



Request for Proposals

No. 2019-04

Development and Leasing of New Correctional Facilities

Through a Lease Agreement

(Statewide)

Alabama Department of Corrections

Issued December 6, 2019

Proposal Due Date: April 30, 2020

Alabama Department of Corrections
Office of the Commissioner
301 South Ripley Street
Montgomery, AL 36104

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SECTION 1 GENERAL PROVISIONS REGARDING THIS RFP

1.1 Introduction

This Request for Proposals ("**RFP**") is issued by the Alabama Department of Corrections ("**ADOC**"), a department of the State of Alabama (the "**State**"), to seek competitive proposals (individually, a "**Proposal**" and collectively, "**Proposals**") to develop and lease to ADOC one or more built-to-suit correctional facilities (each, a "**Facility**") pursuant to a Lease Agreement and other Lease Documents as described herein. See RFP Exhibit A for definitions of the capitalized terms used in this RFP.

1.2 Procurement Method

This RFP is issued by ADOC to those respondents deemed qualified by ADOC (each, a "**Proposer**") on the basis of the Proposer's Statement of Qualifications ("**SOQs**") submitted to ADOC pursuant to the Request for Qualifications for 3 New Build to Suit Correctional Facilities issued by ADOC on June 27, 2019, as amended (the "**RFQ**"). The purpose of this RFP is to invite the Proposers to submit Proposals to lease to ADOC, pursuant to a lease agreement between the parties (the "**Lease Agreement**" or the "**Lease**"), one or more correctional Facilities that will be "built-to-suit" ADOC's requirements as set forth in this RFP. Each lessor (referred to in the RFP Documents as the "**Developer**" or the "**Lessor**") will be responsible for developing and financing the applicable Facility in accordance with such requirements and for maintaining the Facility over the Term of the Lease, as more fully described in this RFP (such lease, development, financing, and maintenance of one or more Facilities referred to herein as a/the "**Project**").

ADOC will accept Proposals only from those Proposers that responded to the RFQ and were deemed qualified by ADOC. Proposers must comply with the terms of this RFP during the procurement and in their Proposals. Each Proposal must incorporate proposals for at least two of the Facilities (each, a "**Proposed Facility**"), which must be identified to ADOC in advance of Proposal submission in accordance with RFP Section 6. ADOC will not review or consider unsolicited or nonconforming proposals.

Based on the evaluation methodology set forth in RFP Section 7, ADOC may identify one or more Proposers with whom to enter into negotiations for one or more Leases for the Facilities. It is currently ADOC's intent to select multiple Proposers for negotiations, rather than selecting a single Proposer with whom to enter into negotiations and, ultimately, Leases for all three Facilities. However, a single Proposer may be selected for negotiations regarding more than one Facility. After a Proposer is selected, ADOC intends to enter into negotiations with the Proposer in accordance with the terms set forth in RFP Exhibit F (the "**Negotiation Terms**"), pursuant to which ADOC and the Proposer will continue to optimize the Project scope, progress the Facility design, refine cost estimates, facilitate financing of the Project, and negotiate the terms of a Lease for the Facility on the basis of the term sheet for the Lease Documents provided by ADOC as part of the RFP Documents (the "**Term Sheet**"). The "**Lease Documents**" will consist of the Lease Agreement and accompanying exhibits, appendices, and other documents, including the Technical Requirements for the Project. If a Lease satisfactory to ADOC cannot be negotiated with a selected Proposer in accordance with the Negotiation Terms, ADOC may proceed to select the next best value Proposer (determined pursuant to the evaluation methodology set forth in RFP Section 7) for negotiation of a Lease for the applicable Facility in accordance with the Negotiation Terms.

1.3 RFP Documents

The RFP consists of the following documents, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented (collectively, the "**RFP Documents**"):

- (a) This RFP document (including exhibits and forms);
- (b) The Draft Term Sheet for the Lease Agreement and other Lease Documents, including the exhibits and appendices thereto (which includes the Technical Requirements and their appendices) issued by ADOC to the Proposers. (These documents contain security sensitive information and otherwise are currently under development, subject to negotiation, and do not reflect business decisions of the State. As such, these documents will not be published and will be subject to confidentiality requirements.); and
- (c) Any background or reference information documents ("**RIDs**") that ADOC may elect to provide to the Proposers. (These documents, which have not yet been identified, may contain security sensitive information; accordingly, they may be subject to confidentiality requirements and may not be published.)

Any RIDs will be provided in connection with this RFP solely for the purpose of providing the Proposers background information. The RIDs will not form a part of the Lease Documents, and Proposers are not entitled to rely on the RIDs (including any opinions, suggestions, directions, or recommendations therein). ADOC makes no representation, warranty, or guarantee as to, and shall not be responsible for, the accuracy, completeness, or pertinence of any RIDs, and shall not be responsible for any conclusions drawn by the Proposers or Developers therefrom.

1.4 Confidentiality of Certain RFP Documents

Certain portions of the RFP Documents contain security or other sensitive information that will be provided only on a secure, confidential basis to ADOC's consultants, the Proposers, and their respective designees. Such confidential information will include any information provided in connection with this RFP that has been designated by the Alabama Law Enforcement Agency in accordance with Alabama Code §39-2-2 as having a direct impact on the security or safety of persons or facilities and requiring confidential handling. Each Proposer having access to any sensitive information is required to maintain such information's security and confidentiality. Moreover, each Proposer will continue to be bound by the terms of the Non-Disclosure Agreement provided with the Proposer's SOQ.

1.5 Drafts and Addenda

ADOC reserves the right, in its discretion, to revise, modify, or change the RFP Documents or procurement process at any time. Any revisions to the RFP (including revisions to provide additional information that this RFP indicates will be provided later in the RFP phase) will be implemented through issuance of Addenda.

1.6 Examination of RFP Documents

Each Proposer shall be solely responsible for examining the RFP Documents, including any Addenda issued by ADOC prior to the Proposal Due Date. Proposers shall be responsible for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained in the RFP Documents or of any provision that the Proposer fails to understand. Failure of the Proposer to do so shall be the Proposer's sole risk, and no relief for error or omission will be provided by ADOC.

Each Proposer is also solely responsible for informing itself with respect to any and all conditions that may in any way affect its Proposal or the performance of the Developer's obligations under the Lease Documents. As noted in RFP Section 1.3, the ability of the Proposers to rely on the RIDs is limited. Subject to the limitations set forth herein (including with respect to any restrictions on Proposer activities and communications), each Proposer is responsible for conducting such investigations as it deems appropriate in connection with its Proposal regarding the conditions associated with any proposed Project Site,

including Hazardous Materials, permanent and temporary Utility appurtenances, area population and demographics, and land use and development conditions (including development-related infrastructure). The Proposer's receipt of ADOC-furnished information does not relieve the Proposer of such responsibility.

Subject to the terms and conditions of the Lease Documents, the submission of a Proposal shall be considered prima facie evidence that the Proposer has made the above-described examination, has conducted sufficient investigations so as to become familiar with matters and conditions to be encountered in connection with the Project, and is satisfied as to, and has correlated its observations with, the requirements of the RFP and Term Sheet Lease Documents.

1.7 Errors

If any mistake, error, or ambiguity is identified by a Proposer at any time during the procurement process in any of the documents supplied by ADOC, the Proposer shall have a duty to notify ADOC of the recommended correction in writing in accordance with RFP Section 4.3 by the final deadline for Proposer comments set forth in the Procurement Schedule.

1.8 ADOC Rights

In connection with this procurement, ADOC reserves to itself all rights (exercisable by ADOC in its discretion) available to ADOC under the Alabama Code or under other applicable Laws, including the right to:

- (a) Modify, cancel, or withdraw the RFP, in whole or in part, or modify, cancel, or suspend this procurement, at any time and without incurring any cost obligations or liabilities;
- (b) Develop the Project in any manner that ADOC deems necessary, including developing or financing some or all of the Project itself;
- (c) Disqualify any Proposer that violates the terms of the RFP;
- (d) Disqualify any Proposer that materially misrepresents or falsifies any information provided to ADOC in its Proposal or otherwise in its course of dealing with ADOC or with any other State agency;
- (e) Reject any or all of the Proposals;
- (f) Waive deficiencies, informalities, and irregularities in a Proposal;
- (g) Request Proposal revisions, seek clarifications or permit corrections to a Proposal or information submitted in response to this RFP, require additional information from a Proposer, or require confirmation of information furnished by a Proposer;
- (h) Contact references, investigate Proposer statements, or consider information relating to a Proposer or Proposal based on information outside of the Proposal that is available to ADOC, including its evaluators' personal experience or knowledge;
- (i) Approve or disapprove changes in the Proposer's Developer Team and Key Individuals from those identified in the Proposer's SOQ;
- (j) Elect not to commence negotiations with any selected Proposer, suspend or terminate negotiations at any time, or recommence negotiations after negotiations have been suspended, or engage in negotiations with a Proposer other than the originally selected Proposer;
- (k) Commence a new procurement for part or all of the Project after cancellation of this procurement, in whole or in part, or termination of negotiations with one or more Proposers;

- (l) Disclose Proposal information in accordance with applicable Law and this RFP; and
- (m) Take any action affecting the Project or the procurement process that is determined to be in the best interests of ADOC or the State of Alabama.

1.9 ADOC Disclaimers

This RFP does not commit ADOC to enter into a contract. ADOC assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to this RFP. All such costs shall be borne solely by each Proposer and its team members. In no event shall ADOC be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Lease Documents, in form and substance satisfactory to ADOC, have been authorized and executed by ADOC, and then only to the extent set forth therein. In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.

SECTION 2 PROJECT OVERVIEW

2.1 General

ADOC intends, through this procurement, to enter into negotiations and, ultimately, Leases for each of the three Facilities. The scope of the Developer's obligations under the Lease will include: (a) development of the Project, including (i) securing the real property interest in the Project Site and other property interests required for the Project, (ii) financing the Project, and (iii) delivering a turnkey, built-to-suit new construction Facility, including design, construction, and commissioning of the Facility for ADOC occupancy and furnishing required utilities and FF&E; and (b) long-term maintenance of the Facility, including (i) lifecycle/capital maintenance, (ii) warranty work, (iii) routine maintenance (other than regular janitorial services), and (iv) provision of utilities in accordance with the performance standards set forth in the Technical Requirements. ADOC will retain all inmate management and other operational responsibilities at each Facility.

2.2 Project Objectives

ADOC is the agency responsible for the care, custody, and control of convicted felons in the State of Alabama. ADOC's mission is to provide public safety through the safe and secure confinement, rehabilitation, and successful re-entry of offenders. The current Alabama Prison Program was instituted to identify and make necessary changes to the prison infrastructure throughout the State. This program seeks to support ADOC's mission in the State's prison system by improving care and support for both staff and inmates. ADOC officials have evaluated multiple alternatives to achieve their mission and have chosen to seek Developers to develop and lease to ADOC three new, built-to-suit male correctional Facilities across the State, with the goal of increasing staff efficiency while offering improved access to medical care, education, staff wellness, rehabilitation programs, and religious services.

ADOC's overall goal for these correctional Facilities is to provide safe, secure, and constitutional incarceration in newly constructed facilities. ADOC is seeking facilities with a 50-year design life, so as to maximize ADOC's occupancy of the new facilities over a long-term lease with minimal interruption or interference required for lifecycle maintenance. The designs also should incorporate innovative features that will optimize the cost of ADOC's facility operations, including for programs that will have a positive effect on ADOC's recidivism rate.

ADOC's objectives for the Projects include:

- (a) Procuring high-quality Facilities that will conform to ADOC's program and Design Criteria, employ proven lifecycle and sustainability strategies, and fully support the intended use and operation of the Facilities (including indicated staffing and energy efficiency criteria).
- (b) Establishing a collaborative relationship between ADOC and the Developer Team so that the Developer is able to deliver a well-designed, well-built Facility for occupancy within ADOC's budget and timeframe.
- (c) Minimizing adverse impacts to ADOC operations through close coordination with ADOC and its stakeholders.
- (d) Encouraging Developer maintenance and promotion of safe, injury-free worksites and workplaces.
- (e) Encouraging Developer maximization of local participation in the Project(s) and assembly of a Developer Team that reflects the racial, gender, geographic, urban/rural, and economic diversity of the State.
- (f) Ensuring quality ongoing maintenance of the Facilities in accordance with ADOC's performance standards, including sufficient maintenance staffing and energy efficiency and sustainability requirements.

2.3 Facility Program

Pursuant to this RFP, ADOC is seeking to lease three newly constructed male correctional facilities on a turnkey build-to-suit basis at locations meeting the Project Site criteria outlined in [RFP Section 2.5.2](#).

Facilities 1 and 3 will be almost identical in programming. Facility 2 will be larger, will contain ADOC's special services (e.g., medical, mental health, aged care, and inmate reception), and must be located in the central portion of the State. The programmatic scope for the three correctional facilities is as follows:

Facility	Beds	Predominant Security Level	Estimated Net Building Area (sq. ft.)	Estimated Site Requirement (acres)
Facility 1	3,104	IV/V	550,627	210
Facility 2	3,954	IV/V	817,983	210
Facility 3	3,104	IV/V	550,627	210

All three Facilities will need to be designed to accommodate the following facility support functions and operational components being provided by ADOC, each in accordance with the Design Criteria and other Technical Requirements set forth in the Lease Documents:

- (a) Security and control;
- (b) Inmate housing;
- (c) Healthcare services (including medical, mental health, and dental);
- (d) Program services;

- (e) Administration;
- (f) Staff services;
- (g) Receiving and release;
- (h) Reception and visiting;
- (i) Food services;
- (j) Laundry; and
- (k) Warehouse.

