



## State of New Jersey

**PHILIP D. MURPHY**  
*Governor*

**SHEILA Y. OLIVER**  
*Lt. Governor*

DEPARTMENT OF THE TREASURY  
DIVISION OF INVESTMENT  
P.O. BOX 290  
TRENTON, NJ 08625-0290  
Telephone (609) 292-5106  
Facsimile (609) 984-4425

**ELIZABETH MAHER MUOIO**  
*State Treasurer*

**CHRIS MCDONOUGH**  
*Director*

TO: Potential Bidders

FROM: Christopher McDonough  
Director

DATE: May 31, 2018

RE: Proxy Research and Voting, Class Action Monitoring  
Services and Optional Proxy Voting Guideline Review  
Request for Proposals –  
**Addendum #5**

Please be advised that the deadline to submit proposals is:

**Wednesday, June 13, 2018 by 3:00 p.m. Eastern**

Proposals must be received in DOI's office by the deadline in order to be considered.

### Question and Answer Response

**Objections/exceptions to the provisions of the RFP:**

- 1. Question:** Section 1.3.1(b) - Bidder generally provides its services on a licensed basis for internal usage by its clients. Bidder is amenable to allowing DOI to generate its own, DOI-generated reports for public distribution and to allow inclusion in those reports of limited and discrete portions of the information/data provided by Bidder. But, for clarity, Bidder does not permit broad based distribution of the proprietary reports and data provided by Bidder as part of its service offering.

**Answer:** As stated in Section 1.3.1(b) of the RFP, only reports created by DOI may be made publicly available, except as required by applicable law. Reports created by DOI may include details regarding DOI's proxy voting, as well as extracts from proxy season summary reports provided by the Contractor.

2. **Question:** Section 4.6.1 - Bidder has reviewed the requirement for a Source Disclosure Certification but notes for clarity that certain elements of the services will be performed by bidder outside the United States.

**Answer:** As directed by Section 4.6.1 of the RFP, prior to contract award bidders must submit a completed Source Disclosure Certification Form, including an explanation of why services to be provided cannot be performed within the United States. Pursuant to N.J.S.A. 52:34-13.2, a contract primarily for services cannot be performed outside of the United States unless the Director of the Division of Purchase and Property certifies in writing a finding that the services cannot be performed within the United States and the certification is approved by the State Treasurer.

3. **Question:** Section 6.1.3 - This section shall be amended to provide a change in the order of precedence so that Contractor's proposal shall have the first level of precedence in the event of any conflict between the terms of that document and any other documents making up the Contract.

**Answer:** The language in the RFP will not be modified.

4. **Question:** Sections 6.6.1 and 6.6.2 - Bidder rejects these sections in their entirety and suggests the following in lieu thereof:

*Bidder grants to the DOI a limited, non-exclusive, non-transferable license to use the information provided as part of, or in connection with, the Services (the "**Information**") for internal business purposes only. The Information is exclusively for the DOI's internal use and is strictly confidential, except that Information related to voting proxies, as well as research and reporting for specific accounts ("**Account Information**") may be disclosed and used to comply with applicable law and rules adopted by government agencies and to manage the DOI's accounts. DOI shall not use the Information for any other purpose nor disclose the Information to other third parties. DOI shall not copy, transfer, reproduce or create derivative works from the Information for redistribution to any third party except for disclosure of Account Information as provided above; provided, further, that DOI shall have the right to include in reports that it prepares limited and discrete portions of the Information. All proprietary rights in the Information belong to Bidder and its third party licensors (if any). For clarity, however, the DOI's custom proxy voting policy (the "**Custom Voting Policy**") shall belong to the DOI and shall continue to belong to the DOI irrespective of any assistance that Bidder provides in the development and enhancement of the Custom Voting Policy.*

**Answer:** Sections 6.6.1 and 6.6.2 of the RFP are deleted in their entirety. DOI rejects the above bidder-proposed language; however, notwithstanding any other interpretation of the contract documents, with the exception of the services to be provided under the scope of work described in Section 3.3 of the RFP titled "Optional Proxy Voting Guideline Review," any information otherwise provided by the Contractor under the scope of services described in Section 3.0 of the RFP shall be considered Contractor Intellectual Property as defined in the Waivered Contracts Supplement to the State of New Jersey Standard Terms and Conditions ("Waivered Terms and Conditions"). For clarity, DOI's proxy voting data, class action data, custom proxy voting policy, and any other information provided to the bidder by DOI shall be considered State Intellectual Property as defined in the Waivered Terms and Conditions.

- 5. Question:** Section 6.11.2 - Bidder rejects this section in its entirety but accepts Section 5.11 as reflected in the Waivered Contracts Supplement to the State of New Jersey Standard Terms and Conditions (Rev. 10/2/2017).

