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Recommendation for New Contracts

AEPA 024-D Computerized Maintenance Management System

Solicitations rejected PRIOR to Category Committee evaluation with cause for rejection:

FAHM Technology Partners, Inc. – missing samples of reporting and samples of training.

Solicitations rejected DURING Category Committee evaluation with cause for rejection:

DMS Technologies – They've had no sales in the US in the last three years. The samples provided for reporting and training were not what was requested. The training they provide is via training documents (versus live training) and they have no marketing reps. Their response to rolling the contract out was focused on a single system implementation, not a cooperative.

Facilio – This program is focused on commercial real estate. All of their professional services are provided from India, which could cause major service limitations because of the time difference. They did not respond to the marketing question and no references were provided. They responded as if this were a project and not a cooperative. As noted in their exceptions they have non-breakable contracts and will accept no liability.

eCIFM – This is a real estate/lease focused program. They have a very long implementation timeline. Their reports seemed to be basic and Excel based. Theirs was the least comprehensive bid response and theirs is the most expensive program.

Methodology Used by the Committee for Determination:

_____ Low responsive and responsible Respondent(s) based on the attached price tabulation.

_____ Low responsive and responsible Respondents(s) based on the attached market basket study tabulation.

X Responsive and responsible Respondent based on specialty offerings or value.

Vendor(s) recommended with reason for recommendation:

Brightly – They offer a very comprehensive program. As the incumbent vendor, with many of our customers currently using the program, we do not want to eliminate their ability to access the pricing they currently have.

Facilities Management Express – They offer a comprehensive and affordable option for customers, with their key vertical being K-12. Their customer service focus is impressive, and they are willing to work with each customer to customize forms to meet their needs. They are offering a 10% discount, with is also available through TIPS and 1GPA. They have a good grasp of cooperatives and on marketing, and have sales reps throughout the country. They have had recent sales in all AEPA member states but two.

The below responses listed deviations and/or exceptions :

Brightly's exceptions are attached. Facilities Management Express had none.

Proposed Motion:

The Category Committee recommends that AEPA reject the responses from:
DMS Technologies, Facilio and eCIFM.

Proposed Motion:

The Category Committee recommends the following responses for approval by AEPA:
Brightly and Facilities Management Express.

Committee Members

Committee Chair – Name & Signature: Cara Hart DocuSigned by: Cara Hart 6EF8D15972384BE...

Committee Member: Craig Peterson

Committee Member: Tina Smith

Committee Member: Click or tap here to enter text.

Exceptions

Instructions:

1. Mark "No" or "Yes" with an "X" below.
2. If "yes" is marked with an "X" below, insert answers into the form shown below, providing narrative explanations of exceptions. *(To insert more rows, hit the tab key from the last field in the last row and column.)*
3. If adding pages, the company name and identifying information as to which item the response refers must appear on each page.
4. Exceptions to local, state or federal laws cannot be accepted under this solicitation.

	No, this respondent does not have exceptions to the Terms and Conditions incorporated in Parts A and B of this IFB.
X	**Yes**, this respondent has the following exceptions to the Terms and Conditions incorporated in Parts A and/or B of this solicitation.

IFB Section and Page Number	Outline Number	Term and Condition	Exception
Part A – Terms and Conditions Page 13		**Contract Documents**	Brightly must rely on its commercial subscription agreements (encompassing terms and conditions specific to SaaS transactions) as the basis for beginning good faith contract negotiations with purchasers as these contain language specific to the software industry, such as a grant of subscription access and intellectual property rights. Brightly is amenable to negotiating contract requests with public entities by incorporating mutually agreed upon clauses into contract documents. Brightly's current commercial agreements are attached to this response.
Part A – Terms and Conditions Page 14		**Delivery Terms, Conditions, and Requirements** **3. Ownership of products and services**	Brightly provides subscription-based access to its commercial cloud services. All intellectual property rights regarding products and services are set forth in an applicable Order and the Brightly Master Subscription Agreement and Professional Services Addendum. Ownership of products and services remains with Brightly. Brightly retains all ownership right, title, and interest in and to its products and services provided under this contract, including without limitation all corrections, enhancement, improvements to, or derivative works thereof, and in all intellectual property rights.
Part A – Terms and Conditions Page 17		**Form of Contract**	The form of contract between Brightly and any entity using Brightly's offerings shall also

