

THE RETIREMENT SYSTEMS OF ALABAMA (RSA)

STANDARD TERMS AND CONDITIONS FOR SOLICITATIONS AND CONTRACTS

1. Choice of Law; Venue. This solicitation, and any contract resulting from this solicitation, will be governed by laws of the State of Alabama, and the sole venue for litigation and alternative dispute resolution activities will be the City of Montgomery in the State of Alabama. No other court shall have jurisdiction.

2. Not to Constitute a Debt of the State. The terms and commitments contained in this solicitation, or in any contract resulting from this solicitation, shall not constitute a debt of the State of Alabama, the incurring of which is prohibited by Section 213 of the Official Recompilation of the Constitution of Alabama, 1901, as amended.

3. Proration. Any provision of this solicitation or of a contract resulting from this solicitation to the contrary notwithstanding, in the event of failure of RSA to make payment hereunder as a result of partial unavailability, at the time such payment is due, of such sufficient revenues of the State of Alabama to make such payment (proration of appropriated funds for the State having been declared by the governor pursuant to Section 41-4-90 of the Code of Alabama 1975), the supplier shall have the option, in addition to the other remedies of the contract, of renegotiating the contract (extending or changing payment terms or amounts) or terminating the contract.

4. Non-Appropriation of Funds. Section 41-4-144(c) of the Code of Alabama: “(c) When funds are not appropriated or otherwise made available to support continuation or performance in a subsequent fiscal period, the contract shall be cancelled and the supplier shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for that purpose.”

5. Open Trade/No Boycott. For any contract resulting from this solicitation, for the duration of the term of such contract, bidder or proposer must represent that it is not currently engaged in, and agrees not to engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

6. Dispute Resolution. In the event of any dispute between the parties arising from this solicitation or from any agreement relating to purchases or leases or services resulting therefrom, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, a vendor's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this solicitation, or a contract resulting from this solicitation, which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar Association.

7. Cancellation. Unless RSA deems it to be in RSA's best interest to provide for a longer cancellation notice period for a particular service or product, any contract resulting from this solicitation may be canceled by RSA, for any reason, with or without cause, by giving the other contracting party thirty (30) days written notice. Any party to a contract resulting from this solicitation may request cancellation and RSA may grant the request, in its sole discretion, if performance is prevented by an act of God, act of War, order of legal authority, or other unavoidable circumstances not attributable to the fault or negligence of

such contracting party. Unless RSA deems it to be in RSA's best interest to provide for a longer cancellation notice period for a service, any contract for services resulting from this solicitation may be cancelled for justifiable cause by RSA by giving the vendor at least 72 hours' written notice.

8. Sales Tax Exemption. Pursuant to Section 40-23-4(a)(11) of the Code of Alabama 1975, RSA is exempt from paying sales tax. An exemption letter will be furnished upon request.

9. No Indemnification. Bidder or proposer, as appropriate, acknowledges and agrees that, under the terms of this solicitation and any agreements relating to purchases or leases or services resulting therefrom, RSA is prohibited from indemnifying any vendor or supplier. RSA does not agree to, and will not, indemnify a bidder, proposer, vendor or supplier for any reason. RSA does not release or waive, expressly or impliedly, RSA's right to assert sovereign immunity or any other affirmative defense right it may have under law. RSA shall control the defense and settlement of any legal proceeding on behalf of RSA, including the selection of attorneys.

10. Foreign Corporation – Alabama Secretary of State Registration. Section 10A-1-7.01 to -7.14 of the Code of Alabama 1975 require a foreign entity (an out-of-state company/firm) to register with the Alabama Secretary of State's Office before transacting business in the State. Any out-of-state entity meeting the requirements of those sections shall register accordingly, to the extent applicable.

11. Beason-Hammon Alabama Taxpayer and Citizen Protection Act. As required by Section 31-13-9(k) of the Code of Alabama 1975, any contract resulting from this ITB or RFP must include the following: "By signing this contract, the contracting parties affirm, for the duration of any agreement that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

Verification of enrollment in the E-Verify program will be required prior to any award to a vendor or supplier who employs one or more employees within the State of Alabama. Failure to provide documentation within 5 calendar days of notification may result in the rejection of the supplier's bid. To enroll in the E-Verify program, visit <https://www.e-verify.gov/>.

