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**Questions/Responses #6  
Maryland Electronic Court Core Acquisition  
RFP Project #K11-0030-29  
November ##, 2010**

Ladies and Gentlemen:

The following questions for the above referenced RFP were received by e-mail and are answered and posted for all prospective Offerors who received the RFP. The statements and interpretations contained in the following responses to questions are not binding on the Judiciary unless the RFP is expressly amended. Nothing in the Judiciary's response to these questions is to be construed as agreement to or acceptance by the Judiciary of any statement or interpretation on the part of the Offeror asking the question.

1. Question: RFP Sections 2.5.6.4 and 2.5.6.5 describe a requirement for entering information into the "JIS incident tracking application". If the offeror has an existing application already being used by its support organization which can track incidents and provide up-to-date status reports to the Judiciary, will that satisfy this requirement?

**Response: JIS has an incident tracking and reporting application that satisfies this requirement.**

2. Question: RFP Section 2.5.2.6: Will the AOC provide the hardware for the MDEC Core Performance Prototype demonstration?

**Response: Yes.**

3. Question: If not, how many users are anticipated to participate in the simulated productions conditions?

**Response: N/A.**

4. Question: RFP Section 2.5.2.7: Will the AOC be performing any user acceptance testing, including testing of the Interoperability Prototype?

**Response: The Interoperability Prototype as described in RFP Section 2.5.2.5 is intended to demonstrate the ability of all MDEC components to effectively interoperate prior to undertaking an extensive effort to configure and tailor the solution to meet the requirements of all case types and functions. As such, it may, but is not required to, serve as the base for design, development, and testing activities proceeding from that point. User acceptance testing will be performed using the Pilot Implementation Test Package deliverable**

**(RFP Section 2.5.2.7a) and must include all interoperability requirements.**

5. Question: Will there be a need for additional training for the AOC users after the initial pre-design training (RFP Section 2.5.5.2) to prepare the AOC users for user acceptance testing?

**Response: Yes. The training described in RFP Section 2.5.5.2 is meant to introduce project and central support / program personnel to the MDEC solution and identify the design and configuration decisions that will need to be addressed during the development phase of the project. End user and administrator training is described in RFP Section 2.5.5.3.**

6. Question: RFP Section 2.5.2.7: Does the AOC currently use any automated test tools?

**Response: No.**

7. Question: RFP Section 2.5.3.5: Does the AOC intend to install the Release 2 in the pilot site first prior to roll out for the remaining of the offices?

**Response: The need for pilot Release 2 will be dependent on the content of the release. The rollout plan will be determined as part of the Long Term Release Plan deliverable (RFP Section 2.5.3.4).**

8. Question: Are there image conversion requirements as part of the MDEC project?

**Response: Conversion of existing scanned documents into the ECM system will be considered outside of the base scope of this initiative. Should assistance be required, it will be handled through the Optional Services component of this RFP.**

9. Question: If yes, please define the sources, volumes and if images are stored within the database or in a file structure?

**Response: N/A.**

10. Question: On which worksheet of Attachment M – Price Proposal should offerors price the customization and development effort?

**Response: These costs should be itemized under services on worksheet 2.5.3.1 (Pilot MDEC Core System)**

11. Question: On which worksheet of Attachment M – Price Proposal should offerors price enterprise product licenses?

**Response: These costs should be itemized under software on worksheet 2.5.3.1 (Pilot MDEC Core System)**

12. Question: In the accounting requirements there are references to Case

and Party accounts, can the AOC clarify that accounts are equivalent to assessed receivables on a case or party?

**Response: Yes, the accounts being referenced are equivalent to receivables maintained at both the case and party level.**

13. Question: RFP Section 1.2 reads: If there are any inconsistencies between the contract and any of the Exhibits, the terms of this Contract shall prevail. If there are any inconsistencies between Exhibits A and B, Exhibit A shall prevail. Would the AOC consider clarifying this section to specify that “If there are any inconsistencies between Exhibits A and B, Exhibit B shall prevail to the extent that Exhibit B provides specific responses to the RFP functional requirements, otherwise Exhibit A shall prevail.”

**Response: No, the AOC will not consider the proposed changes.**

14. Question: RFP Section 3.4 reads: Ten percent (10%) of each applicable invoice shall be withheld by the AOC as retainage. Disbursement of each retainage will occur after the Contractor invoices the retainage and the Contract Manager approves payment of that retainage.

We request that the terms and conditions be modified to specify certain timing of the payment of retainage (for example, upon completion of a specific deliverable such as 2.5.4.5 – Core System Deployment or other key milestone). We also request that the terms and conditions be clarified to specify which types of invoices shall be subject to retainage. We propose that retainage should apply to software license fees and project services, but not to hardware, third party software (such as operating systems or DBMS licenses), or ongoing maintenance.

**Response: No, the AOC will not consider the proposed changes.**

15. Question: RFP Section 3.5 reads: Payments to the Contractor for each deliverable shall be made no later than thirty days after the acceptance of the deliverable and receipt of a proper invoice from the Contractor. Charges for late payment of invoices are prohibited. Will the AOC agree to make this provision subject to The Maryland Code Annotated, State Finance and Procurement Article, §15-104?; or in the alternative, will the AOC agree to amend these terms and conditions to provide that Contractor may terminate this Agreement for cause, or suspend performance of this Agreement if the AOC fails to pay an undisputed amount after 90 days, written notice, and opportunity to cure?

