

## **WRITTEN QUESTIONS AND ANSWERS**

### **SP-18-0026 Description**

#### **ANSWERS ARE IN BLUE**

1. Question: Can we forgo the requirement for the VPAT for the reasons above, and just reference the Dell.com site for their VPATs as we supply Dell computers at the IT provided with our Mass Spectrometry?

Answer: Stated as "should" which defines as an option to include with bid response.

2. Question: Since the due date for questions is Oct 9<sup>th</sup> and the bid closing date is Oct 10<sup>th</sup>, will the State please extend the closing date four business days from the States posting of answers to allow all potential responders to react to and incorporate any changes based on the answers to these and other questions that may be presented? Since the due date for questions is Oct 9<sup>th</sup> and the bid closing date is Oct 10<sup>th</sup>, will the State please extend the closing date four business days from the States posting of answers to allow all potential responders to react to and incorporate any changes based on the answers to these and other questions that may be presented?

Answer: Addendum 1; October 16, 2017 at 14:00 CST has been set for bid opening.

3. Also we believe there is a typo in A2 of this section stating the date upon which the State will post its written response to questions under this section. Can this be corrected?

Answer: Addendum 1; October 16, 2017 at 14:00 CST has been set for bid opening and questions and answers to be posted October 10, 2017.

4. Based on our question at 1.7 will the State accept this section is also not applicable except to the extent it is applicable to the Dell computers, and as supported at Dell.com?

Answer: Yes

5. Based on our question at 1.7 will the State accept this section is also not applicable except to the extent it is applicable to the Dell computers, and as supported at Dell.com?

Answer: Yes

6. We understand that there was a need for a pesticide library to be included in the requirements but we don't see one listed in A-Z. Is there a requirement for a pesticide library and associated software to run it?

Answer: It was our intent to request a pesticide library if the bidder had one available. This item did not get into the final draft. It is not a requirement.

7. Since "satisfaction" is not an objective criterion, can we change this to "Payment will be made when Contractor has installed the instrument meeting manufacture's installation specifications?"

Answer: These terms and conditions will not be changed.

8. Will the State accept a limitation on indemnification obligations under claims for IP infringement, in this Agreements Sections 3 and 4, be to the extent the sale and manufacturing of the equipment is the basis of any claim, that Contractor must be given prompt notice and opportunity to control the defense and settlement and that the sole and exclusive remedies for any damages finally awarded are, at the Contractor's option, either: (a) procure for the State, the right to continue using the Product; or (b) modify the Product so that it becomes non-infringing; or (c) require the State to return the Product and upon return, refund to the State, the price actually paid by buyer for the Product, less a reasonable amount for use, damage and obsolescence; or (d) substitute for the alleged infringing Product other suitable, non-infringing Products with comparable functionality?

Answer: These terms and conditions will not be changed.

9. Will the State accept the following clarification under this Section: For avoidance of doubt and to the extent not prohibited by the laws of the State, notwithstanding anything to the contrary in this Section, CONTRACTOR SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES ARISING OUT OF OR CAUSED BY PRODUCT, CONTRACTOR'S PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS RELATING TO THE PURCHASE OF PRODUCT OR PERFORMANCE OF SERVICES, CONTRACTOR'S BREACH OF THESE TERMS, THE POSSESSION OR USE OF ANY PRODUCT, OR THE PERFORMANCE BY CONTRACTOR OF ANY SERVICES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, DOWNTIME, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL, OR BUSINESS OR OTHER FINANCIAL LOSS.

Answer: These terms and conditions will not be changed.

10. Will the State accept the following clarification under this Section: The products are supplied with the standard manufacturer's warranty, or if none "as-is", provided in the operating manual or as a specific expressed written warranty. CONTRACTOR'S SOLE LIABILITY AND RESPONSIBILITY UNDER THIS AGREEMENT FOR BREACH OF GUARANTY OR WARRANTY IS, CONTRACTOR SHALL AT SOLE DISCRETION, CONTRACTOR REPAIR OR REPLACE DEFECTIVE PARTS OR RE-PERFORM DEFECTIVE SERVICES WITHIN A REASONABLE TIME . THESE ARE THE STATE'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF WARRANTY.

Answer: These terms and conditions will not be changed.

11. Item1 Mass Spectrometer

This line item, as called out the Requirements, is provided with commercial software which includes the manufacturers End User License Agreements provided either as downloads to the users or through click wrap upon, installation. Can we expect that they be accepted into the entire agreement?

Answer: Yes, this should be the final and total price of the system.

12. Items 2-5 Extended Warranty

Will the State accept the following additional terms of performance for the services being requested under this Section, in the event the State decides to purchase these Services, as the provided Bid Documents do not include performance provisions applicable to such services?