ADOC's program goal is to enter into a Lease for each of Facilities 1 and 2 no later than fourth quarter 2020. Closing of the Lease for Facility 3 would follow six months later. ADOC is currently seeking to occupy both Facilities 1 and 2 no later than third quarter 2022, with occupancy of Facility 3 to begin in the second quarter of 2023.

2.4 Lease and Financing

2.4.1 Lease Terms

ADOC expects to enter into a long-term Lease for each Facility. Each Lease is anticipated to be for a term of 30 years, subject to annual appropriation of Lease Payments by the Alabama Legislature. As further described in the Lease Term Sheet, ADOC will use its best efforts to secure sufficient appropriations from the Alabama Legislature to fund the Lease Payments under the terms of the Lease.

2.4.2 Lease Payments

ADOC intends to begin making Lease Payments upon its occupancy of the leased Facility (terms and conditions of which are outlined in the Lease Term Sheet and will be further described in the Lease Documents). No milestone payments will be made during design and construction of the Facility. The aggregate amount of the Lease Payments payable over the Term of the Lease are expected to reflect the total costs of the Project over the Term, inclusive of initial capital costs, lifecycle costs, and maintenance costs. The amount of each Maximum Annual Lease Payment (MLP) under the Lease is expected to be flat throughout the Term, except as may be adjusted for certain permissible fluctuations as outlined in RFP Exhibit D and the Lease Term Sheet. Lease Payments may be abated, or Lease Payment amounts reduced or offset, by amounts attributable to delayed delivery of the Facility or noncompliance with performance standards, on terms and conditions as set forth in the Term Sheet, which will be further described in the ultimate Lease Documents.

2.4.3 Financing

The Developer will be responsible for all real property acquisition, plans, permitting, design, construction, facility maintenance, and refurbishment, and associated Project costs, except to the extent expressly provided in the Lease Documents, and will be required to provide all financing necessary for development, design, construction, maintenance, and refurbishment of the Facility. ADOC encourages Proposers to consider both taxable and tax-exempt financing structures and will make good faith efforts to facilitate each Proposer's proposed reasonable financing approach. As set forth in the Term Sheet, ADOC anticipates retaining during the Lease Term the ability to refinance the Lease Payments to re-amortize Project costs over a modified term length as agreed by the parties.

2.4.4 Affordability Limit

ADOC has determined an overall affordability limit of \$88 million for all three Facilities combined. This affordability limit represents the maximum amount that ADOC would be willing to pay on an annual basis for leasing all three Facilities during the base year (i.e., the sum of the Base MLPs payable to each of the Developers in the initial year following the applicable Occupancy Date under each of the Leases for each of the three Facilities). This affordability limit is based in part on savings associated with staffing the Facilities in accordance with the staffing criteria included in the Technical Requirements (Term Sheet Exhibit D-4). ADOC expects to prepare individual affordability limits for each of the three Facilities, representing the Base MLP under the Lease for each Facility (with respect to the applicable Facility, the "**Affordability Limit**"). The Affordability Limits established by ADOC for each Facility will be provided to the Proposers and used for purposes of the Proposal evaluation criteria set forth in RFP Section 7.

2.5 Development Responsibility

The Developer's general scope of responsibility for design, site acquisition, permitting, construction, and commissioning anticipated under the Lease is summarized in this RFP Section 2.5 and more fully described in the RFP Documents.

2.5.1 Design

The Developer (and its design team) will be responsible for completing the design of each Proposed Facility for which it is selected, to include the integration of the various building components in accordance with ADOC's Design Criteria and other Technical Requirements provided in the RFP Documents as Term Sheet Exhibit D. As further described in the Lease Term Sheet and Technical Requirements, the final design for each Facility must comply with the Technical Requirements (as they may be revised or updated and included in the ultimate Lease Documents), as well as with all applicable Laws (including State and local building codes, ADA standards, energy codes, etc.).

As further described in RFP Exhibit C, Proposers will be required to submit with their Proposals Design Development Documents for each Proposed Facility that are sufficient to form the basis for reliable pricing (subject to the Negotiation Terms).

2.5.2 Project Site

Each Proposer will be required to identify a specific Project Site location for each Proposed Facility, first in a Pre-Proposal Submittal (in accordance with RFP Section 4.5 and RFP Exhibit B) and then in its Technical Proposal (in accordance with RFP Exhibit C). ADOC will evaluate proposed Project Site locations on the basis of the criteria set forth in this Section. Each Proposer may only include in its Technical Proposal Project Sites that the Proposer has submitted and ADOC has approved as a Pre-Proposal Submittal. Proposers may seek and obtain ADOC approval of more than one potential Project Site location for each Proposed Facility; however, in the Technical Proposal, each Proposer is required to identify the specific ADOC-approved Project Site location being proposed for each Proposed Facility. Each Proposer will be fully responsible for acquisition of the Project Site and any other real property interests necessary to deliver the Project. As a condition to Commercial Close of the Lease, the Proposer will be required to demonstrate to ADOC, by evidence reasonably satisfactory to ADOC, that the Developer/Lessor has an appropriate real property interest in the Project Site (e.g., fee simple ownership of the Project Site or an unconditional option to purchase such fee simple interest upon Financial Close).

2.5.2.1 Minimum Location Criteria

Each proposed Project Site location is required to meet the following minimum requirements:

(a) Proximate to population centers that ensure an adequate present and future employment base—estimated average 45-minute commute for employees.

(b) Proximate to existing ADOC employee locations—estimated average 45-minute commute for employees.

(c) Access to healthcare facilities that offer Level 3 trauma capabilities, in addition to other inpatient and outpatient services—estimated maximum 30-minute travel time in typical conditions.

(d) Adequate space for the construction of a prison complex as contemplated in the Technical Requirements, including adequate space for buffers (see particularly the Concept Site Design criteria provided in the Basis of Design included in the Design Criteria, Term Sheet Exhibit D-2).

(e) For Facility 2 only, a location within the central part of the State.

In a Pre-Proposal Submittal as further described in RFP Section 4.5 and RFP Exhibit B, each Proposer will be required to demonstrate that its proposed Project Site location is expected to meet the above criteria. ADOC may require Proposers to provide, whether by amended or supplemental Pre-Proposal Submittal or in the Proposal, additional information to support an assertion that a proposed Project Site location will meet the above criteria.

2.5.2.2 Preferred Site Characteristics

ADOC has also identified certain characteristics it would prefer that proposed Project Sites exhibit. ADOC, in evaluating proposed Project Sites pursuant to the Proposal evaluation methodology set forth in RFP Section 7, will consider the following criteria (in no particular order of importance):

(a) Each proposed site should be somewhat rectangular in shape, with the shortest leg no less than 2,000 lineal feet (LF) long.

(b) Each proposed site should accommodate a prepared development area/building pad of approximately 2,500 LF x 1,800 LF.

(c) No proposed sites should be adjacent to major highways, railroads, or commercial/industrial complexes, or, alternatively, the proposed site should be large enough to have a security buffer of no less than 1,000 LF between the aforementioned elements and the development area/building pad.

(d) Each proposed site should be located within five miles of a primary arterial highway and should be adjacent to a minor arterial or major collector roadway.

(e) Each proposed site should not include flood hazard areas, known surface faults, areas of land creep or landslides, or that have evidence of past or current sinkholes.

(f) No proposed site should be located on or above past mining operations, or on any type of past or present landfill.

(g) Each proposed site should be free of wetlands to the greatest degree possible, with any wetland areas falling outside the development area/building pad.

(h) Each proposed site should have internally consistent geological characteristics, including moderately consistent soil and minimal deleterious material zones.

(i) Each proposed site should be gradable to accommodate cross slopes no greater than 5% for the development area/building pad.

(j) Each proposed site should have adequate infrastructure (water supply, wastewater treatment, electric power, natural gas, telecommunications, etc.) at occupancy to support the Facility, and any future expansions expressly contemplated by the Lease Documents (it being understood that if a proposed site does not have adequate infrastructure, the Developer will be required to, and should have a plan to, provide such infrastructure).

(k) Each proposed site should be free of any environmental land use restrictions or covenants that would impede or otherwise adversely impact the intended purpose and operation of the Facility.

(l) Each proposed site should be free of hazardous materials and other environmental conditions to the greatest degree possible (it being understood that, to the extent that any environmental condition at the site requires assessment, remediation, or mitigation, such undertakings will be the responsibility of the Developer).

For the avoidance of doubt, all responsibility for site conditions shall remain with the Developer, and no Lease Payment adjustment or other cost, schedule, or other relief will be provided in relation to any site conditions, known or unknown, except to the limited extent contemplated in the Lease Term Sheet and expressly set forth in the Lease Documents.

2.5.3 Construction

As the owner of the Facility, the Developer will be fully responsible for construction of the Facility. Such responsibility will include:

- (a) Obtaining all permits and approvals necessary for construction of the Facility;
- (b) The provision of utilities and other site services required to support construction of the Facility; and
- (c) The timely and proper execution and completion of construction to allow for commissioning, completion, and occupancy of the Facility within delivery windows stipulated in the RFP Documents.

2.5.4 Equipment

The Developer will be responsible for supplying, procuring, installing, and maintaining all items of equipment required for the efficient operation of the Facility in accordance with the Technical Requirements, except for any items of equipment or related services that the Technical Requirements specifically identify as being the responsibility of ADOC or a third party. The Developer's responsibility will include equipment that must be integrated into the Facility's design, such as building security and control systems, as well as equipment needed to operate the physical infrastructure, such as elevators and mechanical systems. The relevant categories of equipment and specifications for equipment expected to be provided the Developer are set forth in the Lease Term Sheet and Technical Requirements. A more detailed scope matrix setting forth the allocation of responsibility between the Developer and ADOC for particular types of furniture, fixtures, and equipment (FF&E), specifically identifying ADOC-provided FF&E, is expected to be provided to Proposers later in the RFP phase and will ultimately be incorporated into the Lease Documents.

The Lease Documents may also require the Developer to be responsible for acceptance of assignment and/or management of contracts for certain ADOC-specified equipment and software, such as the detention lock hardware and CMMS described below. Such equipment and software may be purchased by ADOC and, to the extent required by the Technical Requirements and, ultimately, the Lease Documents, must be integrated into the design of the Facilities and its installation coordinated by, or, in some cases, be installed

by, the Developer. Terms and conditions for integration of such equipment and software are outlined the Technical Requirements and will be set forth in the Lease Documents. Information regarding any allowances and contract terms required to be included in Proposals for particular ADOC-specified or –procured equipment will be provided in the RFP Documents.

2.5.4.1 Detention Lock Hardware

ADOC prefers that detention lock hardware be consistent amongst the three Facilities, regardless of the Developers selected. Specifications for detention lock hardware will be provided to the Proposers. Each Proposer will be required to solicit bids from at least three vendors for unit pricing for detention lock hardware types consistent with ADOC’s specifications. Such bids will be submitted to ADOC as a Pre-Proposal Submittal. On the basis of the Pre-Proposal Submittals, ADOC will identify one or more approved vendors to provide the detention lock hardware for the Facilities. Each Proposer will be required to reflect pricing from one or more of the approved vendors in its Proposal. The Developer will remain responsible for procuring approved detention lock hardware for its Project(s).

2.5.4.2 Computer Maintenance Management System (CMMS)

ADOC has determined that a consistent Computer Maintenance Management System (CMMS) will be utilized for the maintenance of all three Facilities. ADOC will select a CMMS provider following an open and competitive bid process in compliance with applicable Law. Each Proposer will be required to include a specified allowance to accommodate the procurement and service of the CMMS and the system’s ongoing maintenance. The Developer will work in coordination with ADOC to ensure incorporation of the CMMS in facility management.

2.6 Maintenance Responsibility

2.6.1 Lifecycle Maintenance

The Developer will be responsible for the lifecycle maintenance of the Facility. In addition, the Developer will be required to maintain the Facility over the Lease Term to the physical and performance standards set forth in the Technical Requirements. The lifecycle schedule and cost control estimates submitted with the Proposal are expected to be refined during the negotiation period in accordance with the Negotiation Terms.

Additional detail regarding the Developer’s lifecycle maintenance responsibilities is provided in the Lease Term Sheet and the Technical Requirements, particularly the Facility Management Specifications ([Term Sheet Exhibit D-1](#)).

2.6.2 Facility Management Services (Routine Maintenance)

During the occupancy period of the Lease, the Developer will be required to provide facility management services in close consultation with ADOC staff. These services will include:

- (a) General facility (physical plant) management services;
- (b) Facility maintenance services;
- (c) Environmental services;
- (d) Roads maintenance and landscaping services;
- (e) Help desk services;
- (f) Utility management services;

- (g) Waste management and recycling services; and
- (h) Pest control services.

Additional detail regarding the Developer's responsibilities for facility management services is provided in the Lease Term Sheet and the Facility Management Specifications.

2.6.3 ADOC Shared Services Coordination

Over the term of the Lease, the Developer will be required coordinate with, and accommodate in its design and commissioning of the Facility and its provision of maintenance services, certain State agency functions and existing ADOC services and service providers. Such agencies and services include:

- (a) The Alabama Department of Finance's Division of Construction Management;
- (b) Medical equipment and services; and
- (c) IT services, including the Alabama Office of Information Technology and third-party vendors.

Additional detail regarding the Developer's responsibilities for coordination and accommodation of these services is provided in the Technical Requirements and will ultimately be included in the Lease Documents.

SECTION 3 PROCUREMENT SCHEDULE

The following represents the current schedule for the procurement (as amended by Addendum, the "**Procurement Schedule**").

