website.

If, prior to the date fixed for submission of Proposals a Bidder submitting a Proposal knows of or should have known of an error in the RFP package, but fails to notify the CDCR of the error, the Bidder shall propose at its own risk. If the Bidder is awarded the Contract, the Bidder shall not be entitled to additional compensation or time because of the error or its later correction.

II.2.2.3 RFP Addenda

The CDCR may modify the RFP document through RFP addenda. If any Bidder determines that an addendum unnecessarily restricts its ability to provide a Proposal, it must notify the POC no later than three (3) business days following the posting of the addendum.

The CDCR will post RFP addenda to the cphcs.ca.gov Website. It is the Bidder's responsibility to check the cphcs.ca.gov Website for RFP addenda or other communications. The CDCR recommends Bidders check the Website on a daily basis at a minimum.

II.2.2.4 Exclusion for Conflict of Interest

No consultant shall be paid out of State funds for developing recommendations on the acquisition of EDP products or services or assisting in the preparation of a feasibility study, if that consultant is to be a source of such acquisition or could otherwise directly and/or materially benefit from State adoption of such recommendations or the course of action recommended in the feasibility study. Further, no consultant shall be paid out of State funds for developing recommendations on the disposal of State surplus EDP products, if that consultant would directly and/or materially benefit from State adoption of such recommendations.

II.2.3 Submission of Proposals

II.2.3.1 Submission Requirements

Bidder Proposal to this RFP shall be delivered to the person and by the date and time specified in RFP Section I.8, RFP Key Action Dates.

An original Bidder Proposal **signed** by a duly authorized officer plus electronic copies (i.e. DVDs or CDs), and hard copies are to be submitted to the CDCR in the quantities and at the locations and dates shown in RFP Section I.8, RFP Key Action Dates, and RFP Section VIII, Proposal Format.

Proposals shall be complete, in writing and with no pertinent information omitted. Proposals shall use and be organized according to the formats described in RFP Section VIII, Proposal Format.

The Bidder's Proposal in response to this RFP will constitute an offer to develop a Contract based on the terms stated in this RFP. The CDCR requests comprehensive, cost-effective, quality solutions that meet all of the requirements in this document.

The Proposal shall remain valid for a minimum of 120 days from date of receipt of Proposal by the CDCR.

The CDCR reserves the right to accept or reject the Proposal, in whole or in part, without further consideration for any reason.

II.2.3.2 Ownership of Proposal Documentation

Proposals (and related materials), once submitted, become the property of the CDCR, may be used and disclosed for any purpose in the CDCR's discretion, and will be returned only at the CDCR's option and at the expense of the Bidder submitting the Proposal. One copy of a submitted Proposal will be retained for official files and become public record.

Any material that a Bidder considers as confidential but does not meet the disclosure exemption requirements of the California Public Records Act should not be included in the Bidder's Proposal, as it may be made available to the public.

The CDCR's policy is to follow the intent of the California Public Records Act (PRA). If a Bidder's Proposal contains material noted or marked as confidential and/or proprietary that, in the CDCR's sole opinion, meets the disclosure exemption requirements of the PRA, then that information will not be disclosed pursuant to a written request for public documents. If the CDCR does not consider such material to be exempt from disclosure under the PRA, the material will be made available to the public, regardless of the notation or markings. If a Bidder is unsure if its confidential and/or proprietary material meets the disclosure exemption requirements of the PRA, then it should not include such information in its Proposal.

II.2.3.3 Costs Incurred

The CDCR will not be responsible for any costs incurred by Bidder in the preparation of its Proposal, due diligence or negotiation of a Contract whether or not finally awarded. Such Proposal and business development costs shall not be included in the cost basis of services to be provided to the CDCR.

II.2.3.4 Withdrawal and resubmission/modification of Proposals

A Bidder may withdraw its Proposal at any time prior to the deadline for submitting Proposals by notifying the CDCR in writing of its withdrawal. The notice must be signed by the Bidder. The Bidder may thereafter submit a new Proposal, provided that it is received at the CDCR no later than the Proposal due date and time listed in RFP Section I.8, RFP Key Action Dates, of this RFP. Modifications offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after the Proposal due date and time listed in RFP Section I.8, RFP Key Action Dates, of this RFP.

II.3 PROPOSAL EVALUATION AND BIDDER SELECTION

The Proposal evaluation and Bidder selection process will be a three-tiered process that includes the following steps:

- Tier 1 – Initial Administrative Requirements and Minimum Qualifications Review
- Tier 2 – Initial Evaluation
- Tier 3 – Best and Final Offer (BAFO) Evaluation

All proposal evaluations will be conducted by a CDCR Evaluation Team.

