

**I. Administrative Information:**

By submission of an application, the applicant agrees as follows:

**A. Acceptance of RFA Terms**

An application submitted in response to this RFA shall constitute a binding offer. The autographic signature of the applicant or of a designee legally authorized to execute contractual obligations shall indicate acknowledgment of this condition. A submission in response to this RFA acknowledges acceptance by the applicant of all terms and conditions, including compensation, as set forth herein.

**B. Colorado Contract General Provisions and Special Provisions**

A contract will be used for awards over the amount of \$25,000.00. The State of Colorado will incorporate standard General Provisions and Special Provisions into any contract resulting from this RFA. Minor elements of the General Provisions may be negotiable. The terms of the Special Provisions are non-negotiable.

A sample of the most recent version of the General Provisions and Special Provisions can be found in **Attachment B: General and Special Provisions-Purchase Order**. Provisions that actually appear in the final contract will reflect the approved State version at the time of contract execution.

A purchase order will be used for awards under the amount of \$25,000.00. Purchase Order Terms and Conditions can be found in **Attachment C**.

**C. Modification or Withdrawal of Applications**

Applications may be modified or withdrawn by the applicant prior to the established submission due date and time.

**D. Addendum or Supplement to Request for Applications**

In the event that it becomes necessary to revise any part of this RFA, a modification will be posted at [www.coloradowic.com](http://www.coloradowic.com). It shall be the responsibility of the applicants to regularly monitor the [www.coloradowic.com](http://www.coloradowic.com) web site for any such postings. Failure to retrieve such modifications, and include their provisions in your application, may result in your application being disqualified.

Should the applicant find any part of the solicitation to be discrepant, incomplete, or otherwise questionable in any respect, the applicant shall be responsible to call such matters to the attention of the purchasing agent immediately. Failure to do so shall be at the applicant's risk. Amendments to this solicitation will be official only if published on [www.coloradowic.com](http://www.coloradowic.com). Applicants should not rely on verbal statements that alter this solicitation.

**E. Oral Presentations/Site Visits**

Applicants may be asked to make oral presentations or to make their facilities available for a site inspection by the evaluation committee. Such presentations and/or site visits will be at the applicant's expense.

**F. Rejection of Applications**

The State of Colorado reserves the right to reject any or all applications received in response to this RFA, to waive informalities and minor irregularities in applications received, and to accept any portion of an application or all items proposed if deemed in the best interest of the State of Colorado to do so.

**G. Confidential/Proprietary Information**

Any restrictions of the use or inspection of material contained within the application shall be clearly stated in the application itself. Written requests for confidentiality shall be submitted by the applicant with the application. The applicant must state specifically what elements of the application are to be considered confidential/proprietary and must state the statutory basis for the request under the Public (open) Records Act. (§24-72-201 et seq., C.R.S.) Confidential or proprietary information must be readily identified, marked and separated from the rest of the application. Co-mingling of confidential and/or proprietary and other information is NOT acceptable. Neither an application in its entirety, nor

application price information will be considered confidential and proprietary. Any information that will be included in any contract resulting from the RFA cannot be considered confidential.

The CDPHE will make a written determination as to the apparent validity of any written request for confidentiality. In the event the CDPHE does not concur with the applicant's request for confidentiality, the written determination will be sent to the applicant. Ref §24-72-201 et seq., C.R.S., as amended, Public (open) Records Act.

Applicant(s) acknowledge that they may come into contact with confidential information contained in the records or files of the State in connection with any resulting contract or in connection with the performance of its obligations under any resulting contract. The awarded applicant(s) shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the State.

The awarded applicant(s) shall notify its employees that they are subject to the confidentiality requirements as set forth above, and shall provide each employee with a written explanation of the confidentiality requirement before the employee is permitted access to confidential data. Awarded applicant(s) shall provide and maintain a secure environment that ensures confidentiality. The confidentiality of all information will be respected and no confidential information shall be distributed or sold to any third party nor used by awarded applicant(s) or its assignees and/or subcontractors in any way except as authorized by this contract. Confidential information shall not be retained in any files or otherwise by awarded applicant(s). Disclosure of such information may be cause for legal action against the awarded applicant(s). Defense of any such action shall be the sole responsibility of the awarded applicant(s). Unless directed otherwise, awarded applicant(s) is required to keep all State information in a secure, confidential manner.

**H. Response Material Ownership**

The State of Colorado has the right to retain the original application and other RFA response materials for our files. As such, the State of Colorado may retain or dispose of all copies as is lawfully deemed appropriate. The State of Colorado has the right to use any or all information/material presented in reply to the RFA, subject to limitations outlined in the Proprietary/Confidential Information clause. Applicant expressly agrees that the State may use the materials for all lawful State purposes, including the right to reproduce copies of the material submitted for purposes of evaluation, and to make the information available to the public in accordance with the provisions of the Public Records Act.

