

## REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES

### TO PROVIDE MECHANICAL/ELECTRICAL ENGINEERING SERVICES FOR VARIOUS PROJECTS TO THE SUSSEX TECHNICAL SCHOOL DISTRICT UNDER THE ADMINISTRATIVE MANAGEMENT OF COMMON SENSE SOLUTIONS, LLC

REFERENCING: SUSSEX TECHNICAL HIGH SCHOOL / HVAC HS RENOVATIONS

CONTRACT NUMBER CN1240D

#### I. Overview

Common Sense Solutions, LLC (CSS) as a Construction / Project Manager for Sussex Technical School District (ST) seeks professional services to provide Mechanical / Electrical Engineering services. This request for proposals ("RFP") is issued utilizing the relative sections of 29 *Del. C.* §§ 6981 and 6982.

The proposed schedule of events subject to the RFP is outlined below:

Public Notice                      Date: January 22, 2014

Deadline for Receipt of Proposals Date: February 6, 2014 at 2:00 PM (Local Time)

Estimated Notification of Award Date: March 10, 2014

A transmittal letter that briefly summarizes the proposing firm's interest in providing the required professional services must accompany each proposal. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP that the applicant may have taken in presenting the proposal. (*Applicant exceptions must also be recorded on Attachment 2*).

CSS, and their Client the Sussex Technical School District, State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

#### II. Scope of Services

CSS is soliciting interested professional Mechanical and Electrical engineering teams to submit a proposal to become a Consultant under the direct administrative supervision of CSS to provide design and other services for projects occurring on the ST campus. These projects may include the evaluation, expansion and renovation of existing systems as well as proposing new systems and technologies including the various components there in, and the assistance in the generation of proposed Budgets for these projects. The Length of Service of this engagement will be open ended, and may be terminated at any time by CSS or ST.

**III. Required Information** The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of CSS.

**A. Minimum Requirements**

1. Provide Delaware license(s) or certification(s) necessary to perform services as identified in the scope of work. Prior to receiving an award, the successful Vendor shall either furnish CSS with proof of State of Delaware Business Licensure or initiate the process of application where required.
2. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below.
3. Complete all appropriate attachments and forms as identified within the RFP.
4. Insurance including Professional Liability Insurance:
  - Provide evidence of professional liability insurance in the amount of \$1,000,000.00/\$3,000,000.00.
  - Proof of insurance and amount of insurance shall be furnished to CSS and shall be no less than as identified in the bid solicitation.
  - CSS & ST shall be listed as Additional Insured & Loss Payees
5. Provide response to Employing Delawareans Report (Attachment 6)

**B. General Evaluation Requirements**

1. Experience and Reputation
2. Expertise for the types of projects referenced in the Scope of Work
3. Capacity to meet requirements (size, financial condition, etc.)
4. Location (geographical)
5. Demonstrated ability
6. Familiarity with public work and its requirements
7. Distribution of work to individuals and firms or economic considerations

**IV. Professional Services RFP Administrative Information**

**A. RFP Issuance**

**1. Obtaining Copies of the RFP**

This RFP is available in electronic form through the State of Delaware Procurement website at [www.bids.delaware.gov](http://www.bids.delaware.gov). Paper copies of this RFP will not be available.

**2. Public Notice**

Public notice has been provided in accordance with 29 *Del. C.* [§6981](#).

**3. Assistance to Vendors with a Disability**

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

**4. RFP Designated Contact**

All requests, questions, or other communications about this RFP shall be made in writing to CSS. Address all communications to the person listed below; communications made to other CSS or ST personnel or attempting to ask questions by phone or in person will

not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact designated below:

**Kevin E. Burdette**

**Email Address: [Kevin@css-de.com](mailto:Kevin@css-de.com)**

**14127 Rottwaller Road, Laurel, DE 19956**

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is preferable, but other forms of delivery, such as postal and courier services can also be utilized.

#### **5. Consultants and Legal Counsel**

CSS may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact consultant or legal counsel on any matter related to the RFP.

#### **6. Contact with CSS or ST employees**

Direct contact with CSS or ST employees other than the Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting CSS or ST employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business with CSS and/or ST who require contact in the normal course of doing that business.

#### **7. Organizations Ineligible to Bid**

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

#### **8. Exclusions**

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

- a)** Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b)** Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c)** Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d)** Has violated contract provisions such as; 1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e)** Has violated ethical standards set out in law or regulation; and
- f)** Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.