			include the Brightly Order document which references the Master Subscription Agreement ("MSA") and, where applicable, Professional Services Addendum ("PSA"). Copies of the current MSA and PSA are included in Brightly's response. The Brightly Order must be signed by the purchaser before offerings are made available. Brightly cannot agree to be bound by unknown purchase order terms as such terms are typically drafted for the purchase of goods not subscription software services. Brightly requests the Form of Contract clause be modified as follows to incorporate the applicable Brightly forms and terms: *The form of contract for this solicitation shall be the Invitation for Bid, the awarded Bidder response and/or contracts in accordance with this Invitation for Bid, and the awarded Bidder's order document which shall include Bidder's Master Subscription Agreement and, where applicable, Professional Services Addendum. Any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgement, or confirmation that are different from or in addition to those required hereunder shall not be binding on the parties, even if signed and returned, unless both parties agree in a separate writing to be bound by different or additional terms or conditions. If a firm submitting a bid requires AEPA Member Agency and/or Participating Entities to sign an additional contract, a copy of the proposed contract must be included with the bid.*
Part A – Terms and Conditions Page 18-19		**Indemnification**	Brightly cannot accept the clause as written. Brightly agrees to provide the following indemnification which is in line with SaaS industry standards:

			Vendor Partner will indemnify and defend AEPA, its Members, Participating Entities, its employees from third party claims, demands, suits, proceedings, loss, cost and damages of every kind and description, including any reasonable attorney's fees and/or litigation expenses, which might be brought or made against or incurred by, AEPA, its Members, Participating Entities, its employees on account of loss or damage to any property or for injuries to or death of any person, to the extent arising from the gross negligence or willful misconduct of Vendor Partner, its employees, agents, representatives, or Subcontractors, their employees, agents, or representatives in connection with or incident to the performance of this agreement, or arising out of worker's compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of Vendor Partner, and/or its subcontractors or claims under similar such laws or obligations. Vendor Partner's obligation under this section will not extend to any liability caused by the sole negligence of AEPA, its Members, participating Entities, its employees. The liability of AEPA, its Members, Participating Entities or its employees will be subject in all cases to the immunities and limitations of the AEPA Member Agency's state laws.
Part A – Terms and Conditions Page 19		**Legal Remedies**	Brightly requests the following modification: *All claims and controversies shall be subject to the federal, state, local rules, regulations, or codes of the state in which the AEPA member Agency or Participating Entity resides.*
Part A – Terms and Conditions Page 21		**Ordering Procedures** 1. Standard Ordering Process	Brightly requires the Buyer sign the Brightly Order document for all transactions.
Part A – Terms and Conditions		**Patent and Copyright Indemnification**	As a SaaS provider, Brightly includes a standard

Page 22			indemnification clause in its commercial SaaS agreements which is drafted in accordance with SaaS industry standards. Brightly requests the IFB Patent and Copyright Indemnification be modified to align with Brightly's standard clause as follows: Vendor Partner shall defend and indemnify Member Agency and its Participating Entities (each a "Claimant") from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Claimant, in connection with any third party claim (each, a "Claim") alleging that Claimant's use of the Cloud Service (as defined in the Vendor Partner agreements) as expressly permitted hereunder infringes upon any intellectual property rights, patent, copyright or trademark of such third party, or misappropriates the trade secret of such third party; provided that Claimant: (x) promptly gives Vendor Partner written notice of the Claim; (y) gives Vendor Partner sole control of the defense and settlement of the Claim; and (z) provides to Vendor Partner all reasonable assistance, at Vendor Partner's expense. If Vendor Partner receives information about an infringement or misappropriation claim related to the Cloud Service, Vendor Partner may in its sole discretion and at no cost to Claimant: (i) modify the Cloud Service so that it no longer infringes or misappropriates, (ii) obtain a license for Claimant's continued use of the Cloud Service, or (iii) terminate any agreement (including Claimant's Cloud Service subscriptions) upon prior written notice and refund to Claimant any prepaid Subscription Fee (as defined in the Vendor Partner agreements) covering the remainder of the term of the terminated Cloud Service subscriptions. Notwithstanding the foregoing, Vendor Partner shall