Event	Date and Time
Pre-Proposal Conference	December 3, 2019 3:00 p.m.
RFP Issuance	December 6, 2019
Proposers may begin to submit comments on RFP (quiet period ends and comment period begins)	December 18, 2019
Proposers may begin to submit Project Site Location Pre-Proposal Submittal	December 18, 2019
Deadline for Proposer submission of Statement of Intended Proposal Submission (Pre-Proposal Submittal)	December 18, 2019 3:00 p.m.
Deadline for Proposers to submit initial RFP comments for ADOC consideration prior to Proposer Conferences	December 20, 2019 12:00 p.m.
Proposer Conferences Round #1	Week of January 13, 2020
Deadline for Proposer submission of Detention Lock Bids Pre-Proposal Submittal	January 29, 2020 3:00 p.m.
Proposer Conferences Round #2	Week of February 10, 2020
Proposer Conferences Round #3	Week of March 2, 2020

Event	Date and Time
Deadline for Proposer submission of Project Site Location Pre-Proposal Submittal	March 6, 2020 3:00 p.m.
Proposer Conferences Round #4	Week of March 23, 2020
Deadline for submission of Proposer comments on RFP	March 27, 2020 3:00 p.m.
Deadline for Proposer submission of: (a) Changes in Developer Team; and (b) Changes in Proposer Key Individuals	April 1, 2020
Anticipated last date for RFP Addenda	April 6, 2020
Anticipated deadline for submission of Proposer comments on RFP Addenda issued after March 27, 2020	April 17, 2020
Proposal Due Date	April 30, 2020 12:00 p.m.
Proposal Opening	May 1, 2020 10:00 a.m.
Anticipated Selection for Negotiations	July 3, 2020
Anticipated Commercial and Financial Close, Facilities 1 & 2	Third Quarter 2020
Anticipated Commercial and Financial Close, Facility 3	Second Quarter 2021

All dates set forth above and elsewhere in this RFP are subject to change, in ADOC's discretion, by Addendum. If there are any conflicts or inconsistencies between this RFP Section 3 Procurement Schedule and any other dates provided in this RFP, this Procurement Schedule will prevail. Failure to strictly adhere to deadlines set forth in this Procurement Schedule and other dates ADOC identifies to Proposers as critical may result in disqualification of the Proposer.

SECTION 4 COMMUNICATIONS; THE OPEN RECORDS ACT

4.1 Authorized Representatives

4.1.1 ADOC's Authorized Representative

ADOC has designated the following individual to be its authorized representative for the procurement (the "**Procurement Contact**"):

Ed Whatley
HPM/CGL
Two Metroplex Drive, Suite 300
Birmingham, Alabama 35209
Email: ADOCinquiries@hpmleadership.com

All correspondence directed to the Procurement Contact shall clearly reference this "RFP to Develop, Lease, and Maintain New Correctional Facilities." Any materials submitted by a Proposer by email shall include in the subject line "RFP 2019-04: New Correctional Facilities Lease RFP: [*Proposer Name*]" and, if emailed in

multiple parts due to file size limits, shall include the number in the subject line (e.g., "Email 1 of 3").

4.1.2 Proposer Representative

Each Proposer's designated representative ("**Proposer Representative**") shall initially be the person identified in the SOQ as the single point of contact for the Proposer. If a Proposer wishes to change its Proposer Representative at any time, including after submission of its Proposal, the Proposer shall provide ADOC's Procurement Contact with the name, address, email address, and telephone number of such new Proposer Representative. Failure to identify a Proposer Representative in writing may result in the Proposer failing to receive important communications from ADOC. ADOC is not responsible for any such failure.

4.2 Rules of Contact

Proposers are required to conduct themselves with professional integrity in participating in the RFP process and preparing their Proposals. The specific rules of contact for the RFP period are as set forth below. Contact includes face-to-face, telephone, facsimile, email, social media, instant messages, text messages, and other means of electronic and formal written communication.

(a) No Proposer (nor any of its Team Members) may communicate with another Proposer (or its Team Members) through their employees, agents, or representatives with regard to the RFP or either team's Proposal, except that (i) subcontractors, consultants, and lenders that are shared between Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams, and (ii) this prohibition does not apply to public discussions regarding the RFP at any ADOC-sponsored informational meetings.

(b) Each Proposer shall correspond with ADOC and its consultants regarding the RFP or the Project only through ADOC's Procurement Contact and the Proposer Representative in accordance with [RFP Section 4.1](#), and only after conclusion of the quiet period and commencement of the comment period as specified in the Procurement Schedule. ADOC will not consider any Proposer correspondence addressed to any person other than the Procurement Contact. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project.

(c) No Proposer, or representative thereof, through their employees, agents, or representatives, shall have any *ex parte* communications regarding the RFP, the procurement, or the Project with any ADOC or other State staff, advisors, contractors, or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance by the Procurement Contact. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in any public meeting or Proposer informational meeting related to the Project. Any Proposer engaging in such prohibited communications may be disqualified at the discretion of ADOC.

(d) To the extent any Proposer intends at any time to initiate contact with, or respond to inquiries by, members of the media regarding the Project, this procurement, or its Proposal, the Proposer shall provide advance notice to ADOC of the nature and expected substance of such contact or response. Such advance notice shall provide ADOC a reasonable opportunity to respond with any concerns or other input. (Note that it is anticipated that the Developer will work under ADOC's direction on aspects of public communication regarding the Project as set forth in the Lease Documents.) In any event, any Proposer communications with the media, Project stakeholders, or members of the general public shall: (i) make clear that the Proposer does not speak for or on behalf of ADOC or the State; (ii) not disclose sensitive security

information or confidential information in contravention of the Proposer's Non-Disclosure Agreement; (iii) not be made in an attempt to improperly influence this procurement process in any way or seek an unfair competitive advantage; and (iv) be limited only to the Proposer's Proposal and Proposed Facilities and not discuss other Proposers or their Proposals.

(e) Subject to the foregoing restrictions, each Proposer may contact private property owners for the purpose of identifying potential Project Sites and performing due diligence and discussing aspects of its Proposal.

(f) Any communications determined by ADOC, in its discretion, to be improper may result in disqualification. Any allegation, verified by ADOC, that a Proposer or Developer Team member, or an agent or consultant of the foregoing, has attempted to influence the evaluation of Proposals or selection of successful Proposers may result in ADOC disqualifying the Proposer and its Developer Team from continuing to participate in the procurement, submitting a Proposal, or continuing to be considered for selection.

(g) ADOC will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified in this RFP.

4.3 Questions and Responses Regarding the RFP

4.3.1 Comments and Questions

ADOC will only consider written comments and questions regarding the RFP, including requests for clarification and requests to correct errors in accordance with [RFP Section 1.7](#) or otherwise, if submitted by the Proposer Representative (or his designee) to the Procurement Contact by email. Except during pre-Proposal meetings as provided herein, no telephone or oral requests will be considered.

Written comments may be submitted at any time after the opening of the comment period and prior to the comment deadline, each as specified in the Procurement Schedule. Proposers are strongly encouraged to submit comments in batches, rather than piecemeal, after the conclusion of each round of Proposer Conferences (ideally within five Business Days after the date of the Proposer's conference).

Comments shall be submitted in writing in Word. Each comment shall be identified by the Proposer as primarily "technical" or "legal/commercial." Proposer comments shall also: (a) include the name of the Proposer team; (b) include the name, telephone number, and email address of the Proposer Representative; and (c) identify the relevant document (i.e., the RFP, Term Sheet, Technical Requirements Exhibit D-1, etc.) and section number, or indicate if it is a general question. Proposers shall conspicuously indicate which of their comments they consider to be confidential or proprietary in nature and justification therefor.

With respect to comments on the RFP Documents generally, suggested revisions to the language in such documents are encouraged. In connection with the submission of comments and questions regarding the RFP Documents, a Proposer may, at its option, enclose a separate document with proposed revisions marked in redline format. Subject to the Open Records Act, ADOC will not circulate revised drafts submitted by Proposers to the other Proposers, nor does ADOC intend to make such proposed revisions public (except to the extent that such revisions are accepted and incorporated by ADOC into the RFP, and subject to the Open Records Act).

4.3.2 ADOC Responses

ADOC will determine whether to respond to any submitted comment or question at its discretion. Any responses will be delivered in writing to all Proposers, except that ADOC intends to deliver any response to a comment or question that ADOC has determined contains confidential or proprietary information only to

the Proposer that submitted it. In responding to Proposer comments and questions, ADOC may rephrase or consolidate comments and questions as it deems appropriate. ADOC may also create and answer questions independent of the Proposers' submissions.

To the extent responses are provided outside of an Addendum, they will not be considered part of the RFP Documents, nor will they be relevant in interpreting the RFP Documents. If ADOC determines, in its discretion, that a change in the RFP is necessary or desirable in response to a comment or question, ADOC will prepare and issue an Addendum to the RFP.

4.4 Pre-Proposal Meetings

4.4.1 Informational Meetings

ADOC may hold joint informational meetings with all Proposers at any time prior to the Proposal Due Date. Informational meetings may be held either in person or by telephonic or electronic means. ADOC will provide written notice of any such informational meetings to all Proposers.

4.4.2 Proposer Conferences

ADOC intends to conduct one-on-one meetings with each Proposer (each such meeting, a "**Proposer Conference**") on the dates set forth in the Procurement Schedule, and on such other dates as may be designated by ADOC in writing to the Proposers. Proposers may request that ADOC schedule additional Proposer Conferences on specific topics by providing the request in writing to the Procurement Contact with proposed dates and details of the topic(s) to be discussed. Any additional Proposer Conferences will be held at ADOC's discretion. In the event that ADOC elects to hold additional Proposer Conferences at a Proposer's request, all Proposers will be given an opportunity for an additional Proposer Conference.

The purpose of the Proposer Conferences is to provide a process that will assist the Proposers in developing optimal technical, commercial, and financing solutions for the Project, while minimizing the risk that a Proposer's solution provided in its Proposal will be considered unresponsive to ADOC's requirements. In addition, the Proposer Conferences will permit the Proposers to provide ADOC with candid comments and feedback on material issues for the Project, such as affordability, or provisions of the Draft Lease Term Sheet and draft Lease Documents that may impact project feasibility, financing, competitiveness, or cost-effectiveness. The meetings will also permit Proposers to propose for ADOC's consideration potential solutions and approaches.

The Proposer Conferences will be subject to the following rules:

(a) Proposers shall not seek to obtain an unfair competitive advantage over any other Proposer in the meetings.

(b) Except as provided in this RFP, ADOC will not discuss with any Proposer any Proposal, alternative technical concept, or confidential question other than the Proposer's own.

(c) No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers. Accordingly, ADOC reserves the right to disclose to all Proposers any issues raised during any Proposer Conference or any material information about the Project or procurement that ADOC reveals or discusses in response to questions raised in a Proposer Conference, except to the extent that ADOC determines that such disclosure would impair the confidentiality of a Proposer's alternative technical concept or would reveal a Proposer's confidential business strategies.

(d) During Proposer Conferences, Proposers may ask questions, and ADOC may provide responses. However, any responses provided by ADOC during Proposer Conferences may not be relied upon, except to the extent that questions were submitted in writing and ADOC provided written responses in accordance with RFP Section 4.3 or has modified the RFP in accordance with RFP Section 1.5. Proposers should note that, in order to facilitate free and open discussion at the Proposer Conferences, any comments provided by or on behalf of ADOC during any Proposer Conference, including in respect of any particular matter raised by a Proposer or which is included in any documents or information provided by a Proposer prior to or during the Proposer Conference, and any positive or negative views, encouragement, or endorsements expressed by or on behalf of ADOC during the Proposer Conferences to anything said or provided by Proposers, will not in any way bind ADOC, and will not be deemed or considered to be an indication of preference by ADOC for evaluation purposes.

(e) The discussion or any statements made by either party in a Proposer Conference will not be binding on such party. Nothing stated at any pre-Proposal meeting, or included in a written record or summary of such meeting, will modify any part of the RFP unless it is incorporated in an Addendum issued in accordance with RFP Section 1.5.

(f) By participating in the Proposer Conferences, a Proposer affirms its agreement with the foregoing rules and acknowledges that the meetings are an integral part of the procurement process as described in this RFP and are in the interests of all parties.

It is expected that the Proposer Conferences will be held in Birmingham or Montgomery, Alabama. At least five Business Days in advance of each round of Proposer Conferences, each Proposer is requested to provide ADOC with a proposed meeting agenda, a list of prioritized issues it would like to discuss, and any materials relevant (e.g., renderings, drawings) to such issues. A Proposer may have at each Proposer Conference such persons representing the Proposer and the Developer Team as the Proposer considers reasonably necessary for effective communication with ADOC and to fulfill the objectives of the Proposer Conference; *provided, however*, that ADOC may, in its discretion, limit the number of participants at any one meeting. ADOC may also invite its consultants to participate in Proposer Conferences.

4.5 Pre-Proposal Submittals

"Pre-Proposal Submittals" are required as follows:

- (a) Statement of Intended Proposal Submission;
- (b) Project Site Location; and
- (c) Detention Lock Bids.

Requirements for content and delivery of these Pre-Proposal Submittals are provided in RFP Exhibit B (or will be provided in a future Addendum). Any information submitted with a Pre-Proposal Submittal that a Proposer deems confidential, proprietary, or otherwise exempt from disclosure should be marked "CONFIDENTIAL" in accordance with RFP Section 4.6.