## **B. RFP Submissions**

### **1. Acknowledgement of Understanding of Terms**

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

### **2. Proposals**

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. CSS reserves the right to reject any non-responsive or nonconforming proposals. Each proposal must be submitted with 7 paper copies and 1 electronic copy on CD or DVD media disk, or USB memory drive. Please provide a separate electronic pricing file from the rest of the RFP proposal responses.

All properly sealed and marked proposals are to be sent to CSS and received no later than **1:00 PM (Local Time)** on February 6, 2014. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**Common Sense Solutions, LLC  
c/o Sussex Technical School District  
DISTRICT OFFICE  
17137 County Seat Highway  
Georgetown, DE 19947**

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than **2:00 PM (Local Time)** on February 6, 2014. Any proposal received after this date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process. Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

### **3. Proposal Modifications**

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

### **4. Proposal Costs and Expenses**

CSS will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor's conference, system demonstrations, Site Visitations or negotiation process.

### **5. Proposal Expiration Date**

Terms or Conditions quoted in the proposal shall remain fixed and binding on the bidder through the award of the proposed Contract.

### **6. Late Proposals**

Proposals received after the specified date and time will not be accepted or considered. To guard

against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

## **7. Proposal Opening**

CSS will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of CSS & ST personnel. Any unopened proposals will be returned to the Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed to competing vendors prior to contract award.

## **8. Non-Conforming Proposals**

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within CSS.

## **9. Concise Proposals**

CSS discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. CSS's interest is in the quality and responsiveness of the proposal to address the objectives of the RFP.

## **10. Realistic Proposals**

It is the expectation of CSS that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable. CSS shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

## **11. Confidentiality of Documents**

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than CSS and ST Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

CSS is working as a Project Manager for ST, which is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 *Del. C.* Ch. 100. Under the law, all the State of Delaware's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by CSS and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information.

If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 Del. C. § 10002(d), and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, CSS will open the envelope to determine whether the procedure described above has been followed.

## 12. Multi-Vendor Solutions (Joint Ventures)

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the "**Prime Consultant / Contractor**". The "**Prime Consultant / Contractor**" must be the joint venture's contact point for CSS and be responsible for the joint venture's performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendors' systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services specified in the proposal shall not be subcontracted without prior written approval by CSS, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to CSS caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each vendor.

### a. Primary Vendor

CSS expects to negotiate and contract with only one "prime vendor". CSS will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors. Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with CSS as a result of this procurement. CSS will make contract payments only to the awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit CSS from the full exercise of its options under Section IV.B.16 regarding multiple source contracting.

### b. Sub-contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by CSS.

### **c. Multiple Proposals**

A primary vendor may not participate in more than one proposal in any form. Sub-contracting Vendors may participate in multiple joint venture proposals.

### **13. Sub-Contracting**

For purposes of this RFP, Proposal and Contract Agreement, the Term of Sub-Contractor and Sub-Consultant shall be interchangeable and equally reference the other without any differentiation.

### **14. Discrepancies and Omissions**

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify CSS's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, at least ten(10) calendar days prior to the time set for opening of the proposals.

CSS will utilize a RFP Question and Answer Process that will allow written requests for clarification of the RFP. All questions will be consolidated into a single set of responses and posted on the State's website at [www.bids.delaware.gov](http://www.bids.delaware.gov) by the date of February 4, 2014. Vendors' names will be removed from questions in the responses released.

Questions are required to be submitted in the following format. Deviations from this format will not be accepted:

- Section number
- Paragraph number
- Page number
- Text of passage being questioned
- Specific Item being questioned

Questions not submitted electronically shall be accompanied by an electronic version on a CD and questions shall be formatted in Microsoft Word.

### **15. Common Sense Solutions, LLC - Right to Reject Proposals**

CSS reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in CSS's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as CSS may deem necessary in the best interest of CSS.

### **16. Common Sense Solutions, LLC - Right to Cancel Solicitation**

CSS reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. CSS makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by CSS. Vendor's participation in this process may result in CSS selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by CSS to execute a contract nor to continue negotiations. CSS may terminate negotiations at any time and for any reason, or for no reason.

#### **17. Common Sense Solutions, LLC - Right to Award Multiple Source Contracting**

Pursuant to 29 *Del. C.* § 6986, CSS may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of CSS and their Client.

#### **18. Notification of Withdrawal of Proposal**

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by CSS prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of CSS at the proposal submission deadline. All proposals received are considered firm offers at that time.

#### **19. Revisions to the RFP**

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at [www.bids.delaware.gov](http://www.bids.delaware.gov). CSS is not bound by any statement related to this RFP made by any CSS employee, ST Employee, or any of either of these parties contractors or agents.

