



Amendment #4
RFP
GIS Software Master Contract
#060B6400028
June 6, 2016

Ladies/Gentlemen:

This Amendment #4 is being issued to amend and clarify certain information contained in the above-referenced RFP. All information contained herein is binding on all Offerors who respond to this RFP. Specific parts of the RFP have been amended. The following changes/additions are listed below; new language has been double underlined and marked in bold (i.e., **word**) and language deleted has been marked with a strikeout (i.e., ~~word~~).

1. Revise Contract Section 5.1 - Patents, Copyrights, Intellectual Property (p.44) as follows:

All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the effective date of this agreement shall belong to the party that owned such rights ~~immediately prior to the Effective Date~~ ("Pre-Existing Intellectual Property"). "Contractor Materials" means all ~~Pre-Existing Intellectual Property~~ **software, data, online services, and documentation** of Contractor and all other ~~I~~ntellectual ~~P~~roperty acquired or developed by Contractor ~~outside of this Contract~~, and any modifications and derivatives thereof. **Subject to the terms of Contractor's license agreement**, ~~if Pre-Existing Intellectual Property or Contractor Material~~ includes any design, device, material, process, or other item, which is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.

2. Revised Contract Section 5.4 – Patents, Copyrights, Intellectual Property (p.44) as follows:

Notwithstanding anything to the contrary in this Contract, to the extent (i) the Work Product incorporates any commercial-off-the-shelf software (COTS) and/or any ~~Pre-Existing Intellectual Property~~ or (ii) any COTS and/or ~~Pre-Existing Intellectual Property~~ (other than a computer's operating system, supported internet browser, browser accessibility software or hardware if needed by the user, and software required to access a commonly-available data transmission tool or export format) is required to access, install, build, compile or otherwise use the Work Product (such COTS and ~~Pre-Existing Intellectual Property~~ individually and collectively referred to herein as "Third-party Intellectual Property," which shall be the sole property of Contractor or its third-party licensors, as applicable), Contractor hereby grants to

the State, on behalf of itself and any third-party licensors, a royalty-free, paid-up, nonexclusive, unrestricted, unconditional, irrevocable, worldwide right and license, with the right to use, execute, reproduce, display, perform, distribute copies of internally, modify and prepare derivative works based upon, such Third-party Intellectual Property as may be necessary for the State to use the Work Product for the purposes for which such Work Product was designed and intended. "Pre-Existing Intellectual Property" means any program, utility or tool owned by Contractor or its third-party licensors that was created by Contractor or its third-party licensors independently from its performance of this Contract and not solely using funds from this Contract.

3. Revise Contract Section 5.5 – Patents, Copyrights, Intellectual Property (p.45) as follows:

Subject to the terms of ~~Section 6~~ **Contractor's license agreement**, Contractor shall defend, indemnify, and hold harmless the State, including, but not limited to, the Department or Requesting Agency 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 by third parties that products the Contractor provides to Department or the Requesting Agency, including Work Product and any Third-party Intellectual Property, infringes, misappropriates or otherwise violates any Third-party Intellectual Property rights. Contractor shall 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.

4. Revise Contract Section 5.8 – Patents, Copyrights, Intellectual Property (p.45) as follows:

~~Except for any Pre Existing Intellectual Property and Third Party Intellectual Property,~~ 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, subject to the terms of a PORFP executed by the Contractor and an authorized representative of the State. **This section 5.8 does not apply to hot fixes, patches, enhancements, or modifications, made by Contractor to its software, data, online services, or documentation.**

5. Revise Contract Section 5.9 – Patents, Copyrights, Intellectual Property (p.46) as follows:

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

6. Revised Contract Section 5.10 – Patents, Copyrights, Intellectual Property (p.46) as follows:

~~This Section 5 shall survive expiration or termination of this Contract.~~

7. Revise Section 11 – Loss of Data (p.49) as follows:

This section is not applicable to this RFP.

~~In the event of loss of any State data or records where such loss is due to the intentional act, omission, or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and is recoverable by the Contractor. In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in Section 16.~~

8. Revise Section 13 – Exclusive Use and Ownership (p.49) as follows:

Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or Requesting Agency ~~or developed by Contractor relating to the Contract~~, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Department or Requesting Agency's confidential information is to be disclosed shall be advised by Contractor of and bound by the confidentiality and intellectual property terms of this Contract.

Issued by

Alicia Baltimore
Procurement Officer