The applicable deadlines for submission of the Pre-Proposal Submittals are set forth in the Procurement Schedule. Proposers are encouraged to submit Pre-Proposal Submittals at any time prior to the stated deadlines. ADOC will endeavor to respond to Pre-Proposal Submittals promptly, but Proposers are advised that ADOC's response may be delayed due to the number and complexity of the Pre-Proposal Submittals in receipt at any one time. ADOC reserves the right to respond to Pre-Proposal Submittals in whatever order it chooses in order to expedite review.

4.6 Confidentiality and Disclosures

4.6.1 Proposer Submittals are Subject to Public Disclosure

ADOC takes its responsibilities under the State of Alabama's Open Records Act very seriously. All documents, written correspondence, exhibits, reports, other printed material, photographs, tapes, electronic disks, and any graphic and visual aids submitted by the Proposer to ADOC as part of this procurement process, including Proposer comments and questions and the Proposal, are subject to the Open Records Act, except as provided therein and under other applicable Law. Such materials will not be returned to the submitting party, except as determined by ADOC in accordance with applicable Laws.

Evaluation work papers, including any individual evaluator or consultant comments or notes, that do not reflect the determination of ADOC's Proposal evaluation committee are not subject to public disclosure. Additionally, the evaluation and selection determinations made pursuant to this RFP, and any Proposal information received in response to the RFP, will not be subject to public disclosure until final contracts have received all necessary approvals.

Proposers are encouraged to familiarize themselves with the Open Records Act and any other laws and regulations applicable to the disclosure of documents submitted in connection with this RFP and to the matter of confidentiality and public information. ADOC will not advise a Proposer as to the nature or content of documents entitled to protection from disclosure under such laws or as to the interpretation of such laws. The Proposer shall be solely responsible for all determinations made by it under applicable Laws. Each Proposer is advised to contact its own legal counsel concerning the effect of applicable Laws on that Proposer's own circumstances.

In the event of any proceeding or litigation concerning the disclosure of any proposal, portion thereof, or related submittal, the Proposer shall be responsible for prosecuting or defending any action concerning the materials at its sole expense and risk; *provided, however*, that ADOC reserves the right, in its discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All reasonable costs and fees (including attorneys' fees and costs) incurred by ADOC in connection with any litigation, proceeding, or request for disclosure shall be reimbursed and paid by the Proposer whose Proposal or related submittal is the subject thereof.

Nothing contained in this RFP shall modify or change the obligations of ADOC under the Open Records Act or other applicable Law.

4.6.2 Confidential Proposer Information

If a Proposer submits any information to ADOC, whether in the Proposal, a comment or question, or otherwise, that the Proposer believes constitutes a trade secret or commercial or financial information that is proprietary or privileged, or information the Proposer believes is otherwise protected from disclosure, the Proposer shall specifically and conspicuously mark such information "CONFIDENTIAL" in the header or footer of each affected page. Additionally, the Proposer must submit, together with any copies of the document required hereunder, a separate, redacted copy of such submission in PDF format, marked clearly as a "REDACTED COPY." Proposers submitting redacted copies shall briefly describe in a separate writing the grounds, as to each redacted item, for claiming exemption from public disclosure under the Open Records Act.

If ADOC receives a request for public disclosure of information marked by a Proposer as "CONFIDENTIAL" or redacted in a "REDACTED COPY", ADOC will use reasonable efforts to notify the Proposer of the request and to give such Proposer an opportunity to assert, in writing and at its sole expense, a claimed exception under the Open Records Act or other applicable Law within a reasonable time period specified in the notice

issued by ADOC, subject to any applicable timeframes or other limitations under the Open Records Act. Furthermore, the Proposer shall protect, defend, and indemnify ADOC, the State, and their respective agents, representatives, directors, officers, employees, contractors, and consultants from any and all claims arising from or relating to the Proposer's determination that those portions of its Proposal that are redacted in any "REDACTED COPY" are confidential, trade secret, or otherwise not subject to disclosure. The foregoing indemnity shall be acknowledged in the Proposer's separate writing accompanying the "REDACTED COPY".

In no event will the State of Alabama, ADOC, or any of their respective agents, representatives, directors, officers, employees, contractors, or consultants be responsible or liable to a Proposer, Proposer team member, or any other party as a result of the disclosure of all or any portion of a Proposal, Proposer comment or question, or any other information submitted in response to this RFP, including materials marked "CONFIDENTIAL" or redacted in a "REDACTED COPY", whether the disclosure is deemed required by Law, court order, or ADOC determination, or occurs through inadvertence, mistake, or negligence on the part of ADOC, the State, or their respective agents, representatives, directors, officers, employees, contractors, or consultants.

SECTION 5 DEVELOPER TEAM ORGANIZATION

5.1 Designation of Developer Entity

This RFP permits a Proposer to identify an entity other than the Proposer to act as Developer, thus allowing unsuccessful Proposers to avoid unnecessary costs associated with formation of such entity. However, if the entity identified as Developer in the successful Proposal is not formed as contemplated by such Proposal or fails to comply with the requirements set forth in this RFP, the entity that signed the Proposal shall have the obligation either to enter into the Lease Agreement itself or to provide a substitute Developer acceptable to ADOC in its discretion.

5.2 Restrictions on Teaming Due to Organizational Conflicts of Interest

Proposers are advised that the Alabama Ethics Act and other applicable Alabama law may preclude certain firms and their subsidiaries and affiliates from participating on a Proposer team, as determined by ADOC. ADOC has adopted the following policy with respect to actual and potential conflicts of interest:

(a) ADOC has retained HPM, CGL, Mayer Brown LLP, and Maynard, Cooper & Gale, P.C. as consultants to assist in drafting the RFQ and RFP documents. These consultants are prohibited from submitting (or participating as a member of a Developer Team submitting) a Proposal in response to this RFP. ADOC's consultants are also prohibited from assisting a Developer Team in the preparation of its Proposal. These activities would constitute a conflict of interest. Except as provided in subsection (b) below, Proposers are prohibited from soliciting or receiving consultation or advice from HPM, CGL, or Mayer Brown LLP in preparation of a Proposal. Engaging in this activity shall also be considered a conflict of interest and shall result in a disqualification of the Proposer from continued participation in this procurement process and from award of any later agreement. For the purposes of this RFP Section 5.2, ADOC interprets its consultants to include parent or subsidiary companies of such consultants.

(b) Proposers are not prohibited from receiving consultation or advice from ADOC's consultants through formal communications as contemplated by this RFP. These communications, or reliance on advice or guidance provided through formal communications, will not create a conflict of interest and will not disqualify an otherwise qualified Proposer.

(c) Proposers are required to conduct the preparation of Proposals with professional integrity and free of lobbying activities. All communications regarding the Project, the RFP, or this procurement must comply with the rules of contact set forth in [RFP Section 4.2](#).

(d) When, for any reason, a Proposer, Developer Team member, potential party to the Lease, or government official suspects collusion or other anticompetitive practice among any vendors or employees of ADOC, that person or entity must provide written notice of the relevant facts to the Alabama Attorney General and the ADOC Commissioner's Office. This includes reporting any chief procurement officer, State purchasing agency, agent, or executive officer who willfully uses or allows the use of specifications, RFQ documents, RFP documents, proprietary competitive information, Proposals, SOQs, contracts, or selection information to compromise the fairness or integrity of the procurement or contract process, or any current or former elected or appointed State official or State employee who knowingly uses confidential information, available only by virtue of that office or employment, for actual or anticipated gain for themselves or another person.

5.3 Changes in Proposer Team

5.3.1 Changes in Proposer Organization or Developer Team

In order for a Proposer to remain qualified to submit a Proposal, unless otherwise approved in writing by ADOC, the Proposer's organization as identified in the SOQ must remain intact for the duration of the procurement process. If a Proposer wishes to make changes in the Developer Team members that were identified in its SOQ, or if there is a material change in ownership or control of a member of the Proposer or a Developer Team Member, the Proposer shall submit to ADOC a written request for its approval of the change as soon as possible, but no later than the applicable deadline set forth in the Procurement Schedule.

5.3.2 Changes in Key Individuals

In order for a Proposer to remain qualified to submit a Proposal, unless otherwise approved in writing by ADOC, the Proposer's Key Individuals as identified in the SOQ must remain intact for the duration of the procurement process. If a Proposer wishes to make changes in the Key Individuals that were identified in its SOQ, the Proposer shall submit to ADOC a written request for ADOC approval of the change as soon as possible, but no later than the applicable deadline set forth in the Procurement Schedule.

5.3.3 Requests for Approval of Changes

Each request for approval pursuant to this [RFP Section 5.3](#) shall be composed of a letter, signed on behalf of the Proposer, requesting ADOC approval of the change in organization, accompanied by a one-page narrative description of the change and any supporting information the Proposer believes may assist ADOC in evaluating the change. The Proposer shall deliver to ADOC one original, two hardcopies of each such request, and one electronic copy to ADOC's Procurement Contact.

If the Proposer is requesting the addition or substitution of, or role change for, a Developer Team member or Key Individual, the Pre-Proposal Submittal shall include any information required with respect to such entity, role, or personnel position specified in the RFQ. If the Proposer is requesting the substitution or deletion of any Developer Team member identified in its SOQ, the Proposer shall submit such information as may be required by ADOC to demonstrate that the changed team meets the applicable RFQ criteria.

ADOC is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its discretion. For clarity:

(a) ADOC may refuse to permit a change to the membership of a Proposer or Developer Team, or a change in the Proposer's Key Individuals, if the change would, in ADOC's judgement, result in a weaker team than was originally shortlisted; or

(b) ADOC may, in the exercise of its discretion, permit any changes to a Proposer or Developer Team (including changes as may be requested arising from changes in ownership or control of a Proposer or a Developer Team member), or changes to the legal relationship among the Proposer and/or Proposer Team members (such as the creation of a new joint venture or other legal entity or relationship in place of the Proposer team originally shortlisted), or change in a Proposer's Key Individuals.

(c) ADOC's approval may include such terms and conditions as ADOC may consider appropriate.

Except as provided herein and in the Lease, a Proposer may not make any changes in any Developer Team members and Key Individuals identified in its SOQ after the applicable deadline set forth in the Procurement Schedule.

SECTION 6 PROPOSAL REQUIREMENTS

6.1 General Provisions Regarding Proposals

As used in this RFP, the term "**Proposal**" refers to a Proposer's complete response in accordance with this RFP, including: (a) the Proposal Letter; (b) the Proposal Security; (c) the Technical Proposal; (d) the Financial Proposal and Financial Model; and (d) the Term Sheet for the Lease Documents. This RFP Section 6 sets forth Proposal submittal instructions and outlines the required Proposal components, organization, and format. Each Proposer is required to assemble and submit its Proposal according to the instructions and order set out in this RFP. ADOC reserves the right to deem a Proposal non-responsive if the Proposer deviates materially from the Proposal submittal, format, organization, and content requirements set forth in this RFP. ADOC may exclude from further consideration a Proposal deemed by ADOC, in its discretion, to be non-responsive or to contain a material misrepresentation.

Each Proposer will be notified in writing if the Proposer's Proposal has been excluded from further consideration or if ADOC has selected one or more other Proposers with whom to enter into negotiations.

The Proposer's costs of preparing the Proposal and participating in Proposer Conferences, and any costs incurred by the Proposer at any time before Commercial Close, including costs associated with Commercial Close and the financing process, shall be borne by the Proposer, except for any costs to be paid under the Lease.

6.2 Submittal Instructions

6.2.1 Proposal Delivery

Proposals must be received by ADOC no later than the Proposal Due Date and time set forth in the Procurement Schedule. Proposals shall be submitted and delivered by hand, express mail courier, or U.S. mail to the Procurement Contact at the physical address (not email) specified in RFP Section 4.1.

Each Proposer is solely responsible for assuring that its Proposal is received by ADOC at the address and by the Proposal Due Date specified above. Proposals received after the Proposal Due Date may be rejected and returned unopened. The time of receipt shall be determined by the time received by the Procurement Contact at its physical address. Hand-delivered Proposals must be delivered in ample time to allow for the

Procurement Contact to acknowledge receipt prior to the closing time for the solicitation. ADOC will not be responsible for any delays in delivery beyond ADOC's control, including those caused by weather, difficulties experienced by couriers or delivery services, misrouting of packages by courier or delivery services, or improper, incorrect, or incomplete addressing of deliveries.

Faxed, electronic, or oral proposals will not be accepted.

6.2.2 Number and Type of Copies and Packaging Instructions

All of the components comprising the Proposal, including the required electronic copies described below, shall be packaged in one or more sealed containers, clearly addressed to ADOC as provided above, and labeled on the external packaging "RFP 2019-04: New Correctional Facilities Lease: [Proposer Name]."

The Proposal package shall contain the following documents in hardcopy in a separate envelope labeled "RFP 2019-04: New Correctional Facilities Lease: [Proposer Name] – Original Transmittal Package":

- (a) One original of the Proposal Letter;
- (b) One original and two copies of the Proposal Security for each Facility as described herein, with each original bond comprising the Proposal Security stamped "ORIGINAL";
- (c) One copy of the Statement of Intended Proposal Submission; and
- (d) One original, notarized State of Alabama Disclosure Statement (RFP Ex. E Form 8).

The Proposal package shall also contain:

(e) 12 hardcopies of the Proposal, excluding the Proposal Security, the Financial Model, and any "REDACTED COPY" of the Proposal provided pursuant to RFP Section 4.6.2. Each hardcopy of the Proposal shall be submitted in loose-leaf three-ring binder(s) clearly labeled "RFP 2019-04: New Correctional Facilities Lease: [Proposer Name] – [Proposal Component]" and marked with the copy number ("Copy 1 of 12") on the face and spine, with each Proposal component (Transmittal Package, Technical Proposal, Financial Proposal, and Appendices) bound separately, and the Financial Proposal separately packaged and sealed;

(f) Three electronic copies of the Proposal, including the Proposal Security, Financial Model, and "REDACTED COPY," each on a separate USB flash drive clearly marked with "RFP 2019-04" and the Proposer's name, with separate electronic files for the Transmittal Package (excluding Proposal Security), Proposal Security, Technical Proposal, Financial Proposal (excluding Financial Model), Financial Model, Appendices, and "REDACTED COPY."