II.3.1 Tier 1 – Initial Administrative Requirements and Minimum Qualifications Review

The CDCR shall perform an initial review to determine compliance to the RFP administrative requirements and the minimum qualification requirements as defined in the RFP and shall notify all disqualified Bidders. Bidders that are deficient in meeting the minimum qualifications at the time of Proposal submittal may be deemed non-responsive to this RFP and no further consideration shall be granted. The CDCR may ask clarification questions prior to deeming a Proposal as non-responsive, but failure to meet minimum qualifications will result in the proposal being rejected.

The Tier 1 – Initial Administrative Requirements and Minimum Qualifications Review includes the following:

- Bid Opening and Content Validation Check (pass/fail)
- Administrative Requirements Review (pass/fail)
- Minimum Qualification Review (pass/fail)
- Non-Functional and Functional Requirements Response Review (pass/fail)
- Statement of Work Review (pass/fail)

For a description of the individual Administrative Requirements and Minimum Qualifications Reviews, see RFP Section IX, Proposal Evaluation.

II.3.2 Tier 2 – Initial Evaluation

Proposals that pass the Tier 1 – Initial Administrative Requirements and Minimum Qualifications Review will be reviewed by the evaluation team as described in Section II.3.2.1, Review of Initial Proposals and Discussion Agenda. Bidders will be invited to Confidential Discussions as stated in Section II.3.2.2, Confidential Discussions with Each Bidder.

II.3.2.1 Review of Initial Proposals and Discussion Agenda

The CDCR's review of the Initial Proposals is preliminary. Therefore, Bidders are cautioned to not rely on the CDCR during these reviews to discover and report all defects and errors in the proposals.

The CDCR's evaluation team or a portion thereof will review each proposal in accordance with the evaluation methodology outlined in the solicitation for the purpose of identifying areas in which the proposal is non-responsive to a requirement, is otherwise defective, or in which additional clarification is required.

As a result of the review, the evaluation team will prepare an agenda of items to discuss with the Bidder and will transmit the agenda to the Bidder approximately three (3) business days prior to the scheduled meeting. The CDCR does not provide any warranty that all defects have been detected and that such notification will not preclude rejection of the Final Proposal if such defects are later found.

II.3.2.2 Confidential Discussion with Each Bidder

In accordance with the discussion agenda, the evaluation team will meet with each Bidder for the purpose of discussing the Initial Proposal in detail. The Bidder may bring to the discussion those persons who may be required to answer questions or discuss issues. The Bidder may be asked to give a short proposal overview presentation. To the maximum extent practical, the Bidder will address the major concerns of the evaluation team, as expressed in the Discussion Agenda, and should be prepared to answer any questions that may arise as a result of the presentation. The participants will then proceed to discuss each of the agenda items.

The CDCR will not make counter proposals to a Bidder's proposed solution to the solicitation requirements. The CDCR will only identify concerns, ask for clarification, and express reservations if a particular requirement of the solicitation is not, in the opinion of the CDCR, appropriately satisfied. The primary purpose of the discussion is to ensure that the Bidder's Final Proposal will be responsive.

If, during the confidential discussion with the Bidder, it is discovered that a change to a solicitation requirement is necessary, and that change is general in nature (not specific to the Bidder's solution) the change will be incorporated into the solicitation via an addendum. The CDCR and the Bidder must reach agreement that the change is general in nature prior to the issuance of the addendum affecting the change. Requests to change a requirement specific to a Bidder's solution will not be considered.

Upon completion of the Confidential Discussions, Initial Proposals will be evaluated based on the Tier 2 evaluation criteria described in RFP Section IX, Proposal Evaluation. A "competitive range" (short list) will be established among the Bidder Proposals. Bidders that are in the "competitive range" (short list) will advance to Tier 3 evaluations as outlined below. Bidders who do not advance to Tier 3 will be notified in writing.

The Tier 2 – Initial Evaluation includes the following:

- Evaluation of Bidder Experience Qualifications
- Evaluation of Project Staff and Project Organization
- Evaluation of Business Solution Response
- Evaluation of exceptions to the Contract

For a description of the specific evaluated components, see RFP Section IX, Proposal Evaluation.