**Response: No, the AOC will not consider the request.**

16. Question: RFP Section 3.6 reads: In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement

Officer may refuse or limit approval of any invoice for payment and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer in accordance with this Contract. We request the Standard Terms and Conditions be modified to indicate that the AOC may withhold payment if the Procurement Officer holds a reasonable, good faith belief that Contractor has not performed in accordance with the terms of the contract.

**Response: No, the AOC will not consider the request to modify the Standard Terms and Conditions.**

17. Question: RFP Section 13. Non-availability of Funding reads: If the General Assembly fails to appropriate funds... this Contract shall be canceled automatically.... The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The AOC shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first. We request the Standard Terms and Conditions be modified to indicate that in the event of a termination of the arrangement for non-availability of funding, the Contractor shall be reimbursed for the fair value of work performed and products delivered prior to the termination date.

**Response: No, the AOC will not consider the request to modify the Standard Terms and Conditions.**

18. Question: RFP Section 14. Termination for Cause reads: If Contractor fails to fulfill its obligations under this Contract... the AOC may terminate the Contract by written notice to the Contractor... All finished or unfinished work provided by the Contractor shall, at the AOC's option, become the AOC's property..... We request the Standard Terms and Conditions be modified to indicate that the AOC shall retain a license to use any software to the extent it pays the license fee for such software in full.

**Response: No, the AOC will not consider the request to modify the Standard Terms and Conditions.**

19. RFP Section 15. Termination for Convenience reads: The performance of work under this Contract may be terminated by the AOC in accordance with this clause in whole or, from time to time, in part whenever the AOC shall determine that such termination is in the AOC's best interest. The AOC will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. We request the Standard Terms and Conditions be modified to eliminate the termination for convenience provision in its entirety; or we request the Standard Terms and Conditions be modified to provide the option for termination for convenience only at

specific milestones in the project (e.g., upon completion of the fit analysis; upon completion of the pilot court; and upon completion of each quarterly statewide deployment event). Regardless of whether the AOC can agree to one of the alternatives above, we request the Standard Terms and Conditions be modified to indicate that the Contractor shall be paid the fair value for all work performed and products delivered prior to the date of termination.

**Response: No, the AOC will not consider the request to modify the Standard Terms and Conditions.**

20. Question: RFP Section 17. Suspension of Work reads: The AOC unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the AOC's convenience. We request the Standard Terms and Conditions be modified to indicate that if the arrangement is suspended, the AOC will pay for all work performed and products delivered up to the date of the notice to suspend. We also request the Standard Terms and Conditions be modified to indicate that if the AOC does not provide notice to resume performance of the arrangement for 180 consecutive days, the Contractor may terminate the arrangement.

**Response: No, the AOC will not consider the request to modify the Standard Terms and Conditions.**

21. Question: RFP Section 22. Liability for Loss of Data reads: In the event of loss of any data or records necessary for the performance of this Contract, which such loss is due to the error or negligence of the Contractor, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating all such lost data or records in a manner, format, and time-frame acceptable to the AOC. We request the Standard Terms and Conditions be modified to indicate that our liability for lost data should be based "solely" on our negligence or error. In addition, we request the Standard Terms and Conditions be modified to indicate that the Contractor shall be responsible for restoring all such lost data or records to the last known state and format for which the data was originally provided.

**Response: No, the AOC will not consider the request to modify the Standard Terms and Conditions.**

22. Question RFP Section 25.1 provides that the contractor shall indemnify the AOC against liability for any suits, actions, or claims of any character arising from or relating to the performance of the Contractor. We request the Standard Terms and Conditions be modified to provide indemnification to the AOC for property damage and personal injury, as well as any claim that the software provided by Contractor pursuant this Agreement, or the AOC's use thereof, infringes or misappropriates any United States intellectual property, intangible asset, or other proprietary right, title, or interest (including, without limitation, any copyright or patent or any trade secret right, title, or interest), or violates any other contract, license, grant, or other

proprietary right of any third party.

**Response: No, the AOC will not consider the request to modify the Standard Terms and Conditions.**

23. Question: RFP Section 29 provides for Standard Terms and Conditions associated with ownership rights of data, licenses and materials provided. We request that this provision be modified by excluding modifications or derivative works to Contractors existing intellectual property, with language similar to: “Nothing in this Agreement shall be deemed to vest in the AOC any ownership or intellectual property rights in and to Contractor’s intellectual property (including, without limitation, Contractor’s trade secrets), any components and copies thereof, or any derivative works based thereon prepared by Contractor.”

**Response: No, the AOC will not consider the proposed changes.**

24. Question: RFP Section 30.3 provides for the warranties provided by the contractor. We request the Standard Terms and Conditions be modified to provide a warranty consistent with industry standards that the hardware and software will meet the specifications set forth in our proposal and to disclaim all other implied warranties, similar to the following alternate language: Contractor acknowledges that the AOC will rely on Contractor’s expertise, skill, and judgment with respect to the goods and services Contractor provides. Contractor further warrants that all Deliverables furnished hereunder by Contractor will: (i) meet the requirements and acceptance or completion criteria as set forth in the Agreement, including the Exhibits, and any Change Order(s); (ii) comply in all material respects with the Documentation and Specifications; (iii) be free from material Defects; and (iv) with respect to any modifications, customizations or changes made to the System by Contractor pursuant to this Agreement, perform in accordance with the technical, functional or other requirements set forth in, or as otherwise delivered in accordance with the Agreement. Except as specifically set forth in this Section 30 or elsewhere in this Agreement, Contractor disclaims all other warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose.

**Response: No, the AOC will not consider the request to modify the Standard Terms and Conditions.**