**I. Application Prices**

Applicant testifies that submitted prices were arrived at independently and there was no collusion involved.

Estimated application prices are not acceptable. Application prices should be best and final offer, unless otherwise stated in the RFA. The application price will be considered in determining the apparent successful applicant. Applications shall be firm for a period of not less than one-hundred-twenty (120) calendar days.

Prices are expected to be firm, fixed price, with payment due at milestones as defined in this request for applications. Estimated application prices are not acceptable; pricing must be in United States funds. Applications submitted must include all related costs, for example surcharges, travel, etc. Any costs not included as part of the application will be disallowed.

**J. RFA Cancellation**

The State reserves the right to cancel this Request for Application in its entirety or individual phases at any time, without penalty.

**K. Conflict of Interest/Organizational Conflict of Interest**

By submission of a RFA response, the applicant agrees that at the time of contracting the proposer has no interest, direct or indirect, that would conflict in any manner or degree with the performance of the required services and obligations. The applicant shall guarantee that in the performance of the contract they shall not employ any person having any such known interest. Applicants are required to disclose

all current or pending projects with the State of Colorado, and/or political subdivisions. Applicants must include all potential conflicts related to this solicitation and any other services related to this project at the time of response submission and during contract performance. Applicants must explain any State employment affiliation.

Any business entity or person is prohibited from being awarded a contract if the business entity or person has an "Organizational Conflict of Interest" with regard to this solicitation and the resulting contract(s).

No person or business entity who was engaged by the State to prepare the original RFA shall be eligible to participate (directly or indirectly) in the submission of an application for this solicitation

**IF:**

1. Such person or entity had prior access to source selection information related to this procurement process, and
2. That prior access included, but was not limited to: requirements, statements of work, or evaluation criteria.

The State considers such engagement or access to be an Organizational Conflict of Interest, which would cause such business entity or person to have an unfair competitive advantage.

If the State determines that an Organizational Conflict of Interest exists, the State, at its discretion, may cancel the contract award. In the event the successful applicant was aware of an Organizational Conflict of Interest prior to the award of the contract and did not disclose the conflict to the procuring agency, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed by subcontractors in connection with the performance of the contract, with the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.

**L. Present/Former Employee Standards of Conduct – Disclosures**

Pursuant to sections 24-18-101 and 201, et. seq., C.R.S., and section 24-50-507, C.R.S., former and present public employees and officials may not "be interested" in some State Agency contracts and are prohibited from engaging in certain activities in relation to State contracts. The State reserves the right to void or terminate contracts entered into in contravention of those provisions, or contracts in which a current State employee performs any contract administration function involving the use of State time or resources or that is otherwise contrary to State law. Notwithstanding the disclosure provisions in section 24-18-201, C.R.S., the State reserves the right to disqualify any application, or void or terminate any contract involving the participation or use of a present or former employee within the meaning of that section where such disqualification or termination is deemed to be in the best interest of the State. At the time of the submission of any application, the contractor shall disclose to the Procuring Agency the identity, organization, and nature of participation of any present or former employee (who terminated State employment within six months prior to the date of receipt of applications) participating in development of the application. Further, the contractor shall disclose during contract performance the identity, organization, and nature of participation of any present or former employee (who terminated State employment within six months prior to the date of any resulting contract or purchase order).

**M. Alternative Bids or Offers/Affiliated Vendors**

Unless otherwise permitted by the Procuring Agency, alternative applications by any vendor are not permitted. Unless otherwise permitted by the Procuring Agency, applications by affiliated vendors are not permitted except in accordance with this paragraph. An affiliated vendor is one who is controlled or owned by another vendor responding to this solicitation, or owned or controlled by a third person or other entity that controls or owns two vendors responding to this solicitation. "Affiliation" includes one person's having a substantial role in the preparation of offers by two vendors responding to this solicitation. A submission of an application in connection with any solicitation represents a certification that the applicant is not affiliated with any known vendor also submitting an application in response to the solicitation, except to the extent the nature of such affiliation is described with

particularity. The State reserves the right to disqualify any application by, or void any resulting purchase order or contract with, any vendor responding to a solicitation in violation of this provision or the following certificate of independent price determination.

