



STATE OF DELAWARE  
DEPARTMENT OF CORRECTION  
245 MCKEE ROAD  
DOVER, DELAWARE 19904

TO: ALL OFFERORS

FROM: CRAIG FETZER  
PURCHASING SERVICES ADMINISTRATOR

SUBJECT: Addendum to Professional Services Request for Proposal (RFP)  
Contract No. DOC17048-PRETRIAL

**ADDENDUM #1 – April 21, 2017**  
**CONSOLIDATED QUESTIONS & ANSWERS**

**General Questions:**

**Question:** Regarding high risk pretrial offenders, are they currently kept on GPS monitoring and if not why? Can you also identify who is considered high risk, what criteria determine that they are high risk?

**Answer:** GPS monitoring must be ordered by the Court and not all high risk offenders are ordered to GPS monitoring. Risk is currently determined using the Justice of the Peace Court Risk Assessment Instrument.

**Question:** If a pretrial offender violates the conditions of their release, will our pretrial officers have arresting power?

**Answer:** No.

**Section number:** IV Professional Services RFP Administrative Information; Sub Section D, Contract Terms and Conditions

**Paragraph number:** 7.c. (ACA Safe Harbor)

**Page number:** 18

**Text of passage being questioned:** “The State and its utilizing agencies are not the employer of temporary or contracted staff. However, the State is concerned that it could be determined to be a Common-law Employer as defined by the Affordable Care Act (“ACA”). Therefore, the State seeks to utilize the “Common-law Employer Safe Harbor Exception” under the ACA to transfer health benefit insurance requirements to the staffing company. The Common-law Employer Safe Harbor Exception can be attained when the State and/or its agencies are charged and pay for an “Additional Fee” with respect to the employees electing to obtain health coverage from the Vendor.

The Common-law Employer Safe Harbor Exception under the ACA requires that an Additional Fee must be charged to those employees who obtain health coverage from the Vendor, but does not state the required amount of the fee. The State requires that all Vendors shall identify the Additional Fee to obtain health coverage from the Vendor and delineate the Additional Fee from all other charges and fees. The Vendor shall identify both the Additional Fee to be charged and the basis of how the fee is applied (i.e. per employee, per invoice, etc.). The State will consider the Additional Fee and prior to award reserves the right to negotiate any fees offered by the Vendor. Further, the Additional Fee shall be separately scored in the proposal to ensure that neither prices charged nor the Additional Fee charged will have a detrimental effect when selecting vendor(s) for award.”

**Question:** Can you please explain the expectations we're clearly and precisely? If you can offer an example, that may be helpful as well.

**Answer:** For any contract involving temporary employee placement or the hiring of contractors that could be considered employees of the state (i.e. provided work space on state property and under the direct supervision of state employees), the contracting agency must

- 1) Require vendors to submit a separately identified ACA Safe Harbor additional fee in the vendor's proposal response, and
- 2) The vendor must clearly identify how the ACA Safe Harbor fee is charged (i.e. by frequency, including by invoice, by hour, by employee, etc.), and
- 3) The ACA Safe Harbor fee must remain a component of the scoring criteria and must receive a lifecycle cost analysis.

To enable the State to claim ACA Safe Harbor, the fee must be separately disclosed, charged and paid by the using agency. For this solicitation, applicability is not anticipated although this will be further determined based upon the proposal selected for award.

**Section number:** IV Professional Services RFP Administrative Information; Sub Section D, Contract Terms and Conditions

**Paragraph number:** 7.o.2 (Termination for Convenience)

**Page number:** 23

**Text of passage being questioned:** “The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.”

**Question:** Once notified by the state that you are terminating the contract how much time is given before all financial payments to the vendor is stopped?

**Answer: As noted above, the State's written notice of termination will include the effective date of the termination. No services or payments will be permitted after the effective date of termination. The Vendor will receive compensation for satisfactorily completed prior to the effective date of termination. A Vendors invoice will be processed for payment within 30 days or less of the date it is received.**

**Section number:** IV Professional Services RFP Administrative Information; Sub Section D, Contract Terms and Conditions

**Paragraph number:** 7.u. (Fair Background Check Practices)

**Page number:** 24

**Text of passage being questioned:** "Pursuant to 29 Del. C. §6909B, the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. §711(g) for applicable established provisions."

**Question:** Is it the expectation of the state that the vendor do background checks on all of its employees? Secondary to that question, are we allowed to hire those with criminal backgrounds because they carry with them a knowledge to help those we are servicing?

**Answer: The vendor is encouraged to adopt fair background check practices. Delaware Department of Correction will require the awarded vendor's employee to successfully obtain a DOC security clearance.**

**Section number:** IV Professional Services RFP Administrative Information; Sub Section D, Contract Terms and Conditions

**Paragraph number:** 7.x. (Work Product)

**Page number:** 25

**Text of passage being questioned:** "All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State. The vendor will seek written permission to use any product created under the contract."

**Question:** In the event that the vendor creates a unique device to use in the course of their work on offenders in Delaware at their expense, does this then mean that that product is considered the property of the state?

**Answer: No. Provided that the unique device received prior approval from Delaware Department of Correction to be used and the vendor can demonstrate the cost of the unique device is solely absorbed by the vendor and such costs are not being passed to the Delaware Department of Correction.**

**Section number:** IV Professional Services RFP Administrative Information; Sub Section D, Contract Terms and Conditions

**Paragraph number:** 7.ff.4. (Prior Use)

**Page number:** 27

**Text of passage being questioned:** “The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.”

**Question:** Is there an expectation that the vendor is to purchase equipment to do this contract in advance of it being awarded in its final form? Or are you speaking of equipment in which the state may purchase in relation to the execution of this RFP?

**Answer:** Vendors are not expected to purchase any equipment for this contract in advance of it being awarded. This paragraph is only applicable during the execution of an awarded contract.