**Answer:** DOI is not modifying Section 6.11.2 of the RFP at this time. DOI notes that Section 1 of the State of New Jersey Standard Terms and Conditions, as modified by 6.15.1 of the RFP, provides that a bidder may present terms and conditions that are in conflict with those set forth in the RFP during negotiations prior to contract award; provided that negotiated terms and conditions may not conflict with any of the material terms and conditions set forth in the RFP. DOI further notes that the provisions in Article D, Section 5.11 of the Waivered Terms and Conditions govern any goods and services described in the definition of Information Technology Contract in Article D, Section 1.2 of the Waivered Terms and Conditions.

- 6. Question:** Section 6.12 - Bidder rejects the remedy which authorizes the Director to seek the contract items by any available means and obligating Bidder to pay any difference between the price paid and the defaulting Bidder's price.

**Answer:** DOI is not modifying Section 6.12 of the RFP at this time. DOI notes that Section 1 of the State of New Jersey Standard Terms and Conditions, as modified by 6.15.1 of the RFP, provides that a bidder may present terms and conditions that are in conflict with those set forth in the RFP during negotiations prior to contract award; provided that negotiated terms and conditions may not conflict with any of the material terms and conditions set forth in the RFP.

- 7. Question:** Section 6.15.2 - Bidder agrees to procure the type of insurance contemplated by clause (iii) of Section 6.15.2 but Bidder rejects the requirement that the policy forms be approved by DOI. Further and for clarity, the insurance and amounts required by this section shall apply to Bidder's full business operations and shall not be a requirement to procure insurance coverage unique to the DOI.

**Answer:** The second full sentence of Section 6.15.2(iii) of the RFP shall be amended to read:

"The insurance shall be in the amount of not less than \$10,000,000 and in such policy forms as shall be reasonably acceptable to DOI."

DOI confirms that the insurance and amounts required by Section 6.15.2(iii) of the RFP apply to the Contractor's full business operations and do not require the Contractor to procure insurance coverage unique to DOI.

**Objections/Exceptions to the State of New Jersey Standard Terms and Conditions (Rev: 2/16/18)**

- 8. Question:** Section 3.6 - As noted in response to Section 4.6.1 of the RFP, certain elements of the services will be performed by Bidder outside the United States.

**Answer:** See DOI's response to Question 2.

- 9. Question:** Sections 5.11 and 5.12 - Bidder notes for clarity that these sections are not applicable to the product/services being provided in response to the RFP.

**Answer:** Sections 5.11 and 5.12 of the New Jersey Standard Terms and Conditions are only enforceable to the extent applicable. DOI confirms that Section 5.12 does not apply to the scope of work for this RFP.

**Objections/Exceptions to the Waivered Contracts Supplement to the State of New Jersey Standard Terms and Conditions (Rev. 10/2/17)**

**10. Question:** Article A - As noted above, it is intended that this document be deemed to be part of Bidder's response to the RFP and the mutual agreement of the parties on the contractual terms shall be a condition to Bidder's bid.

**Answer:** All posted addenda, including this addenda responding to the questions provided during the RFP Question and Answer period shall be a part of the RFP and a part of any contract awarded as a result of the RFP. Conditional Bids or Proposals cannot be submitted in response to this RFP. For clarity, as stated in Section 6.15.1 of the RFP: "In the event that the Bidder would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the Bidder must present those conflicts for the State to consider during the Question and Answer period or during negotiations prior to contract award. The negotiated terms and conditions may not conflict with any of the material terms and conditions as set forth in the RFP."

**11. Question:** Article B; Section 2.20(B)&(C) - Bidder rejects Sections 2.20(B)&(C) and notes that these concepts are covered in part by Article D, Sections 4.1 and 5.11.

**Answer:** See DOI's responses to Questions 5, 6, and 9. For clarity, Article D, Section 4.1 of the Waivered Terms and Conditions are only applicable to the portions of scope of services that meet the definition of Information Technology Contract as defined in Article D, Section 1.2 of the Waivered Terms and Conditions

**12. Question:** Section C; Section 4.2 - The provisions above in response to Section 6.15.2 of the RFP document shall apply equally to paragraph D of Section 4.2 of the Standard Terms and Conditions.

**Answer:** Paragraph C, Section 4.2 of the Waivered Terms and Conditions is superseded by Section 6.15.2(iii) of the RFP. See DOI's response to Question 7.

**13. Question:** Section C; Section 5.18 - Bidder rejects clauses (c) and (d) in Section 5.18 and refers to its suggested language above regarding Sections 6.6.1 and 6.6.2 of the RFP document.

**Answer:** Article C, Sections 5.18(c) and 5.18(d) of the Waivered Terms and Conditions are deleted in their entirety. As noted in its response to Question 4 above, DOI rejects the above bidder-proposed language; however, notwithstanding any other interpretation of the contract documents, with the exception of the services to be provided under the scope of work described in Section 3.3 of the RFP titled "Optional Proxy Voting Guideline Review," any information otherwise provided by the Contractor under the scope of services described in Section 3.0 of the RFP shall be considered Contractor Intellectual Property as defined in the Waivered Terms and Conditions. For clarity, DOI's proxy voting data, class action data, custom proxy voting policy, and any other information provided to the bidder by DOI shall be considered State Intellectual Property as defined in the Waivered Terms and Conditions.