**N. Certification of Independent Price Determination**

1. By submission of this application, each applicant certifies, and in the case of a joint application, each party thereto certifies as to its own organization, that in connection with this procurement:
  - a. The prices in this application have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other applicant or with any competitor;
  - b. Unless otherwise required by law, the prices which have been submitted in this application have not been knowingly disclosed by the applicant and will not knowingly be disclosed by the applicant prior to opening, directly or indirectly to any other applicant or to any competitor; and
  - c. No attempt has been made or will be made by the applicant to induce any other person or firm to submit or not submit a application for the purpose of restricting competition.
2. Each person signing the Request for Application Cover Sheet & Signature Page of this application certifies that:
  - a. The signing individual is the person in the applicant's organization responsible within that organization for the decision as to the prices being offered herein and that he has not participated, and will not participate, in any action contrary to K.(1)(a) through K.(1)(c) above; or
  - b. He is not the person in the applicant's organization responsible within that organization for the decision as to the prices being offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision, in certifying that such persons have not participated, and will not participate, in any action contrary to (1)(a) through (1)(c) above, and as their agent does hereby so certify; and he has not participated, and will not participate, in any action contrary to K.(1)(a) through K.(1)(c) above.
3. An application will not be considered for award where K.(1)(a), K.(1)(c), or K.(2) above have been deleted or modified. Where K.(1)(b) above has been deleted or modified, the application will not be considered for award unless the applicant furnishes with the application a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency (CDPHE) determines that such disclosure was not made for the purpose of restricting competition.

**O. Selection of Successful Application and Notice of Intent to Award**

The State reserves the right to make an award on receipt of initial applications, so applicants are encouraged to submit their most favorable application at the time established for receipt of applications. Applicants not meeting the requirements identified in the RFA shall be ineligible for further consideration. The State may conduct discussions with applicants in the competitive range (those most responsive to the requirements and reasonably susceptible of being selected for award) for the purpose of promoting understanding of the State's requirements and the applicant's application, to clarify requirements, make adjustments in services to be performed, and in prices. Changes to applications, if permitted, will be requested in writing from applicants. If application revisions are permitted after oral presentations and discussions, a date will be established in writing by the State for submission of best and final offers (BAFO). Applicants will not be provided an opportunity for comprehensive application revisions.

Upon review and approval of the evaluation committee's recommendation for award, the CDPHE will issue "Notice of Intent to Make an Award" letter(s) to all applicants.

**P. Requirement for Valid Contract**

The State Agency will not be responsible for any products delivered or services performed prior to issuance of a purchase order signed by an authorized representative of the State Agency's purchasing department, or a contract signed by a duly authorized representative of the State Agency and approved by the State Controller or designee.

**Q. Vendor Forms**

In the event applicant's form(s) or part(s) of forms are included as an attachment(s) applicant agrees that, in the event of inconsistencies or contradictions, the terms and conditions of the solicitation document shall supersede and control over those contained in the applicant's form(s) regardless of any statement to the contrary in an applicant form(s). Unless the State specifically agrees in writing through overt reference or other express written indication of assent, terms and conditions on vendor forms regarding choice of law, venue, warranty disclaimer or exclusion, indemnification or limitation of liability shall be of no effect.

- R. Award of Contract/Standard (Model) Contract/Legislative Changes**  
The award will be made to that applicant(s) whose application, conforming to the RFA, has been determined to be responsive and responsible and most advantageous to the State of Colorado, considering the evaluation factors set forth in this announcement. A contract must be completed and signed by all parties. In the event the parties are unable to enter into a contract in a reasonable timeframe, the State may elect to rescind the "Notice of Intent to Make an Award" communication and make the award to the next most responsive and responsible applicant. The successful applicant(s) is required to enter into a formal Contract with CDPHE. The State of Colorado reserves the right to amend the contract in response to future legislative changes that affect this project.
- S. Reciprocity**  
Reciprocity is mandated by statute. C.R.S. §8-18-101 states, "When a contract for commodities or services is to be awarded to a bidder, a resident bidder... shall be allowed a preference against a nonresident bidder equal to the preference given or required by the state in which the nonresident bidder is a resident".
- T. Term of the Contract**  
This RFA may result in one contracts with no renewal periods. The initial contract will be effective upon approval by the State Controller's designee through September 30, 2016. The contract may not be renewed.
- U. Acceptance of Application Content**  
The contents of the application (including persons specified to implement the project) of the successful applicant will become contractual obligations if acquisition action ensues. Failure of the successful applicant to accept these obligations in a contract, purchase document, delivery order or similar acquisition instrument may result in cancellation of the award and such applicant may be removed from future solicitations.
- V. Order of Precedence**  
In the event of any conflict or inconsistency between terms of this request for application and the offer, such conflict or inconsistency shall be resolved first, by giving effect to the terms and conditions of the contract, second to the request for application, and third, to the application.
- W. Venue**  
The parties agree that venue for any action related to performance of this application shall be in the City and County of Denver, Colorado.
- X. Withholding of Debts Owed to State Agencies**  
Pursuant to C.R.S. §24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 22, Title 39, C.R.S.; (c) unpaid loans due to the student loan division of the department of higher education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the Controller.
- Y. State Ownership of Contract Products / Services**  
All products/services produced in response to the contract resulting from this RFA will be the sole property of the State of Colorado, unless otherwise noted in the RFA.
- Z. Incurring Costs**

The State of Colorado is not liable for any cost incurred by applicants prior to issuance of a legally executed contract or procurement document. No property interest of any nature shall occur until a contract is awarded and signed by all concerned parties.