6.2.3 Format

Each Proposal should contain concise written material, drawings, and graphics; legibility, clarity, and completeness are essential. The Proposal must be submitted exclusively in the English language inclusive of English units of measure and with cost terms in United States dollar denominations.

Hardcopies of the Proposals shall be prepared on 8-1/2" x 11" sized white paper (except that drawings may be submitted on 11" x 17" paper) and shall be sequentially numbered, labeled, and bound. Each binder of the Proposal shall be labeled to indicate its contents. Double-sided printing and divider tabs are encouraged.

Electronic copies of Proposal elements shall be submitted on a USB Flash drive in PDF format, unless otherwise specified in this RFP. If the electronic file is password-protected, the password shall be provided.

Use of searchable, bookmarked PDFs and hyperlinked tables of contents is encouraged. In addition: (a) unsigned documents may be provided in either PDF or Word format; (b) electronic copies of design drawings should be submitted in PDF format, except as otherwise specified in [RFP Exhibit C](#); and (c) the Financial Model should be submitted in a Microsoft Excel 2007 (or later version) (English United States) compatible format.

6.3 Proposal Organization

Each Proposal shall consist of the components set forth in the table below and be organized accordingly.

Proposal Component	RFP Cross-Reference
Transmittal Package	RFP Section 6.4
1. Proposal Letter	RFP Section 6.4.1 , RFP Ex. E Form 1
2. Proposal Security	RFP Section 6.4.2
3. Required Statements and Forms	RFP Section 6.4.3 , RFP Exhibit E
Technical Proposal	RFP Section 6.5 , RFP Exhibit C
Financial Proposal	RFP Section 6.6 , RFP Exhibit D
Financial Model	RFP Section 6.6 , RFP Exhibit D
Appendices	RFP Section 6.7
1. Developer Team and Key Individual Information	RFP Section 6.7.1
2. Changes from SOQ	RFP Section 6.7.2
3. Lease Term Sheet	RFP Section 6.7.3

6.4 Transmittal Package

6.4.1 Proposal Letter

The Proposal shall include a signed, notarized transmittal letter in the form of [Form 1](#) (the "**Proposal Letter**"). A duly authorized official of the Proposer or lead firm must execute the Proposal Letter.

If the Proposer is a partnership, consortium, or other form of joint venture, or a special purpose limited liability company or other special purpose entity, the Proposer must attach to the Proposal Letter evidence of authorization to deliver the Proposal and enter into negotiations pursuant to the Negotiation Terms. Such evidence should be in the form of letter(s) on the letterhead stationery of each equity member, executed by duly authorized official(s) of such equity member, stating that: (a) the equity member has authorized a named Proposer representative to submit the Proposal and communicate with ADOC regarding the Proposal on its behalf; and (b) the representations, statements and commitments made in the Proposal on behalf of the equity member's firm have been authorized by, are correct, and accurately represent the role of, the equity member's firm on the Proposer team.

6.4.2 Proposal Security

Each Proposer shall provide with its Proposal one or more bonds, in an aggregate amount equal to \$5 million (the "**Proposal Security**"), with separate bonds provided for each Proposed Facility. The Proposal Security for each Proposed Facility must be valid through the date that is 120 days after the Proposal Due Date and, if the Proposer is selected for negotiations with respect to a Proposed Facility, shall be subject to

increase to \$20 million, extension, and forfeiture in accordance with the Negotiation Terms. Each of the bonds must be issued by a surety company that is (a) authorized to do business in the State of Alabama, (b) has a rating of "A-" or better and Class VIII or better by A.M. Best Company or is rated in the top two categories by two nationally recognized rating agencies, and (c) is listed on the U.S. Department of the Treasury's Listing of Approved Sureties (Department Circular 570) (<http://www.fms.treas.gov/c570/c570.html>).

6.4.3 Required Statements and Forms

6.4.3.1 Statement of Intended Proposal Submission

The Proposal submittal package shall include a copy of the updated Statement of Intended Proposal Submission that was accepted by ADOC as a Pre-Proposal Submittal pursuant to RFP Section 4.5.

6.4.3.2 Disclosure Statement

The Proposal transmittal package shall include an updated and complete, executed, and notarized State of Alabama Disclosure Statement form. The form is provided in RFP Ex. E Form 8.

6.5 Technical Proposal

The Proposal shall include a Technical Proposal applicable to each Proposed Facility in accordance with the requirements set forth in RFP Exhibit C.

6.6 Financial Proposal

The Proposal shall include a Financial Proposal, including a Financial Model, in accordance with the requirements set forth in RFP Exhibit D.

6.7 Supplemental Appendices to the Proposal

6.7.1 Developer Team and Key Individuals

6.7.1.1 List and Organizational Chart (Forms 2 and 3)

The Proposal must include for attachment to the Lease a list and organizational chart of the Proposer's key Developer Team members and personnel for the Project. If the Proposer is proposing that the Proposed Facilities have any different lead firms or key personnel, a separate list and chart for each Proposed Facility must be provided. Each such list/chart must:

(a) Identify lead firms for, at minimum, the disciplines, and roles identified in RFP Ex. E Form 2.

(b) Identify at least the Key Individuals (consistent with the SOQ or as otherwise approved by ADOC in accordance with this RFP) for the roles identified in RFP Ex. E Form 3, and such persons' percentage commitment (full-time or % part-time) to the Project.

6.7.1.2 New Developer Team and Key Individual Information

In this supplemental appendix, the Proposer must provide:

(a) A narrative description of the qualifications and experience of each Developer Team member firm newly identified pursuant to RFP Section 6.7.1.1 (i.e., excluding firms identified in the SOQ) and the relevance of the firm's experience to the Project; and

(b) A resume, up to two pages long, for each Key Individual newly identified pursuant to RFP Section 6.7.1.1, setting out and describing the relevance of each individual's qualifications and experience.

6.7.2 Changes from SOQ

ADOC is relying on, and each Proposer is expected to maintain, the commitments made in the SOQ. A Proposer should not make changes in commitments made by the Proposer in its SOQ except to the extent that the change represents an improvement in quality, performance, utility, safety, or reliability that is compliant with the requirements of the RFP Documents or has otherwise been discussed with ADOC in the Proposer Conference process or in the negotiation phase.

The Proposal must include a supplemental appendix clearly and concisely identifying each approved change or, if not requiring ADOC's pre-approval pursuant to RFP Section 4.5 or 5.3, proposed change to the following components of the Proposer's SOQ:

- (a) Proposer and Developer Team structure and firm roles;
- (b) Key Individuals;
- (c) Statement of Intended RFP/Proposal Submission;
- (d) Statement of Ability to Meet Insurance Requirements;
- (e) Statement of Litigation and Judgment History;
- (f) Financial capacity information; and
- (g) Any other material commitment or representation made in the SOQ.

The Proposer may use whatever method(s) provides the clearest illustration of the proposed changes as compared to the SOQ, including, for example, redlines from the original SOQ materials, summary narrative descriptions, or detailed indexes.

6.7.3 Lease Term Sheet

The Proposal must include the current Term Sheet for the Lease issued by ADOC to the Proposer. The Proposer's Term Sheet must conform to the Term Sheet last issued by ADOC. Any modifications to ADOC's Term Sheet proposed to be discussed as part of the negotiation phase must be shown in an attached redline (or redlined changed pages) and will be subject to ADOC's agreement.

Note that the negotiated Lease is expected to include the incorporation of commitments made by the selected Proposer in the SOQ and Proposal.

SECTION 7 PROPOSAL EVALUATIONS

7.1 Evaluation Process

ADOC's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable Laws governing this procurement. The Proposal evaluation process will include: (1) first, a review of each Proposal's Transmittal Package and Appendices for responsiveness and relevant pass/fail criteria; (2) second, a review of each Technical Proposal, including for responsiveness and relevant pass/fail criteria, and a qualitative Technical Evaluation, resulting in a Technical Score; (3) third, a review and evaluation of

each Financial Proposal, including for responsiveness and relevant pass/fail criteria, and the calculation of a Lease Price Score; and (4) finally, a best value determination resulting in a ranking of the responsive Proposals. The steps in this process and evaluation criteria are set forth in this [RFP Section 7](#).

Evaluation of Proposals will be conducted by an "**Evaluation Committee**" composed of representatives from ADOC and designated State stakeholders. Advisors, including outside consultants to ADOC, may assist the Evaluation Committee in making an educated and informed assessment of the Proposals. All evaluators and advisors will be subject to ADOC's confidentiality requirements and conflict of interest policies.

The evaluation and selection process is subject to modification by ADOC, in accordance with applicable Laws and principles of fairness, at any time prior to the Proposal Due Date. Notwithstanding any provision of this [RFP Section 7](#), ADOC reserves the right to make selections on the basis of best value, cost alone, or quality alone, or to accept or reject any or all Proposals if it is determined to be in the best interest of the State.

7.2 Responsiveness and Pass/Fail Evaluation

All Proposals will be substantively reviewed (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth in [RFP Section 7.2.1](#).

In the event that a Proposal omits required information or contains information that otherwise could potentially result in a "non-responsive" or "fail" determination, ADOC's Procurement Contact may, but is not required to, request additional or clarifying information from the Proposer pursuant to [RFP Section 7.4](#) prior to a final responsiveness and pass/fail determination. ADOC reserves the right, in its discretion, to disregard or waive minor informalities, irregularities, omissions, nonconformities, discrepancies, and apparent clerical mistakes.

Any Proposal that is determined by the Evaluation Committee to be unresponsive to this RFP or to not pass the pass/fail criteria herein will be excluded from further consideration and will not be eligible for selection. ADOC may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. ADOC will inform a Proposer if ADOC determines that the Proposer's Proposal is unresponsive, does not pass the pass/fail criteria, or contains a material misrepresentation.

7.2.1 Responsiveness

In order to be considered for selection, a Proposer must submit a complete Proposal fully responsive to this RFP. Responsiveness will be assessed on the basis of overall responsiveness. Failure to submit a responsive Proposal may result in ADOC requiring prompt submission of additional or clarifying information pursuant to [RFP Section 7.4](#), giving a lower qualitative score in evaluation of the Proposal, or disqualification of the Proposal as described above.

7.2.2 Pass/Fail Criteria

The substance of the Proposals will be evaluated based on the following pass/fail criteria:

(a) **Completeness:** The Proposal contains the required materials as set forth in [RFP Section 6](#) and [RFP Exhibits B through D](#), in accordance with the instructions set forth therein.

(b) **Forms:** The Proposer has delivered all required Forms set forth in [RFP Exhibit E](#), properly and accurately completed and (as applicable) executed and notarized in accordance with this RFP.

(c) **Material Adverse Information:** The information, certifications, signed statements, and documents required to be submitted with the Proposal do not identify any information that is materially adverse to the best interests of the Project, this procurement, ADOC, or the State.

(d) **Proposed Facilities:** The Proposal includes proposals for each of the Proposed Facilities identified in the Proposer's Statement of Intended Proposal Submission, submitted and accepted by ADOC as a Pre-Proposal Submittal pursuant to RFP Section 4.5 and RFP Exhibit B.

(e) **Project Site:** The Proposal proposes Project Sites meeting the minimum requirements set forth in RFP Section 2.5.2.1, consistent with the Pre-Proposal Submittal submitted by the Proposer and accepted by ADOC pursuant to RFP Section 4.5 and RFP Exhibit B.

(f) **Staffing Plan:** The Proposal reflects and includes a staffing plan that is consistent with the Facility staffing criteria included in the staffing plan template provided in the Technical Requirements (Term Sheet Exhibit D-4).

(g) **Proposal Commitment Dates:** The Proposal reflects a guaranteed Occupancy Date no later than the anticipated Occupancy Date for the applicable Facility in accordance with ADOC's Facility program as set forth in RFP Section 2.3.

(h) **Technical Proposal:** The Facility design and Project schedules, approaches, and plans meet the applicable minimum requirements set forth or referenced in RFP Exhibit C.

(i) **Developer Team Members and Key Individuals:** The Developer Team members and the Key Individuals that are included in the Proposer's Proposal have not changed since the Proposer's submission of the SOQ or ADOC's approval of a change pursuant to RFP Section 5.3, and the Proposal attaches a copy of ADOC's approval thereof.

(j) **Financing Plan:** The Proposer's preliminary Financing Plan is sufficiently developed consistent with the required level of development of the Proposal and, taking into consideration such level of development: (i) identifies adequate financing for the Developer's obligations under the Lease, (ii) is feasible, and (iii) has attracted adequate support from financing parties; in each case, sufficient to satisfy ADOC that the Developer, if selected, is capable of undertaking its obligations under the Negotiation Terms.

(k) **Financial Capacity Information:** There has been no material adverse change in the business, operations, financial condition, profitability, prospects, liabilities, or capitalization of any financially responsible Developer Team member since the date of the submission of the Proposer's SOQ that has not been mitigated to the satisfaction of ADOC, nor is there any other condition or situation related to any Developer Team member that presents a significant risk to the Developer's ability, if selected, to satisfy its obligations under the Negotiation Terms and Lease.