II.3.3 Tier 3 – Best and Final Offer Evaluation

After completion of the Initial Evaluation, the CDCR will select Bidders in the "competitive range" (short list) who will be invited to proceed to the BAFO Evaluation and will be scored based on Tier 3 evaluation criteria described in RFP Section IX, Proposal Evaluation. Prior to submitting Best and Final Offers, Finalist Bidders will be required to participate in a series of discussions with the CDCR designed to provide both CDCR and Finalist Bidders with adequate due diligence prior to submission of BAFO Proposals. During this stage, CDCR will contact the client references provided by the Bidder and may conduct site visits to organizations that have implemented a Bidder's solution.

The Tier 3 – Best and Final Offer (BAFO) process includes the following:

- Bidder Demonstrations
- Best and Final Offers
- Reference checks and potential site visits
- Final Evaluation and Bidder Selection

For a description of the detailed BAFO Evaluation, see RFP Section IX, Proposal Evaluation.

II.3.4 Final Agreement Negotiations

II.3.4.1 Bidder's Negotiation Team

The Bidder will deploy a senior negotiation team for the Agreement negotiations.

The CDCR desires that a Bidder negotiation team be led by its proposed Program Executive, who would be responsible for day-to-day management of the engagement.

The negotiation team must be empowered to make decisions on all parts of the entire Agreement including the Master Services Agreement and all Exhibits (e.g., pricing and other key business terms such as service level requirements, events of default, liabilities, damages) to be assumed by Bidder.

The Bidder agrees to honor the spirit of this process by limiting contact to the CDCR team members authorized to conduct the process. Any deviation from authorized points of contact will be grounds for proposal rejection.

The Bidder negotiation team must include a senior lawyer. The senior lawyer must have reviewed the Agreement and been directly involved in the development of the Issues List.

Continuity in Bidder negotiation team is to be maintained by the Bidder. Adding new members to the team and/or substituting team members will only cause delays in negotiations and therefore should be avoided.

If it is determined that the Bidder's negotiation team is not empowered to negotiate the Agreement, or if substitutions are made or if additional members are added to the team, the net effect of which is to delay the negotiations, then the CDCR reserves the right to cease negotiations and may require the Bidder to reimburse the CDCR for expenses incurred in connection with the Bidder's failure to comply with the above procedures.

II.3.4.2 Control of Document

The CDCR will retain revision control of the Agreement, including all Exhibits and Attachments.

II.3.4.3 In Person Meetings - Location of Meetings

Negotiations will be conducted at CDCR locations in Sacramento at times to be determined by the CDCR. Meetings will require the in-person presence of the entire Bidder negotiation team. Meetings via telephone may be scheduled at the discretion of the CDCR.

II.3.4.4 News Releases

News releases pertaining to the award of the Agreement may not be made without prior written approval of the CPHCS' Chief Information Officer, acting on behalf of CDCR.

II.4 PROTEST PROCEDURES

II.4.1 General

Failure of a Bidder to comply with the protest procedures set forth in this section will render a protest inadequate and non-responsive, and will result in rejection of the protest.

II.4.2 Prior to Submission of Protest

An interested party that is an actual or prospective Bidder with a direct economic interest in the procurement may file a protest based on allegedly restrictive or defective specifications or other

improprieties in the RFP process that are apparent, or should have been reasonably discovered prior to the submission of a Proposal. Such protest must be received prior to the Proposal due date and time.

II.4.3 After Award

A Bidder submitting a Proposal may protest the award based on allegations of improprieties occurring during the Proposal evaluation or award period if it meets all of the following conditions:

- The Bidder has submitted a Proposal that it believes to be responsive to the RFP document.
- The Bidder believes that its Proposal meets the requirements of the RFP, proposes services of proven quality and performance, and offers a competitive cost.
- The Bidder believes that the CDCR has violated the rules of the competition and has incorrectly selected another Bidder submitting a Proposal for an award.

Protests must be received no later than five (5) business days after the protesting party has been sent a Non-Award letter.

II.4.4 Form of Protest

A Bidder who is qualified to protest should submit the protest to the POC who will forward the matter to the CPHCS Chief Information Officer, acting on behalf of CDCR.

- The protest must be in writing and sent by certified or registered mail, or overnight delivery service (with proof of delivery), or delivered personally to POC. If the protest is hand-delivered, a receipt must be requested.
- The protest shall include the name, address, telephone and facsimile numbers, and email address of the party protesting or its representative.
- The title of the RFP under which the protest is submitted shall be included.
- A detailed description of the specific legal and factual grounds of protest and any supporting documentation shall be included.
- The specific ruling or relief requested must be stated.