**AA. Non-Discrimination**

The applicant shall comply with all applicable state and federal laws, rules and regulations involving non-discrimination on the basis of race, color, religion, national origin, age or sex.

**BB. Parent Company**

If an applicant is owned or controlled by a parent company, the name, main office address, and parent company's tax identification number must be provided in the solicitation response. The tax identification number provided must be that of the applicant responding to the RFA. The applicant must be a legal entity with the legal right to contract and must be registered in the State of Colorado to conduct business.

**CC. News Releases**

No news releases pertaining to this RFA shall be made prior to execution of the contract without prior written approval of CDPHE.

**DD. Contract Cancellation**

CDPHE reserves the right to cancel, for cause, convenience, or lack of fiscal funding, any contract resulting from this RFA by providing timely notice to the contractor.

**EE. Taxes**

CDPHE, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code (Registration No. 84-730123K). CDPHE's Colorado State and Local Sales Tax Exemption Number is 98-02565. Applicant is hereby notified that when materials are purchased in certain political sub-divisions (for example in the City of Denver) the applicant may be required to pay sales tax even though the ultimate product or service is provided to the State of Colorado. This sales tax will not be reimbursed by the State.

**FF. Assignment and Delegation**

Except for assignment of antitrust claims, neither party to any resulting contract may assign or delegate any portion of the contract without the prior written consent of the other party.

Awarded contractor(s) will NOT be allowed to subcontract portions of this RFA. Awarded contractor(s) shall be fully accountable to the CDPHE and shall ensure that all subcontractors agree to and comply with the terms and conditions of the contract. During contract performance, the CDPHE may request and awarded vendor(s) shall provide proof of subcontractor compliance with CDPHE terms and conditions.

**GG. Availability of Funds**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void, without penalty to the State of Colorado.

**HH. Selection and Evaluation:**

An Evaluation Committee will evaluate the merits of applications received in accordance with the evaluation factors stated in this RFA and identify the application that is most advantageous to the state. While numeric evaluations may be used in some aspects of the process to identify strengths and weaknesses of applications, and to establish a ranking, the final decision will be a business decision by the State and will not be based on a numerical score. A Decision Memorandum will document the basis for the award decision.

The technical aspects of applications will be assessed based on the soundness of the applicant's approach and the applicant's understanding of the requirement. Past experience/qualifications will be assessed by considering the extent to which the qualifications, experience, and past performance are likely to foster successful, on-time performance. Technical and past experience assessments may include a judgment concerning the potential risk of unsuccessful or untimely performance, and the

anticipated amount of State resources necessary to insure timely, successful performance based on requirements of Procurement Code C.R.S. §24-103-401 et.seq and C.R.S. §24-103.5-101 et.seq. The State reserves the right to include the State of Colorado and other states as additional references and may use all information available regarding past performance as defined in C.R.S. §24-102-205 et.seq. The State also reserves the right to call references only on the selected applicant(s) as a method of determining responsibility.

Failure of the applicant to provide any information requested in this RFA may result in disqualification of the application. This responsibility belongs to the applicant.

Applicants should not assume that they will have an opportunity for oral presentations or revisions of applications, so they should submit their most favorable applications as their initial application. If award is not made on receipt of initial applications, applicants in the competitive range (those most responsive to the requirements and reasonably susceptible of being selected for award) may be provided an opportunity to make an oral presentation. The oral presentation may be held for the purpose of clarification and to ensure full understanding of and responsiveness to solicitation requirements.

If application revisions are permitted after oral presentations and discussions, a date will be established in writing by the State for submission of best and final offers. Applicants will not be provided an opportunity for comprehensive application revisions.

The apparently successful applicant may be required to submit for the most current reported period and a reasonable number of previous years (in order of preference) an audited financial statement, a financial statement reviewed by a certified public accountant, a third-party prepared financial statement if an audited or reviewed statement is not available, or another financial statement prepared in the routine course of the applicant's business, in order to assist the State in making its determination of applicant responsibility in accordance with C.R.S. §24-103-401.