7.3 Best Value Determination

The apparent best value determination will be based on the highest Total Proposal Score calculated as follows with respect to each passing, responsive Proposal for each Proposed Facility:

Score Component	Percentage of Total Points
Technical Score	30%
Financing Plan Score	30%
Lease Price Score	40%
Total Proposal Score	100%

Each individual Technical Score, Financing Plan Score, and Lease Price Score will be multiplied by the applicable weighting percentage set forth above to determine the relevant points score.

If the Proposer has provided different solutions or pricing for a scenario in which it is selected to provide both (rather than one) of its Proposed Facilities, the Evaluation Committee will also calculate an Total Proposal Score for each of the Proposed Facilities in that scenario.

The Evaluation Committee will rank the passing, responsive Proposals for each Facility from highest to lowest Total Proposal Score. The Proposer with the highest-ranked Proposal will be the apparent best value Proposer with respect to the applicable Facility; *provided, however*, that, in the event that the highest-ranked Proposal for a Facility is based on a scenario in which the Proposer will be selected for both of its Proposed Facilities, and the Proposal for such Proposer's other Proposed Facility is not the highest ranked for that Facility, then the Evaluation Committee may proceed to the next highest-ranked Proposal(s) with respect to the applicable Facilities.

7.3.1 Technical Score

Technical Proposals that are determined to be responsive and passing the relevant pass/fail criteria set forth in [RFP Section 7.2](#) will be qualitatively evaluated and Technical Scores assigned by the Evaluation Committee using the following criteria:

Criteria	RFP Reference	Weighting
Project Site	RFP Section 2.5.2	30%
Technical Proposal Score	RFP Exhibit C (including referenced Technical Requirements and innovation and design)	70%
Total		100%

7.3.2 Financing Plan Score

After evaluation of the Technical Proposals and determination of Technical Scores, ADOC will open the sealed packages containing the Financial Proposals. The Financial Proposals will then be evaluated to determine if they are responsive and meet all applicable pass/fail criteria set forth in [RFP Section 7.1](#). The Financing Plans of responsive and passing Financial Proposals will then be qualitatively evaluated by the Evaluation Committee, taking into consideration the factors identified in [RFP Section 7.1.2\(k\)](#). The qualitative evaluation of the Financing Plan will be the sole criterion for the Financing Plan Score, accounting for 100% of this score.

7.3.3 Lease Price Score

The Evaluation Committee will determine the Lease Price Scores for all responsive and passing Proposals as follows:

$$\text{Lease Price Score} = \frac{\text{Lowest Base MLP}}{\text{Proposer's Base MLP}}$$

Where:

Proposer's Base MLP is: The amount of the Proposer's proposed Maximum Annual Lease Payment (MLP) in the initial year following the Occupancy Date (Base MLP)

Lowest Base MLP is: The lowest Base MLP proposed by any Proposer with respect to the applicable Facility

For the purposes of the Base MLP, all Proposers should assume an Occupancy Date for the applicable Facility consistent with ADOC's Facility program as set forth in [RFP Section 2.3](#).

7.4 Requests for Clarification

ADOC may issue requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within two Business Days from receipt of the request, or within such other reasonable time specified by ADOC considering the nature of the request. The scope, length, and topics to be addressed in clarifications shall be prescribed by ADOC. Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

7.5 Proposer Selection

ADOC will identify the Proposer whose Proposal, taking into consideration price and evaluation factors set forth in this [RFP Section 7](#) and using the evaluation methodology set forth herein, is of best value to ADOC with respect to the applicable Facility. Based on the Evaluation Committee's calculation of a Total Proposal Score for each Proposal for each Facility, the committee will make an apparent best value determination in accordance with [RFP Section 7.3](#) and will select one or more Proposers commence negotiations for each of the three Facilities in accordance with the Negotiation Terms set forth in [RFP Exhibit F](#).

EXHIBITS

EXHIBIT A DEFINITIONS AND INTERPRETATION

1. Key Definitions and Acronyms

Terms used in this RFP but not defined herein shall have the meanings ascribed to them in the Term Sheet.

Abatement Amount: the amount of any Lease Payment Abatement which may be made in accordance with the Lease.

ADA: collectively, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, and the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 *et seq.*, and the rules and regulations promulgated thereunder.

Addenda or **Addendum:** additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP.

ADOC: the Alabama Department of Corrections.

ADOC Indemnitees: see RFP Ex. F Section 6.2.1.

Affordability Limit: see RFP Section 2.4.3.

Base MLP: the amount of the Maximum Annual Lease Payment (MLP) payable in the initial year following the Occupancy Date.

Business Day: each day of the calendar week Monday through Friday, excluding State holidays.

Commercial Close: the execution of the Lease Agreement and the satisfaction of all conditions precedent thereto and to the effectiveness of the Lease.

Construction Documents: the Design Documents prepared by the Proposer, based on and further developing the Design Development Documents, and setting forth in detail the requirements for the construction of the Project, as described in RFP Ex. F Section 3.3.3.

Delay Liquidated Damages: see Term Sheet Section 10.2(c).

Design Change Fee: compensation payable to the Proposer pursuant to RFP Ex. F Section 7.3.

Design Criteria: the part of the Technical Requirements provided as Term Sheet Exhibit D-2 (referred to therein as the Volume 2 Criteria Documents).

Design Development Documents: Design Documents prepared by the Proposer, based on and further developing ADOC's Design Criteria and the other Technical Requirements, and submitted to ADOC with the Proposer's Proposal, to the extent such Design Documents are accepted by ADOC in accordance with the Negotiation Terms.

Design Documents: all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details, and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals necessary for, or related to, the design of the Project. "Design Documents" refers to the Design Development Documents and the Construction Documents, once such documents are accepted by ADOC in accordance with RFP Ex. F Section 3.3.

Design Materials: see RFP Ex. F Section 8.1.1.

Design Package: see RFP Ex. F Section 3.3.3.1.

Developer: the entity proposed by the selected Proposer to enter into a Lease with ADOC pursuant to this RFP.

Developer Team: all entities listed by the Proposer as providing services or construction on the Project, whether as Developer, a member, partner, or joint venturer in Developer, a Related Entity to Developer, or a Subcontractor to Developer. Members of the Developer Team may also be referred to as **"Team Members."**

End of Lease: see Term Sheet Section 17.

Facility: one of three new, turnkey built-to-suit correctional facilities to be leased by ADOC in accordance with this RFP.

Facility Management Specifications: the part of the Technical Requirements in Term Sheet Exhibit D-1 that is referred to therein as the Facility Management Specifications.

FF&E: furniture, fixtures, and equipment.

Final Price Proposal: the final Price Proposal submitted by the Proposer in accordance with the Negotiation Terms (RFP Ex. F Article 4).

Financial Close: execution and delivery of, and satisfaction of all conditions precedent to, the agreements and security documents necessary or appropriate for the Lessor to obtain all financing and initial availability of funds required for delivery of the Project.

Financial Model: the electronic financial model for the Project, including the related formulae, output, assumptions, and information used by or incorporated in such model, that the Proposer submitted with its Financial Proposal in accordance with RFP Ex. D Section 4, as further developed and approved by ADOC in accordance with the Negotiation Terms.

Financial Proposal: that part of the Proposal described in RFP Exhibit D.

Financing Plan: the Proposer's plan for financing the Project that the Proposer submitted with its Financial Proposal in accordance with RFP Ex. D Section 4, as further developed and approved by ADOC in accordance with the Negotiation Terms.

Force Majeure: see Term Sheet Section 23.

General Conditions: the part of the Technical Requirements in Term Sheet Exhibit D-1 that is referred to therein as the General Conditions.¹

Guaranteed Maximum Price or GMP: the initial not-to-exceed amount proposed in a Proposer's Financial Proposal that the Proposer guarantees (subject to the Negotiation Terms) shall be the maximum amount to be reflected in the aggregate Lease Payments over the Lease Term for total Project capital development, lifecycle, FF&E, and facility management and maintenance costs. The GMP is the sum of the Proposer's control estimate of total Project capital development costs, its control estimate of total Project lifecycle costs over the Term, its control estimate of total Project furniture, fixture, and equipment (FF&E) costs, and its control estimate of the annual facility management and maintenance costs, aggregated over the Term, each as initially provided in the Proposer's Financial Proposal pursuant to RFP Ex. C Section 2, and each as

¹ **Note to Proposers:** The General Conditions are not currently included in Term Sheet Exhibit D-1 and are expected to be provided soon after initial release of the RFP Documents, during the RFP phase.

subsequently developed in accordance with RFP Ex. F Article 4 and set forth in the Proposer's Final Price Proposal.

Key Individuals: those personnel positions identified in RFP Ex. E Form 3 and the individuals identified by the Proposer for such positions pursuant to RFP Section 6.7.1.

Law: any constitution, charter, statute, treaty, act, common or statutory law, ordinance, regulation, code, rule, executive order, order, decree, circular, permit, judgment, directive, ruling, decision, guideline, resolution, or declaration of any governmental authority or any interpretation or application thereof by any such governmental authority.

Lease: a Lease Agreement to be entered into between the Developer/Lessor and ADOC for a Project, as described in RFP Sections 1.2 and 2.3 and Term Sheet Section 1.

Lease Documents: see RFP Section 1.2.

Lease Payment(s): payment(s) to be made by ADOC to Developer pursuant to a Lease. See Term Sheet Section 4.1 and the preface of the Term Sheet.

Lease Payment Abatement(s): see Term Sheet Section 24.3.

Lender(s): see Term Sheet Section 3.2.

Lessee: ADOC under the Lease for a Facility.

Lessee Default: see Term Sheet Section 25.4.

Lessor: the Developer/Lessor under the Lease for a Facility.

Lessor Default: see Term Sheet Section 25.1.

Maximum Annual Lease Payment (MLP): the sum of the Maximum Lease Payments payable on the monthly basis over each year of the Lease Term following the Occupancy Date.

Maximum Lease Payment: the maximum amount of the Lease Payment payable per month of the Lease Term following the Occupancy Date, subject to abatement in accordance with the Term Sheet.

Negotiation Terms: the terms pursuant to which ADOC and a selected Proposer will proceed to negotiate the Lease for a Facility, as described in RFP Section 1.2 and set forth in RFP Exhibit F.

Noncompliance Event(s): see Term Sheet Section 24.1.

Occupancy Date: see Term Sheet Section 10.2(b).

Occupancy Deadline: see Term Sheet Section 10.2(b).

Open Records Act: the Alabama Open Records Act, Alabama Code § 36-12-40.

Preliminary Project Development Schedule: the schedule and milestones for the negotiation phase of the Project, Commercial and Financial Close, as set forth in the Proposal or as otherwise agreed by the parties in accordance with the Negotiation Terms.

Preliminary Work: has the meaning set forth in RFP Ex. F Article 3.

Price: the total Base MLP and the Base MLP per bed, that the Lessor will be eligible to receive under the Lease, as such sum is developed from such amounts set forth in Form 4 of the Proposer's Financial Proposal and derived from the GMP developed in accordance with RFP Ex. F Article 4.

Price Proposal: the proposed Lease Payments, cost control estimates, and other pricing information submitted by the Proposer in its Financial Proposal in response to RFP Exhibit C, as well as the refined Price Proposals submitted by the Proposer pursuant to the Negotiation Terms in accordance with RFP Ex. F Article 4.

Procurement Contact: ADOC's authorized representative for the procurement, as set forth in RFP Section 4.1.

Procurement Schedule: the current schedule for the procurement as set forth in RFP Section 3.

Professional Standard: the degree of judgment, skill, diligence, prudence, and foresight that is reasonably and ordinarily possessed and exercised by (and generally accepted as being appropriate for) nationally recognized, first-class professionals of good standing and who are performing work for projects that are of similar scope, nature, and complexity as the Project, using accepted design standards normally used on similar projects in the geographic area of the Project.

Project: see RFP Section 1.2 and Term Sheet Section 1.3. "Project" may refer to (a) ADOC's procurement of all three Facility Projects pursuant to this RFP, when used in reference to ADOC's procurement hereunder; (b) the Project for a particular Proposed Facility, when used in relation to a Proposer or Proposal; or (c) to the specific Facility Project to be delivered by a selected Developer/Lessor pursuant to a Lease, when used in the context of the Lease and Technical Requirements.

Project Debt: see Term Sheet Section 3.1.

Project Site: the location upon which a Facility will be constructed, which satisfies the minimum requirements of RFP Section 2.5.2.1, as determined and subject to pre-approval by ADOC in accordance with RFP Article 7, RFP Sections 2.5.2 and 4.5 and RFP Exhibit B.

Project Specifications: the part of the Technical Requirements provided as Term Sheet Exhibit D-3 (referred to therein as the Volume 3 Specifications).

Proposal: see RFP Section 1.1.

Proposal Due Date: the deadline for submission of Proposals, as identified in the Procurement Schedule.

Proposal Letter: the letter, executed by or on behalf of the Proposer delivered with its Proposal and conforming to RFP Ex. E Form 1.

Proposal Security: the one or more bonds, in an aggregate amount equal to \$5 million per Proposed Facility, provided by the Proposer with the Proposal to ADOC to secure the Proposer's obligations under the Proposal in accordance with RFP Section 6.4.2, which, upon ADOC's selection of the Proposer for negotiations, must be increased to \$20 million per Facility in accordance with RFP Ex. F Section 7.1, as a condition precedent to commencing negotiations, to secure the Proposer's obligations under the Negotiation Terms through Commercial Close and to secure the Lessor's obligations under the Lease through Financial Close.

Proposed Facility: see RFP Section 1.2.

Proposer: the entity submitting a Proposal for the Project in response to this RFP. Only those respondents to the RFQ that deemed qualified by ADOC based on ADOC's evaluation of the SOQs may be considered Proposers.

Proposer Representative: see RFP Section 4.2.