12. Conflict of Law. If any provision of this solicitation and any subsequent award shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of the solicitation or a resulting agreement, be enacted, then that conflicting provision shall be deemed null and void.

13. Disclosure Statement. Section 41-16-82 of the Code of Alabama 1975 requires the Vendor Disclosure Statement to be completed and filed with all proposals, bids, contracts, or grant proposals in excess of \$5,000.

14. Certification Pursuant to Act No. 2006-557. Section 41-4-142 of the Code of Alabama 1975 (Act No. 2006-557) provides that every bid submitted and contract executed shall contain a certification that the supplier and all of its affiliates that make sales for delivery into Alabama or leases for use in Alabama are registered, collecting, and remitting Alabama state and local sales, use, and/or lease tax on all taxable sales and leases into Alabama. By submitting this bid or proposal, or signing the resulting contract, the supplier is hereby certifying that they are in full compliance with Section 41-4-142, they are not barred from bidding or entering into a contract as a result, and acknowledges that the awarding authority may declare the contract void if the certification is false.

15. Product Delivery, Receiving and Acceptance. In accordance with the Universal Commerce Code (Title 7 of the Code of Alabama 1975), after delivery, RSA shall have the right to inspect all products before accepting. RSA will inspect products in a reasonable timeframe. Signature on a delivery document does not constitute acceptance by RSA. RSA will accept products only after satisfactory inspection.

16. Internet Website Links. Internet and/or website links will not be accepted in bid responses as a means to supply any requirements slated in this solicitation or any contract term.

17. Click Wrap. RSA acknowledges that additional terms between the supplier and RSA or third-party terms may apply but does not agree to be bound by them unless provided for review and separately agreed to in writing by an authorized official of RSA. If the purchase or use of the supplies or services provided utilizes a computer interface, no RSA end user shall be deemed to have agreed to any clause by virtue of it appearing in an “I agree” click box or other comparable mechanism (“click-wrap” or “browse-wrap”); rather the terms and conditions, such as End User License Agreements, may only be accepted by inclusion in an agreement and signature by an authorized official of RSA. If the terms and conditions or any other third-party terms and conditions are invoked through click wrap, execution by any unauthorized individual shall not bind the end user or RSA to such clause. Any clause which requires RSA to indemnify another party or clause which assigns jurisdiction to any state other than Alabama which is contained in such click-wrap is deemed to be stricken from the terms and conditions unless expressly agreed in writing and under the signature of an unauthorized individual.

18. Assignment. Any contract which results from this solicitation shall not be assignable by the vendor without the prior written consent of the RSA. Any assignment or other transfer in violation of this provision will be null and void.

19. Debarment and Suspension. By submitting a bid or proposal, bidder or proposer certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any governmental department or agency. If a bidder or proposer cannot certify this statement, such bidder or proposer must attach a written explanation for review by RSA.

20. Merit System Exclusion. It is understood and agreed that any bidder or proposer awarded a contract shall be an independent contractor and as such all services rendered by the contractor and its agents and employees shall be as an independent supplier and not as an employee, Merit or otherwise, of the State of Alabama or RSA, and supplier or its agents and employees shall not be entitled to receive Merit System benefits.

21. Severability. In the event any provision of this solicitation, or any provision of a contract resulting from this solicitation, shall not be enforceable, the remaining provisions shall continue in full force and effect.

22. Volume of Business. Except as otherwise expressly stated in this solicitation, or in a contract resulting from this solicitation, RSA cannot and does not guarantee any volume of business.

23. Waiver. The failure of RSA to require performance of any provisions of this solicitation, or of a contract resulting from this solicitation, shall not affect RSA’s right to require performance at any time thereafter, nor shall a waiver of any breach or default constitute a waiver of any subsequent breach or waiver of the provision itself.