



UNIVERSITY OF
SOUTH CAROLINA

AMENDMENT NO.1 TO SOLICITATION

TO: ALL VENDORS

FROM: Michelle Robinson, CPPB, Procurement Manager

SUBJECT: SOLICITATION NUMBER: USC-FPB-3010-MR
Provide Total Curriculum Support and NCLEX Review Course for Student Nurses.

DATE: August 10, 2016

This Amendment No.1 modifies the Fixed Price Bid only in the manner and to the extent as stated herein.

Vendor Questions and Answers

BIDDER SHALL ACKNOWLEDGE RECEIPT OF AMENDMENT NO.1 IN THE SPACE PROVIDED BELOW AND RETURN IT WITH THEIR BID RESPONSE. FAILURE TO DO SO MAY SUBJECT BID TO REJECTION.

Authorized Signature

Name of Offeror

Date

QUESTIONS RECEIVED FROM VENDOR A

Question #1: Vendor A has requested the following exceptions from the Solicitation USC-FPB-3010-MR:

(“Contractor”) respectfully submits the following exceptions to VII. Terms and Conditions:

Exceptions to VII. Terms and Conditions - A. General

ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015)

Contractor reserves the right to assign the contract, in its entirety, in the event of a merger, consolidation, or acquisition of substantially all of Contractor’s assets, provided that the assignee agrees in writing to assume all of Contractor’s rights and obligations under the contract.

CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (FEB 2015)

Contractor’s Order Form used by Contractor to process orders for Contractor products and services shall also be included in the contract, provided that any terms and conditions set forth in the Contractor’s Order Form which are inconsistent with these terms shall be null and void.

Exceptions to VII. Terms and Conditions- B. Special

DEFAULT (JAN 2006)

Subsections (b) and (e) are not applicable to Contractor’s online, proprietary and copyrighted educational resources.

OWNERSHIP OF DATA & MATERIALS (JAN 2006)

Notwithstanding the foregoing, Contractor shall own all content, materials, tools, code, and data used or provided by Contractor in the delivery of products or performance of services under this contract, as well as all diagnostic, technical, and general products usage information that is gathered, de-identified, and made anonymous, to (i) facilitate Contractor’s product support and software development, and improve products and content efficacy, (ii) monitor, record and report information about Contractor’s products user activity (iv) collect information around Contractor’s products site volume and load, and user results in connection with certain products features or material, as well as other aggregate, anonymized metrics.

INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015)

Contractor’s indemnification obligations shall be comprised of assuming all costs and expense related the obligations set forth in INFORMATION USE AND DISCLOSURE (FEB 2015), subsection (h) (1) - (5).

INDEMNIFICATION - INTELLECTUAL PROPERTY (JAN 2006)

Contractor will assume all costs and expense related to defending such claims and indemnifying the State against any and all court awarded damages. The State shall provide prompt written notice to Contractor of any claim or threatened claim. Contractor’s indemnification obligations do not apply if the claim is caused by the State’s modification or unauthorized use of an acquired item.

INFORMATION USE AND DISCLOSURE (FEB 2015)

All student data will only be used as permitted by the State or expressly by each student. Contractor is required to collect certain identifiable information from students and faculty required to register as a user,

and make use of, Contractor's online, educational resources, including reporting scores and other learning information to each student's respective institution and faculty. In addition, Contractor may use diagnostic, technical, and general products usage information and other aggregate data that is gathered, de-identified, and made anonymous, to (i) facilitate Contractor's product support and software development, and improve products and content efficacy, (ii) monitor, record and report information about Contractor's products user activity, and (iv) collect information around Contractor's products site volume and load, and user results in connection with certain products features or material, as well as other aggregate, anonymized metrics. Upon termination of the Contract, student data will either be returned to the State or rendered unusable by Contractor, subject to continued safeguarding pursuant to the contract terms and conditions.

TERMINATION FOR CONVENIENCE (JAN 2006)

All right, title and interest in and to Contractor's materials, products, content, tools and resources are and shall remain the sole and exclusive intellectual property of Contractor and shall not be assigned or transferred to the State.

RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015)

In order to (i) preserve the integrity of Contractor's educational assessment and ensure proper use, (ii) comply with applicable privacy laws, and (iii) protect Contractor's intellectual property rights, all users of Contractor's online resources are required accept Contractor's online user terms when registering an account with Contractor. These terms and industry standard and necessary for compliance with law and Contractor's policies. Any offers for additional products and services are only made with express consent of users indicating a desire to receive offers. In accordance with the aforementioned disclosure, the liquidated damages noted in subsection (d) shall not apply.

Answer: The University has considered the requested exceptions to several of the clauses in Section VII. Terms and Conditions of the solicitation and has decided not to modify any of the clauses in Section VII. Terms and Conditions of the solicitation. Please be aware that Offerors who take exception to any of the Terms and Conditions listed in Section VII of the solicitation in the bids they submit will be deemed non-responsive and rejected by the University as the offerors are attempting to impose conditions which would modify requirements of the fixed price bid or limit their liability to the University, since to allow the offerors to impose such conditions would be prejudicial to other offerors.