Proposer-Related Entity: any of the Proposer, Developer/Lessor, its equity or joint venture members, consultants, Subcontractors, or any other person for whom the Proposer or Developer/Lessor may be liable, or any officer, director, partner, representative, agent, or employee of any of the foregoing.

Proposer Team Lead: the entity responsible for creating and leading the Proposer team throughout the competitive selection process for the project.

Reference Information Documents (RIDs): the documents and information included in the RFP Documents as described in RFP Section 1.3.

Related Entity: with respect to any particular entity, any other entity that is a parent, affiliate, or subsidiary, at any tier, of such particular entity, or that is under common ownership, control, or management with such particular entity.

Request for Proposals (RFP): this Request for Proposals for the Project issued by ADOC on December 4, 2019, as amended by Addenda, including all RFP Documents, as described in RFP Section 1.1.

Request for Qualifications (RFQ): the Request for Qualifications for the Project issued by ADOC on June 27, 2019, as amended by addenda.

RFP Documents: the set of documents issued by ADOC identifying the Project for which a Proposal may be submitted by a Proposer/Developer, including the RFP, Term Sheet (including Technical Requirements), and RIDs, as described in RFP Section 1.3.

Service Provider: an individual, corporation, joint venture, partnership, or other legal entity that will have direct responsibility to provide maintenance and/or lifecycle services to the Facility during the operating term of the Lease, as identified in the Proposal.

State: State of Alabama.

Statement of Qualifications (SOQ): the submission made by a Proposer in response to the RFQ, including all clarifications thereto submitted in response to requests by ADOC.

Subcontract: means any contract, at any tier, entered into by the Lessor or a Subcontractor thereof for the performance to perform any part of the Work or to provide any materials, equipment, or supplies for any part of the Work, other than any contract with ADOC or the State.

Subcontractor: means any person or entity with which the Lessor or another Subcontractor, at any tier, has entered into a Subcontract, including suppliers.

Technical Proposal: that part of the Proposal described in RFP Exhibit C.

Technical Requirements: the set of documents issued by ADOC as Term Sheet Exhibits D, providing ADOC's technical requirements impacting the development, design, construction, maintenance, and refurbishment of each of the Facilities. The Technical Requirements provided in Term Sheet Exhibit D shall, in accordance with the Negotiation Terms, serve as a basis for technical terms and conditions to be incorporated into the Lease Documents. The Technical Requirements include the General Conditions, Facility Management Specifications, Design Criteria, and Project Specifications. See Term Sheet Section 1.4.

Term or Lease Term: see Term Sheet Section 1.6.

Term Sheet: the set of documents issued by ADOC with the RFP Documents, setting forth the terms that will, in accordance with the Negotiation Terms, serve as a basis for the Lease Documents, as further described in RFP Section 1.2.

Work: all work, services, and items required to be furnished and provided by the Developer/Lessor for the applicable Project under the Lease Documents, including all administrative, design, engineering, construction, End of Lease Work, financing, lifecycle and routine maintenance, facility management, professional services, labor, materials, equipment, and other items necessary to deliver the Facility for occupancy and operations by ADOC in accordance with the Lease Documents. The "Work" excludes those efforts that the Term Sheet (including the Technical Requirements) expressly specifies will be furnished by persons other than the Lessor or otherwise expressly excludes from the Lessor's scope of Work.

2. Construction and Interpretation of this RFP

2.1 Binding Interpretation

No construction or interpretation of any provision of this RFP or the other RFP Documents (including the Term Sheet and Technical Requirements) shall be binding on ADOC unless furnished or agreed in writing by ADOC.

2.2 Number and Gender

In this RFP, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa, and words in one gender include all genders.

2.3 Headings

The division of this RFP into sections and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this RFP. The headings in this RFP are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of the RFP.

2.4 References to this RFP

The words "herein", "hereby", "hereof", "hereto", and "hereunder", and words of similar import refer to this RFP document as a whole and not to any particular portion of it. The words "Section", "subsection", "paragraph", "sentence", "clause", and "Exhibit" mean and refer to the specified section, subsection, paragraph, sentence, clause, or exhibit of, or to, this RFP document unless another RFP Document (i.e., the Term Sheet or the Technical Requirements) is expressly referenced. A reference to a subsection or clause "above" or "below" refers to the denoted subsection or clause within the Section in which the reference appears. A reference to a section, exhibit, attachment, or table preceded by "RFP", "Term Sheet", "RFP Ex. X", "Term Sheet Ex. X", or "TR Ex. D-X" is a reference to that section, exhibit, attachment, or table, as applicable, of or to this RFP document (in the case of "RFP"), the Term Sheet (in the case of "Term Sheet"), or the Technical Requirements provided as Term Sheet Exhibit D (in the case of "TR Ex. D"), the exhibit or appendix to this RFP document, the Term Sheet, or the Technical Requirements by the number or letter indicated (in the case of "RFP Ex. X", "Term Sheet Ex. X", or "TR Ex. D-1 Appendix X", where "X" is the exhibit letter or appendix number).

2.5 References to Agreements and Other Documents

Unless specified otherwise, a reference to an agreement or other document is considered to be a reference to such agreement or other document (including any schedules or exhibits thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms.

2.6 References to Any Person

A reference in this RFP to any Person at any time refers to such Person's permitted successors and assigns.

2.7 Meaning of Including

In this RFP, the word "including" (or "include" or "includes") means "including without limitation" and shall not be considered to set forth an exhaustive list.

2.8 Meaning of Discretion

In this RFP, the word "discretion" with respect to any Person means the sole and absolute discretion of such Person. Whenever this RFP indicates that a matter is subject to a Person's approval, consent, acceptance, determination, or decision, and no standard is otherwise provided, then such approval, acceptance, consent, determination, or decision shall not be unreasonably withheld or conditioned.

2.9 Notice, Approval, Etc., in Writing

Whenever this RFP requires or provides for any notice, approval, consent, acceptance, determination, decision, certificate, order, waiver, explanation, policy, information or the like, the same and any request therefor must be in writing (unless otherwise waived in writing by the other party).

2.10 Meaning of Promptly

In this RFP, the word "promptly" means as soon as reasonably practicable in light of then-prevailing circumstances.

2.11 Trade Meanings

Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

2.12 Laws

Unless specified otherwise, a reference to a Law is considered to be a reference to (a) such Law as it may be amended, modified, or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from re-codification or similar reorganizing of Laws, and (d) all future Laws pertaining to the same or similar subject matter.

2.13 Currency

Unless specified otherwise, all statements of or references to dollar amounts or money in this RFP are to the lawful currency of the United States of America. Where this RFP requires Proposal pricing to be provided in 2019 dollars, such pricing shall be as of the Proposal Due Date.

2.14 Time

All times in this RFP are for local Central time in Montgomery, Alabama.

2.15 Days

Unless specified as a Business Day, "day" as used in the RFP Documents means a calendar day.

EXHIBIT B PRE-PROPOSAL SUBMITTALS

To the extent that the Proposer believes that any Pre-Proposal Submittal, or part thereof, contains trade secret or proprietary information or information that otherwise should be protected from disclosure, please submit it in accordance with [RFP Section 4.6.2](#).

1. Statement of Intended Proposal Submission

Each Proposer is required to submit a Proposal for two Facilities. Each Proposer, in a "Statement of Intended Proposal Submission" submitted as a Pre-Proposal Submittal pursuant to [RFP Section 4.5](#), shall confirm its Proposed Facilities, i.e., identify the two Facilities for which it intends to submit a Proposal. (Proposers may propose on Facilities 1 and 2, Facilities 2 and 3, or Facilities 1 and 3.) Statements indicating an intention to propose for only one Facility shall result in disqualification from the procurement.

Each Proposer shall deliver to ADOC (i) one electronic copy of its Statement of Intended Proposal Submission in PDF format emailed to ADOC's Procurement Contact at the email address set forth in set forth in [RFP Section 4.1](#) by the deadline specified in the Procurement Schedule and (ii) one original and two hardcopies of such Statement delivered by hand, U.S. mail, or express courier to ADOC's Procurement Contact at the physical address set forth in [RFP Section 4.1](#) not later than 12:00 p.m. on the second Business Day after the deadline set forth in the Procurement Schedule.

2. Proposed Project Site Location

Each Proposer shall submit to ADOC, as one or more Pre-Proposal Submittals pursuant to [RFP Sections 2.5.2 and 4.5](#), one or more proposed Project Site locations for each Proposed Facility. Each such Pre-Proposal Submittal shall include a street address and legal property description for the proposed Project Site location and a survey. Each such Pre-Proposal Submittal shall also include a concise narrative demonstrating that the proposed Project Site location meets the minimum location criteria in [RFP Section 2.5.2.1](#) and describing the extent to which the proposed Project Site location meets the preferred criteria in [RFP Section 2.5.2.1](#), including, by reference, the Concept Site Design criteria (particularly [Sections 1.1 and 1.2](#)) provided in the Basis of Design included in the Design Criteria ([Term Sheet Exhibit D-2](#)). The Pre-Proposal Submittal should indicate the status of the Proposer's acquisition of the relevant real property, outline key terms of any purchase contract or option, and describe any property acquisition and due diligence activities conducted with respect to the Project Site to-date, as well as any additional acquisition-related or due diligence activities anticipated to be conducted prior to the Proposal Due Date.

Each Proposer shall deliver to ADOC (i) one electronic copy of this Pre-Proposal Submittal in PDF format emailed to ADOC's Procurement Contact at the email address set forth in set forth in [RFP Section 4.1](#) by the deadline specified in the Procurement Schedule and (ii) one original and two hardcopies of such Statement delivered by hand, U.S. mail, or express courier to ADOC's Procurement Contact at the physical address set forth in [RFP Section 4.1](#) not later than 12:00 p.m. on the second Business Day after the deadline set forth in the Procurement Schedule. These Pre-Proposal Submittals may be submitted on a rolling basis at any time prior to the deadline specified in the Procurement Schedule. However, prompt submission (after conclusion of the quiet period specified in the Procurement Schedule) is strongly encouraged.

3. Detention Lock Hardware Bids

Each Proposer shall submit to ADOC, as a Pre-Proposal Submittal pursuant to [RFP Section 4.5](#), copies of bids solicited from at least three vendors of detention lock hardware as further described in [RFP Section 2.5.4.1](#). Each such bid shall conform to a standard unit price-type bid form to be provided by ADOC

and shall provide unit prices (by quantity, if applicable), extensions, and anticipated total pricing based on the units that the Proposer estimates will be required for each of its Proposed Facilities.

Each Proposer shall deliver to ADOC (i) one electronic copy of this Pre-Proposal Submittal in PDF format emailed to ADOC's Procurement Contact at the email address set forth in set forth in RFP Section 4.1 by the deadline specified in the Procurement Schedule and (ii) one original and two hardcopies of such Statement delivered by hand, U.S. mail, or express courier to ADOC's Procurement Contact at the physical address set forth in RFP Section 4.1 not later than 12:00 p.m. on the second Business Day after the deadline set forth in the Procurement Schedule.

EXHIBIT C

TECHNICAL PROPOSAL REQUIREMENTS

In the Technical Proposal, the Proposer should use the section numbers and corresponding titles shown in this RFP Exhibit C. To the extent that the Proposer believes that any Technical Proposal component, or part thereof, contains trade secret or proprietary information or information that otherwise should be protected from disclosure, please submit it in accordance with RFP Section 4.6.2.

Proposal Component	RFP Reference
Technical Proposal	<u>RFP Section 6.4, RFP Exhibit C</u>
1. Implementation Schedule and Plan	<u>RFP Ex. C, Section 1</u>
2. Design, Construction, and Commissioning Approach	<u>RFP Ex. C, Section 2</u>
3. Design Development Documents	<u>RFP Ex. C, Section 3</u>
4. Facility Management Services Approach and Life Cycle Plan	<u>RFP Ex. C, Section 4</u>
5. Communications Plan	<u>RFP Ex. C, Section 5</u>
6. Staffing Plan	<u>RFP Ex. C, Section 6</u>

1. Implementation Schedule and Plan (Package 1)

Package 1 of the Technical Proposal is to provide information and documentation that reasonably demonstrates that the Proposer is capable of performing Developer/Lessor's responsibilities and obligations under the Lease to deliver the Project. Package 1 is to address the requirements set out in this RFP Ex. C Section 1.

1.1 Preliminary Project Schedule

Provide an initial Project Schedule prepared in accordance with the requirements of the General Conditions provided in Term Sheet Exhibit D-1. Such schedule must include, at a minimum, the following information, as well as a Project Schedule brief explaining how the Work will be implemented to achieve the milestone dates and describing the key milestones and decisions on how each align and work together:

- (a) The critical path;
- (b) Negotiation Phase schedule, including anticipated dates for delivery of Design Packages and Price Proposals;
- (c) Anticipated Commercial and Financial Close dates and timeframes for activities to be undertaken prior to closing;
- (d) Acquisition of the Project Site and other real property interests necessary for the Project, to the extent undertaken prior to the Proposal Due Date;
- (e) Mobilization;
- (f) Key dates related to the Design Management Plan, including key milestone dates, design development (including consultation with ADOC under the Negotiation Terms), and design reviews;

- (g) Provision of design mock-ups;
- (h) Major construction stages and key milestones in construction;
- (i) Anticipated Occupancy Date and the proposed Occupancy Deadline; and
- (j) Major rehabilitation / lifecycle activities.

1.2 Submittals Schedule

Provide a draft Submittals Schedule in accordance with the requirements of the General Conditions, including the order and timing of all Submittals in relation to the Project (including the anticipated submission date and finalization date for each Submittal) and a description of each Submittal, including the subject matter and form (for example, a drawing or narrative) of each Submittal, clearly outlining the components and detail that are to be reviewed by ADOC.