**"SCOPE OF SERVICES**

**General Items (applicable to all Services Plans and all Services provided on a time and materials basis)**

1. Health and Safety - Provider may require a completed Certificate of Decontamination, or transfer of an instrument to a suitable, safe and secure location reasonably determined by Provider, as a condition to servicing any instrument. Customer warrants that any instrument or component to be serviced will be fully decontaminated of radioactive, biological, toxic or other dangerous materials or substances prior to servicing so that the service technician will not be exposed to any such materials. Customer shall not assign Provider personnel to work in bio-safety level 3 or level 4 laboratories without prior written notice to Provider and Provider's written consent.
  2. Delivery - Provider will use reasonable efforts under the circumstances to provide Services as quickly as possible. The Services will be scheduled at a time mutually agreed upon by Provider and the customer. It is customer's responsibility to provide access to Provider so Provider may complete Services, within the scheduled or guaranteed time period, if applicable.
  3. Hours of Operation - Unless otherwise specified in the Quotation, Services are generally provided during normal working hours, Monday through Friday, 8:00 AM to 8:00 PM EDT, excluding holidays.
  4. Guaranteed On-Site Response Time - Services with an on-site response time guarantee are only guaranteed for Zones 1 and 2 unless specific additional guaranteed response time upgrades have been purchased. For all other zones, on-site response time will be on a reasonable effort basis and prioritized over customers repair calls without a service plan. For Services eligible for guaranteed on-site response time, service calls must be received by Provider's service center before 2:00 PM local time. Calls received after this period will be considered received the next business day. Customer shall provide access to the instrument within the response time guaranteed.
- A. On-site remedy for all Services except Services plans - In the event Provider fails to be on-site within the purchased guaranteed response time, except where customer did not provide access to the instrument, customer shall receive full credit for the purchased response time.
- B. On-site remedy for Services plans - Provider may issue a credit to customer for delay in guaranteed response time or scheduled service, of one (1) business day or more except where delays are a result of non-performance subject to Force Majeure or reasonable access to the instrument was not provided pursuant delivery. Each late day's pro-rated credit is an amount equal to 1/365th of the annual fee for the Services plan covering the respective instrument for which the service call was made. If a Services plan covers more than one instrument, the pro-rata credit is determined by allocating a pro-rata portion of the plan's annual fee to the instrument with respect to which the service call was made. The credit may be used by customer when renewing its current Services plan covering that instrument for a consecutive period, as a credit against plan fees. To be eligible to use the credit, Provider's Services plan administrator must receive notice in writing (e-mail notification is satisfactory) of the customer's intention to use the credit for a renewal at the time of renewal, but in any event no later than fifteen (15) days after the expiration of the Services plan period in which the credit was earned. The credit described above is Provider's sole obligation and customer's sole remedy for failure of Provider to respond within the guaranteed on site response time where provided for in the Services plan. Provider's Services Plan Administrator contact details can be found at [service.sales@sceix.com](mailto:service.sales@sceix.com).

#### **Services Plan Terms (only applicable to purchase of a Services Plan)**

1. Instrument Recertification - If an instrument has not been under warranty or a Services plan prior to commencement of a newly purchased Services plan, Provider may require instrument recertification on a time and materials basis not covered under the new Services Plan, prior to the effective date of the new Services Plan.

2. Hardware and Application Telephone Support - All calls made to regional telephone support numbers during Provider's hours of operation where customer left a message for a return call including the caller's name and telephone number will be responded to within 4 business hours, unless other response time is specified in the Quotation.
3. Planned Maintenance - Customer and Provider will schedule PM Services within a 1 month period of the manufacturer's recommended PM Timeframe. Customer shall provide access to the instrument for that visit. PM Services not completed because customer would not provide access at a time reasonable to Provider will be forfeited.
4. Plan Restrictions -
  - A. The decision to repair or replace any parts of the instrument will be made by Provider in its sole and reasonable discretion. Parts and components replaced or otherwise utilized in the repair of the instrument may be either new or refurbished at the discretion of Provider. All parts which have been removed and replaced in performance of Services become the property of Provider.
  - B. Services plans do not cover replacement of parts, costs, repairs or adjustments for defects resulting from or necessitated by acts of nature, damage not caused by Provider, accident, neglect, carelessness, misuse, including without limitation: operation with incompatible solvents or samples in the system; operation outside of the environmental or use specifications or not in conformance with the instructions for the instrument system, software, or accessories; improper or inadequate maintenance by the user; installation of software or interfacing, or use in combination with software or products, not supplied or authorized by Provider; or modification, repair, service transfer to another location of the instrument made by the customer, customer's employees, agents or an unauthorized contractor, or intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations. Services plans do not cover repair or replacement of parts that are radioactive or contaminated with biological, toxic or other dangerous materials or substances. Services plans do not cover parts for any instrument or other equipment other than the covered instrument or equipment as identified in the Service Plan by its specific serial number(s). Services plans do not cover consumables unless otherwise specified in the Quotation. Services plans do not cover costs, repairs, or adjustments made necessary by connection of the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, or by any interruption or surge in voltage (see Instruction Manual for specifications).
  - C. Unless otherwise expressly stated by Provider in writing or under the Terms of the purchased Services plan, parts in contact with any liquid are considered wetted and may be deemed user replaceable and not covered by any Services plan, including, but not limited to seals, filters, gaskets, etc.
  - D. Use of any non-Provider's parts or reagents that deposit or cause to be deposited residual matter in the instrument flow path or that otherwise interrupt the flow path that are reasonably determined by Provider to have caused instrument failure will require remedial repairs of the affected parts to be completed outside a Services plan at Provider's then prevailing rates for billable service.
  - E. Unless otherwise specified in the Quotation, Service plans do not include customer training or services related to the relocation of instruments.
  - F. Ancillary equipment not manufactured by Provider, such as third party computers, may be excluded from any Services plan at Provider's discretion. Provider will pass on to customer any manufacturer's warranty of any such ancillary equipment, to the extent permitted by the manufacturer."

Answer: These terms and conditions will not be changed.