



**Addendum #4 to
Request for Proposals (RFP)
Telecommunications Equipment and Services (PBX III)
RFP #060B1400048
January 5, 2011**

Ladies/Gentlemen:

This Amendment is being issued to change, add or delete certain information contained in the above named RFP. Specific parts of the RFP have been amended and the RFP changes are detailed below. The changes are marked with text underlined if it is new and crossed through if it has been deleted. This marking will help you more easily identify what has changed.

1. In Attachment A – Telecommunications Equipment and Services Contract: after Section 30,

Add Section 31 - Limitation of Liability as stated below:

31. Limitation of Liability

For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

A. For infringement of intellectual property rights;

B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;

C. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability per claim shall not exceed five (5) times the total amount of the PORFP out of which the claim arises; provided however, the State may, in its sole discretion, decrease the ceiling established hereunder in any PORFP issued pursuant to this RFP. Third party claims arising under Section 26 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising under Section 26 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 26.

2. In Attachment A – Telecommunications Equipment and Services Contract: Section 26.1,

Add the words: Subject to the terms of Section 31. Section 26.1 now reads:

26.1 Subject to the terms of Section 31, the Contractor shall hold harmless and indemnify the State against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

3. In Attachment A – Telecommunications Equipment and Services Contract: after Section 31,

Add Section 32 - Intellectual Property as stated below:

32 Intellectual Property

32.1 All work performed or provided by the Contractor in connection with the RFP, this Contract and a PO Agreement, including but not limited to any and all deliverables, reports, drawings, studies, specifications, estimates, tests, photographs, graphics, mechanical, artwork, computations, data, inventions, discoveries, developments, improvements, ideas, concepts, creative works, innovations and designs, whether or not in writing or reduced to practice, and whether or not they are patentable, including but not limited to, processes, methods, formulas, and techniques and know-how, works of authorship, trade secrets, trademarks, copyrights, and any other intellectual property ("Work Product") will be considered "work for hire," as if the Contractor had been "hired to invent," or as having similar status in the United States or elsewhere, and therefore, all rights therein will be the property of the State. In the event any Work Product is not considered "work for hire," Contractor, on behalf of itself and its employees, agents, subcontractors and affiliates, hereby assigns to the State all rights, title, and interest in such Work Product. The Contractor shall not affix (or permit any third party to affix) any restrictive markings upon any Work Product (except as expressly directed or otherwise authorized in writing by the State) and, if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such markings. During the term of this Contract and at any time following expiration or termination for any reason of this Contract, upon the request and at the reasonable expense of the State or its nominee and for no additional remuneration, Contractor and its employees, agents, subcontractors and affiliates will take such action as the State reasonably may request to more fully evidence, protect, maintain, secure, defend, transfer, vest or confirm the State's ownership, right, title and interest in the Work Product.

32.2 Contractor will defend, indemnify, and hold harmless the State, including, but not limited to, the Department and its agents, officers, and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any claim the Work Product or any third party intellectual property infringes, misappropriates or otherwise violates any third party intellectual property rights. Contractor will not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent, which consent may be withheld in the State's sole and absolute discretion. Contractor will be entitled to control the defense or settlement of such claim (with counsel reasonably satisfactory to the State), provided that the State will, upon requesting indemnification hereunder: (a) provide reasonable cooperation to Contractor in connection with the defense or settlement of any such claim, at Contractor's expense; and (b) be entitled to participate in the defense of any such claim. Contractor's obligations under this section will not apply to the extent any third party intellectual property infringes, misappropriates or otherwise violates any third party intellectual rights as a result of modifications made by the State in violation of the license granted to the State pursuant to section 32.1; provided that such infringement, misappropriation or violation would not have occurred absent such modification.

32.3 Without limiting Contractor's obligations under section 32.1, if all or any part of the Work Product or any third party intellectual property is held, or Contractor or the State reasonably determines that it could be held, to infringe, misappropriate or otherwise violate any third party intellectual property right, Contractor (after consultation with the State and at no cost to the State): (a) will procure for the State the right to continue using the item in accordance with its rights under this Contract, the RFP and the applicable PO Agreement; (b) replace the item with an item that does not infringe, misappropriate or otherwise violate any third party intellectual property rights and, in the State's sole and absolute determination, complies with the item's specifications, and all rights of use and/or ownership set forth in this Contract, the RFP and the applicable PO Agreement; or (c) modify the item so that it no longer infringes, misappropriates or otherwise violates any third party intellectual property right and, in the State's sole and absolute determination, complies with the item's specifications and all rights of use and/or ownership set forth in this Contract, the RFP and the applicable PO Agreement.

32.4 Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials and/or the Work Product, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State.

1. In Attachment A – Telecommunications Equipment and Services Contract, Section 6,

Delete Sections 6.2, 6.3 and 6.4 as stated below:

~~6.2 — The Contractor agrees that at all times during the term of this Contract and thereafter, the works created and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created under this Contract are not works for hire for the Department, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.~~

~~6.3 — The Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.~~

~~6.4 — The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.~~

Date Issued: January 11, 2011

Ed Bannat
Procurement Officer