			have no liability or obligation with respect to any Claim that is based upon or arises out of (A) use of the Cloud Service in combination with any software or hardware not expressly authorized by Vendor Partner, (B) any modifications or configurations made to the Cloud Service by Claimant without the prior written consent of Vendor Partner, and/or (C) any action taken by Claimant relating to use of the Cloud Service that is not permitted under the terms of this Agreement. This section states Claimant's exclusive remedy against Vendor Partner for any Claim of infringement or misappropriation of a third party's intellectual property rights related to or arising from Claimant's use of the Cloud Service.
Part A – Terms and Conditions Page 30		**Survival**	Brightly requests this language be revised as follows to include software subscriptions: All applicable software license agreements or software subscription orders, warranties, or service agreements that were entered into between Vendor Partner and Buyer under the terms and conditions of the Contract must survive the expiration or termination of the Contract.
Part A – Terms and Conditions Page 30-31		**Termination for Convenience**	Brightly provides its cloud services subscriptions for the Subscription Term as set forth in the Order document and cannot agree to termination for convenience of its cloud services subscriptions. Pursuant to Brightly's Master Subscription Agreement, all Subscription Fee payment obligations are non-refundable and non-cancelable, and quantities purchased cannot be decreased during the Relevant Subscription Term. In the event the contract is terminated for convenience, any existing Subscription Term shall continue until the expiration set forth in the Order and no refund shall be issued.
Part A – Terms and Conditions Page 32		**Warranty**	Brightly provides a warranty in the Master Subscription Agreement relating to cloud services; Brightly cannot agree to warranties which

			are not applicable to its cloud services. Brightly requests the Warranty language be deleted and the Master Subscription Agreement language be used instead: (a) Company warrants that Cloud Service will perform substantially in accordance with the features and functions described in the applicable Documentation. To the extent permitted by law, Subscriber's exclusive remedy and Company's entire liability for a breach of this warranty in Section 6.2(a), at its option: (i) will use commercially reasonable efforts to restore the non-conforming Cloud Services so that they comply with this warranty, or (ii) if such restoration would not be commercially reasonable, Company may terminate the Order for the non-conforming Offering and refund any prepaid fees paid for such Offering. The warranty excludes: (a) no charge Offerings or Previews, and (b) issues, problems or defects arising from Third Party Content, Subscriber Data or Content, or use of Cloud Service not in accordance with this Agreement. (b) Company represents and warrants that all such Professional Services shall be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of this warranty in Section 6.2(b), Subscriber's exclusive remedy and Company's entire liability shall be the re-performance of the applicable Professional Services. (c) Company makes only the limited warranties expressly stated in this Agreement, and disclaims all other warranties, including without limitation, the implied warranties of merchantability and fitness for a particular purpose. Company does not warrant or otherwise guarantee that: (i) reported errors will be corrected or support

			requests will be resolved to meet Subscribers' needs, (ii) any Order or Third Party Content will be uninterrupted, error free, fail-safe, fault-tolerant, or free of harmful components, or (iii) any Content, including Subscriber and Third Party Content, will be secure or not otherwise lost or damaged. Representations about Orders or features or functionality in any communication with Subscriber constitutes technical information, not a warranty or guarantee. (d) Company's Cloud Services have not been tested in all situations under which they may be used. Subscriber is solely responsible for determining the appropriate uses for the Cloud Services and the results of such use; Company will not be liable for the results obtained through Subscriber's use of the Cloud Services. Company's Cloud Services are not specifically designed or intended for use in (i) storage of sensitive, personal information, (ii) direct life support systems, (iii) nuclear facility operations, or (iv) any other similar hazardous environment.