The CDCR, at its discretion, may make a decision regarding the protest without requesting further information or documents from the protestor. Therefore, the initial protest submittal must include all grounds for the protest and all evidence available at the time the protest is submitted. If the protestor later raises new grounds or evidence that was not included in the initial protest but which could have been raised at that time, the CDCR will not consider such new grounds or new evidence.

II.4.5 Determination of Protest Submitted Prior to Submission of Proposal

Upon receipt of a timely and proper protest based on allegedly restrictive or defective specifications or other improprieties in the RFP process that are apparent, or should have been reasonably discovered prior to the submission of a Proposal, the CDCR will provide a written determination to the protestor prior to the Proposal Due Date. If required, the CDCR may extend

the Proposal Due Date to allow for a reasonable time to review the protest. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below and the CDCR, at its sole discretion, may elect to withhold the Agreement award until the protest is resolved or denied or proceed with the award and implementation of the Agreement.

II.4.6 Determination of Protest Submitted After Submission of Proposal

Upon receipt of a timely and proper protest, the CDCR will investigate the protest and will provide a written response to the Bidder within a reasonable time. If the CDCR requires additional time to review the protest and is not able to provide a response within ten (10) business days, the CDCR will notify the Bidder. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below. The CDCR, at its sole discretion, may elect to withhold the Agreement award until the protest is resolved or denied or proceed with the award and implementation of the Agreement.

II.4.7 Appeals Process

The CPHCS Chief Information Officer's decision, acting on behalf of CDCR, shall be considered the final action by the CDCR unless the protesting party thereafter seeks an appeal of the decision by filing a request to the POC for appeal with the Federal Receiver, within five (5) calendar days of the issuance of the CIO's decision.

The justification for appeal is specifically limited to:

- Facts and/or information related to the protest, as previously submitted, that were not available at the time the protest was originally submitted.
- The Chief Information Officer's decision contained errors of fact, and that such errors of fact were significant and material factors in the CIO's decision.
- The decision of the Chief Information Officer was in error of law or regulation.

The Bidder's request for appeal shall include:

- The name, address, telephone, and facsimile numbers, and email address of the Bidder filing the appeal or its representative.
- A copy of the Chief Information Officer's decision.
- The legal and factual basis for the appeal.
- The ruling or relief requested. Issues that could have been raised earlier will not be considered on appeal.

Upon receipt of a request for appeal, the Federal Receiver will review the request and the decision of the Chief Information Officer and shall issue a final determination. The decision of the Federal Receiver shall constitute the final action of the CDCR.

II.4.8 Protest Remedies

If the protest is upheld, the CDCR will consider all circumstances surrounding the procurement in its decision for a fair and reasonable remedy, including the seriousness of the procurement deficiency, the degree of prejudice to the protesting party or to the integrity of the competitive procurement system, the good faith efforts of the parties, the extent of performance, the cost to

the CDCR, the urgency of the procurement, and the impact of the recommendation(s) on the CDCR. The CDCR may recommend any combination of the following remedies:

- Terminate the Agreement for convenience.
- Re-solicit the requirement.
- Issue a new RFP.
- Refrain from exercising options to extend the term under the Agreement, if applicable
- Award a Contract consistent with statute or regulation.
- Other such remedies as may be required to promote compliance.

II.5 DISCLAIMER

Submission of a Proposal constitutes acknowledgment that Bidder has read and agrees to be bound by these rules.

This RFP does not constitute a Contract or an offer to contract and CDCR will not be legally bound by an acceptance of it. In addition, any Agreement awarded as a result of this RFP is subject to any additional restriction, limitation, established by the California Prison Health Care Services or condition enacted by the Legislature that may affect the provisions, funding, or terms of the Agreement in any manner.

The CDCR reserves the right to make one award, multiple awards, or to reject all Proposals, in whole or in part, submitted in response to this RFP. The CDCR reserves the right to make no selection if Proposals are deemed to be outside the fiscal constraint or against the best interest of the California Prison Health Care Receivership.

This RFP does not commit the CDCR to pay the costs incurred in connection with any Proposal or to procure or contract for any services offered.

The CDCR reserves the right, at its sole discretion, to reject any portion and all of the Proposal or to modify the proposed scope, with or without reason. Omissions, evasions, alterations, additions or irregularities of any kind may constitute sufficient cause for rejection of a Proposal without further consideration. The CDCR reserves the right to negotiate any or all items with individual Bidders if it is deemed in the CDCR' and/or California Prison Health Care Receivership's best interest.