#### **20. Exceptions to the RFP**

Any exceptions to the RFP, or CSS's terms and conditions, must be recorded on Attachment 2. Acceptance of exceptions is within the sole discretion of the evaluation committee.

#### **21. Award of Contract**

After reviews of the evaluation committee's report and its recommendation, CSS will generate an official recommendation to ST for their consideration.

The final award of a contract is subject to ST approval, and this will not be performed until the contract terms and conditions have been finalized. CSS has the sole right to select the successful vendor(s) to be presented to ST for consideration of an award, to reject any proposal as unsatisfactory or non-responsive, to recommend a contract to other than the lowest priced proposal, to recommend multiple contracts, or recommend not to award a contract, as a result of this RFP.

It should be explicitly noted that ST is not obligated to award the contract to the vendor who submits the lowest bid or the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to ST. The award is subject to the appropriate Sussex Technical School District approvals.

Notice in writing to a vendor of the acceptance of its proposal by CSS and the subsequent full execution of a written contract with ST will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

## **22. Cooperatives**

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation.

## C. RFP Evaluation Process

An evaluation team composed of representatives of CSS and ST will evaluate proposals on a variety of quantitative criteria.

CSS and ST reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in a timely manner any and all information that CSS and ST may deem necessary to make a decision.

### 1. Proposal Evaluation Team

The Proposal Evaluation Team shall be comprised of representatives of CSS and ST. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ 6981 and 6982.

**The Team will negotiate with the qualified firm designated 1<sup>st</sup> on the preference list that they feel is most beneficial to ST.** The Team shall make a recommendation regarding the award to CSS. CSS will then make a recommendation to the Sussex Technical School Board of Education, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § 6982, to award a contract to the successful vendor in the best interests of ST.

### 2. Proposal Selection Criteria

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals shall contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by CSS to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.

All proposals shall be evaluated using the same criteria and scoring process. The following major factors shall be utilized by the Evaluation Team to evaluate proposals:

Criteria	Weight
Communication and Presentation of Concepts	15
Key Staff / Project Team Qualifications	15
Capacity to meet requirements & Familiarity with Planning / Modeling Software and Techniques	15

Location (geographical)	10
Demonstrated Ability / Previous Client References	15
Familiarity with Public Education Projects	15
Firms Impact to Local Economy	15
<b>Total</b>	<b>100%</b>

### 3. Proposal Clarification

The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

### 4. References

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the Evaluation Team and/or representatives of ST may visit some customers of the vendor, which may or may not include vendor personnel. If the vendor is involved in such site visits, CSS will pay travel costs only for ST personnel for these visits.

### 5. Oral Presentations

Selected vendors may be invited to make oral presentations to the Evaluation Team. The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for CSS are the vendor's responsibility.

## D. Contract Terms and Conditions

### 1. General Information

- a. The term of the contract between the successful bidder and ST / CSS shall be for three years and may be extended for an additional six years.
- b. The selected vendor will be required to enter into a written agreement with ST. CSS & ST reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by CSS & ST, as well as the Delaware State Office of Management and Budget. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements as the project(s) progress.

- c. The selected vendor or vendors will be expected to enter negotiations with ST via CSS, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
- d. ST's Standard Contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
- e. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt of a State of Delaware- Division of Accounting –Department of Finance Purchase Order. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.
- f. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

## **2. Collusion or Fraud**

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void.

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of CSS participated directly or indirectly in the vendor's proposal preparation.

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

## **3. Lobbying and Gratuities**

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a CSS and/or ST employee or agent of CSS & ST concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP. The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, ST shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with CSS or ST employees, contractors or agents of CSS & ST concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in

this RFP.

#### **4. Solicitation of CSS or ST Employees**

Until contract award, vendors shall not, directly or indirectly, solicit any employee of CSS or ST to leave their employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of CSS's contracting officer. Solicitation of CSS or ST employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a CSS or ST employee who has initiated contact with the vendor. However, CSS or ST employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

#### **5. General Contract Terms**

##### **a. Independent Contractors**

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party, or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

It may be at CSS's discretion as to the location of work for the contractual support personnel during the project period. CSS shall provide working space and sufficient supplies and material to augment the Contractor's services.

##### **b. Non-Appropriation**

In the event the Sussex Technical High School Board of Education or the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of ST requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

##### **c. Licenses and Permits**

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2502.

Prior to receiving an award, the successful vendor shall either furnish CSS with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O.

Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

**d. Notice**

Any notice to CSS required under the contract shall be sent by registered mail to:

**Common Sense Solutions, LLC  
c/o Sussex Technical School District  
DISTRICT OFFICE  
17137 County Seat Highway  
Georgetown, DE 19947**

**e. Indemnification**

**1. General Indemnification**

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless CSS and ST, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's its agents and employees' performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, whole or part, to CSS and/or ST, its employees or agents.

**2. Proprietary Rights Indemnification**

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against CSS and/or ST, CSS shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify CSS and/or ST against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively "Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

- a)** Procure the rights for CSS & ST to continue using the Product(s);
- b)** Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- c)** Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements

of the Contract, or only alters the Product(s) to a degree that CSS agrees to and accepts in writing.

**f. Insurance**

1. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney’s fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor’s negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
  
2. The vendor shall maintain such insurance as will protect against claims under Worker’s Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of CSS.
  
3. During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows:

Comprehensive General Liability	\$1,000,000 per person and \$3,000,000 per occurrence
Misc. Errors and Omissions	\$1,000,000/\$3,000,000
Product Liability	\$1,000,000/\$3,000,000
Automotive Liability (Bodily Injury)	\$100,000/\$300,000
Automotive Property Damage (to others)	\$ 25,000

4. The vendor shall provide a certificate of insurance as proof that the vendor has the required insurance.

**g. Performance Requirements**

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

**h. Ownership of Work Products**

CSS & ST will be provided with the complete Ownership of any Work Product that is generated or acquired by the Consultant during the term of this Contract. The Work Product shall be furnished to CSS & ST in both a paper format as well as an electronic format suitable to CSS & ST. The Vendor shall pay any and all Fees and Charges as they relate to the following:

- I. Software to view and utilize the data.
- II. Software Set Up and Licensing
- III. Insurance Liabilities

#### **i. Costs and Payment Schedules**

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of CSS & ST. The contract costs proposed shall include full compensation for all taxes that the selected vendor is required to pay. CSS & ST will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. CSS & ST may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

#### **j. Penalties**

ST may include in the final contract penalty provisions for nonperformance, such as liquidated damages.

#### **k. Termination for Cause**

If for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner his obligations under the contract, or if the Vendor violates any of the covenants, agreements or stipulations of the contract, ST shall thereupon have the right to terminate the contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) calendar days before the effective date of such termination, in that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall become the property of ST, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to CSS & ST.

#### **l. Termination for Convenience**

ST may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) calendar days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall become ST property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to CSS & ST. If the contract is terminated by ST as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the Vendor during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

#### **m. Non-discrimination**

In performing the services subject to this RFP the vendor will agree that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.



**n. Covenant against Contingent Fees**

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty ST shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

**o. Vendor Activity**

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

**p. Work Product**

All materials and products developed under the executed contract by the vendor are the sole and exclusive property of CSS & ST. The vendor will seek written permission to use any product created under the contract. CSS & ST shall have the right to request periodic copies of all work products as the work progresses throughout the Term of the Contract.

**q. Contract Documents**

The RFP, the purchase order, the executed contract and any supplemental documents between CSS and the successful vendor shall constitute the contract between CSS and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, Sussex Technical School District's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between CSS and the vendor.

**r. Applicable Law**

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in Sussex County, Delaware.

In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

- 1) the laws of the State of Delaware;
- 2) the applicable portion of the Federal Civil Rights Act of 1964;
- 3) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
- 4) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
- 5) that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any vendor fails to comply with (1) through (5) of this paragraph, CSS & ST reserves the

right to disregard the proposal, terminate the contract, or consider the vendor in default.

The selected vendor shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws, as well as Sussex County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

#### **s. Severability**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

#### **t. Scope of Agreement**

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

#### **u. Other General Conditions**

- 1) Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
- 2) Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
- 3) Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- 4) Prior Use** – CSS 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 CSS.
- 5) Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
- 6) Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
- 7) Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of CSS.
- 8) Additional Terms and Conditions** – CSS reserves the right to add terms and conditions during the contract negotiations.

## **E. RFP Miscellaneous Information**

### **1. No Press Releases or Public Disclosure**

Vendors may not release any information about this RFP. CSS reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to CSS & ST with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of CSS & ST.

### **2. Definitions of Requirements**

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

### **3. Production Environment Requirements**

CSS requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

## **F. Attachments**

The following attachments and appendixes shall be considered part of the solicitation:

- Attachment 1 – Non-Collusion Statement
- Attachment 2 – Exceptions
- Attachment 3 – Confidentiality and Proprietary Information
- Attachment 4 – Business References
- Attachment 5 – Subcontractor Information Form
- Attachment 6 – Employing Delawareans Report
- Attachment 7 – Office of Supplier Diversity Application

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