1.3 Accommodation Schedule

Provide an accommodation schedule (room list) for all Functional Areas identifying for each space:

- (a) An area summary of the Proposer's design by department and by floor that includes the total net and a gross floor area, and the net to gross ratios for each department and for each floor;
- (b) An area summary of the building that includes total net and gross areas by floor and by building totals;
- (c) The amount of any variance(s) in net area between the Proposer's design and the relevant requirements of the Design Criteria provided in Term Sheet Exhibit D-2, expressed in real terms and as a percentage. RFP Ex. E Form 9 provides a template for such reconciliation.

The accommodation schedule should follow the same sequence and terminology as in the Design Criteria.

2. Design, Construction, and Commissioning Approach (Package 2)

In Package 2 of the Technical Proposal, the Proposer is to provide a written narrative for its approach to design and commissioning of each Proposed Facility that clearly describes the design process, the key design and construction issues associated with the Project, and the Proposer's strategy to manage those issues. The summary of the Proposer's approach and strategy to manage design and commissioning will govern the development of Developer's plan as required under the Lease in accordance with the Technical Requirements.

Floor plans required for this Technical Proposal Package 2 are to be provided at the scales noted. All electronic copies of drawings are to be provided in AutoCAD version 2019 or newer files at the scales noted.

2.1 Project Site Information

- (a) Include a copy of the Proposer's Project Site Location Pre-Proposal Submittal, accepted by ADOC, setting forth the Project Site location proposed for each Proposed Facility.
- (b) Describe the status of the Proposer's acquisition of the relevant real property as of the Proposal Due Date, outline key terms of any purchase contract or option, and describe all property acquisition and due diligence activities conducted with respect to the Project Site from the date of the Pre-Proposal Submittal to the Proposal Due Date, including title insurance underwriting and geotechnical and environmental investigation, as well as any

additional acquisition-related or due diligence activities anticipated to be conducted during the negotiation phase.

- (c) Provide any information that may impact (support or weaken) the case that the proposed Project Site meets the minimum location criteria set forth in RFP Section 2.5.1.1, and describe how the proposed Project satisfies (or does not satisfy) the preferred Project Site characteristics set forth in RFP Section 2.5.2.2.

2.2 Design Approach and Considerations

- (a) Describe and provide details of the Proposer's management plan for the design of each Proposed Facility, including: (i) the design methodology and general approach overall; (ii) how consideration of the ADOC's program services and Developer's maintenance obligations will be integrated into the design; (iii) security and IT integration; and (iv) how constructability considerations will be included in the design process.
- (b) Describe and provide details of how the Proposer will preserve sufficient flexibility in the initial design submitted in its Proposal to accommodate changes during the detailed design development process that will take place pursuant to the Negotiation Terms and thereafter under the Lease.

2.3 Construction Approach

Describe and provide details of the Proposer's management plan for construction of the Proposed Facilities, including:

- (a) The overall construction methodology and general approach; and
- (b) Construction constraints, risks, and mitigation strategies.

2.3.1 Construction Safety

Describe the Proposer's approach to safety for construction activities throughout the Term of the Lease, including in connection with life cycle maintenance and refurbishment. At a minimum, the following items are to be provided:

- (a) A safety policy statement providing the Proposer's health and safety objective; and
- (b) An outline of the overall safety plan in conformance with the requirements of the General Conditions.

2.3.2 Quality Assurance

Provide a preliminary Quality Assurance Plan describing the implementation of the Proposer's Quality Assurance program in accordance with the Technical Requirements.

2.3.3 Commissioning

Provide a preliminary Commissioning Plan describing the Proposer's approach to commissioning the Proposed Facilities in accordance with the Technical Requirements.

3. Design Development Documents (Package 3)

Package 3 of the Technical Proposal shall provide the Proposer's Design Development Documents for each Proposed Facility, which shall include, at a minimum, the items identified in this RFP Ex. C Section 3.

3.1 Design Principles: Design Redundancy

Provide written and graphical summaries to demonstrate how the design of each Proposed Facility, including its infrastructure, makes provision for loss of primary service.

3.2 Architectural Design Principles

3.2.1 Design

- (a) Provide functional relationship drawings (1:200 architectural plans) for each Proposed Facility, indicating the location and functional relationships of all program elements, horizontal and vertical circulation and internal traffic flow [inmate, staff, visitor, and support services (goods and services)]. Use color to illustrate the program elements and to differentiate the following types of internal circulation systems: public, service, controlled access for staff and inmate movement (flow diagram and evacuation route plan).
- (b) Provide written and graphical summaries to demonstrate the Proposer's understanding of the Functional Program in the following areas as described in the Design Criteria Documents (Term Sheet Exhibit D-2): location and siting; form and character; safety and security; building configuration and circulation; design redundancy; and wayfinding and signage.

3.2.2 Building Design

Provide for each Facility:

- (a) Large format renderings of the exterior and interior of the Facility, including: (i) the Facility as seen from main entrance road.; and (ii) the main entrance area of the Facility as seen from nearest county or State Road. Such renderings should be convertible to a printable 11 x 17 format.
- (b) A 3-D animated model illustrating context, massing and architectural features. Provide video animation no more than four minutes in length that demonstrates the exterior and interior in a complete manner.
- (c) Building elevations and sections and site sections, sufficient to illustrate design aesthetics, materials, and major features, including proposed exterior color schemes.
- (d) North-south and east-west cross-sectional diagrams (1:200) showing relationship between the Project and adjacent site uses.
- (e) Floor plans (1:16) including basic dimensions with room numbers cross-referenced to the Functional Program space requirements. Include all walls and doors, structural elements, circulation elements (for example, stairs, elevators), and major service shafts.

3.2.3 Building Code

Provide for each Proposed Facility:

- (a) A basic analysis of building code requirements applicable to the Facility, including requirements and implications consistent with the Design Criteria.
- (b) Any building code "Alternative Solution" supported by a code consultant's report outlining and supporting the proposed approach.

3.2.4 Site Development

Provide for each Proposed Facility the following development plans:

- (a) Site plan (1:100) including site development, adjacent roads and property uses showing location of all buildings (including full build-out), roadways, pathways, firefighting access, post-disaster provisions, green space, vehicle parking, and services elements.
- (b) Landscape plan, sections, and elevations (1:100) which present the proposed landscape design.

3.2.5 Wayfinding and Signage

Describe in written narrative and, if necessary, provide supporting sketches of the wayfinding and signage program including:

- (a) Exterior wayfinding and directional signage; and
- (b) Interior wayfinding and directional signage.

3.2.6 Building Envelope

Describe in written narrative and if necessary, provide supporting sketches of the Facility's building envelope including: (a) exterior insulation and cladding systems; (b) roofing systems, (c) exterior finishes/colors; and (d) glazing.

3.2.7 Site Circulation and Parking

Describe and provide details of the Proposer's parking plan for the Project, including:

- (a) The Proposer's temporary parking solution during construction, if required; and
- (b) The Proposer's permanent parking solution, including confirmation of the total number of parking spaces that will be provided.

3.3 Engineering Design Principles: Structure

Describe and provide details of the structural systems for the Facility including schematic level (1:100) drawings including the following as a minimum:

- (a) Foundation system, including geotechnical assumptions for foundation design, pile capacity, retaining walls, drainage, expected total and differential settlement.
- (b) Floor and roof structural systems, including column/beam/roof truss sizes, ceiling heights, and column spacing/bay dimensions.
- (c) Shear wall system, including design criteria, system type, system layout and member dimensions, foundations, and any special features.

3.4 Engineering Design Principles: Mechanical Systems

- (a) Provide descriptions of the mechanical systems, including maintainability, zoning, redundancy, and future capacities, as applicable. At a minimum, the following systems are to be included: (i) primary energy source; (ii) secondary energy source; (iii) cooling system; (iv) heating system; (v) ventilation system; (vi) domestic hot and cold-water systems; (vii) sanitary and storm drainage; (viii) natural gas services; (ix) mechanical equipment related

to food services; (x) all major mechanical space locations; (xi) Building Management System; and (xii) fire protection systems.

- (b) Outline ventilation strategy for each building component, and demonstrate, in that strategy, how all applicable ASHRAE ventilation requirements are to be met for systems with varying occupant densities, and how pressure relationships are to be maintained
- (c) Provide and detail smoke control and operations under fire service requirements.
- (d) Provide drawings and details for the following: (i) mechanical room schematic layout including corridors and access; (ii) roof layout; (iii) list of major equipment including air handling units, heat pumps, cooling towers, boilers, or any other significant pieces of equipment; and (iv) control sequences.
- (e) Provide system schematic drawings as follows: (i) heating; (ii) cooling; (iii) fire protection; (iv) domestic water; and (v) ventilation and air distribution, including exhausts.

3.5 Engineering Design Principles: Electrical Engineering

Provide a brief description of each of the following systems, including capacities, redundancy and spare capacities as applicable:

- (a) Outline basic electrical criteria for each system;
- (b) Load classification and identification;
- (c) Electrical system spare capacity;
- (d) Wiring methods and devices;
- (e) Raceway systems;
- (f) Grounding system;
- (g) Lightning protection;
- (h) Power quality;
- (i) Acoustics measures for electrical systems;
- (j) Electrical utilities;
- (k) Emergency power;
- (l) Electrical distribution;
- (m) Metering;
- (n) Lighting;
- (o) Lighting control;
- (p) Electrical instrumentation and controls for mechanical; and
- (q) Fire alarm system.

3.6 Location and Configuration of Services

- (a) Provide a site plan (1:250) showing location and configuration of services including power, telephone, cable TV, data, security, routing of buried concrete-encased duct banks, and any other electrical and communication services outside the Facility.
- (b) Provide single line and design drawings (1:250) and design documentation for electrical services and distribution, showing and describing: (i) origin of supply(s); (ii) arrangements for service redundancy; (iii) main service switchgear and transformer locations and main electrical distribution room; (iv) sub-electrical room locations; and (v) position, size, and capacity for emergency power, associated switchgear, UPS, and transfer switches.
- (c) Provide floor plans (1:50) and design documentation for lighting and power, showing typical spaces (typical Living Unit, A&D, S&OU, access between SLC Secure and SLSC Non-Secure, typical Sally Port and typical Secure Vestibule) and describing: (i) position and types of site lighting (general and at threat and building perimeter); (ii) lighting and controls, including proposed day lighting measures and energy management measures; (iii) proposed power monitoring systems; (iv) main single-line diagram showing sizes of all transformers, generators and distribution breakers, the proposed methodology of distribution, and the general arrangement methodology of supply to the Facility; (v) interconnection block diagram and networking between lighting system, power monitoring, fire alarm, clock, ESCS and BMS systems; and (v) indicate design illumination levels (including maintenance factors) for each area.
- (d) Describe the electrical services to be provided and include details of: (i) power distribution and maximum demand calculations for normal power, emergency power – including loads on generator, delayed generator, critical (life safety and non-life safety systems) and normal power branch; (ii) low-voltage network including type of switchgear proposed; type of breakers and trip units proposed; type of feeders and raceways proposed; (iii) type(s) of lighting to be used, incorporating standards of design and exit lighting; (iv) standby and UPS requirements and distribution; (v) proposed equipment cut sheets for power distribution, lighting and emergency generator; (vi) fire alarm system, including details of fire alarm panels, detection and signaling devices; (vii) a schematic riser diagram and describe the proposed integration with other systems; and (viii) motor control system, including details and locations.

3.7 ESCS

- (a) Provide written and graphical description of the ESCS demonstrating the overall system logical architecture or framework of all sub-systems as described in the Design Criteria and Project Specifications and how they integrate with each other. Describe the level of redundancy and fault tolerance proposed to maintain mission critical ESCS services.
- (b) Provide floor plans (1:50) showing device locations in typical spaces (e.g., typical Living Unit, A&D, Segregation and Observation unit, access between Secure and Non-Secure, typical Sally Port and typical Secure Vestibule).
- (c) Describe how the integration HMI software will facilitate the integration of the ESCS sub-systems. Provide sample HMI GUI screen shots and manufacturers' product data sheets to support the proposed solution.

- (d) Provide written descriptions, supported by conceptual system line diagrams and manufacturer's data sheets to demonstrate meeting the requirements described in the Design Criteria and Project Specifications for each of the listed ESCS sub-systems.
- (e) Provide written narrative and logical network diagrams to demonstrate the approach to the design of the ESCS LAN (including WLAN) and how the design makes provisions for the following aspects: (i) core switches; (ii) access layer switches; (iii) application servers (virtual and/or physical); (iv) proposed major VLANs; (v) connectivity of ESCS sub systems to the ESCS LAN; (vi) integration of the ESCS LAN with the ESCS WLAN; and (vii) redundancy and fault tolerance.
- (f) Describe the Proposer's approach to performing the network threat and risk assessment (network TRA) on the proposed ESCS LAN. Provide a sample network TRA (generic TRA or from a past project).
- (g) Describe the Proposer's approach to developing the disaster recovery plan (DRP) of the ESCS LAN and how it relates to the network TRA. Provide a sample DRP (generic DRP or from a past project).
- (h) Describe the interoperability between the ESCS and Facility life safety systems and requirements (e.g. fire alarm, voice evacuation, emergency evacuation).
- (i) Provide any proposed value-added features or functionality of the ESCS that would improve the operations and functionality of the Facility

3.8 Communication Systems

- (a) Provide written narratives and diagrams to demonstrate the approach to the design of the Structured Cabling system (end-to-end) and how the design makes provisions for the following aspects:
 - (i) Overall floor plan with locations of Communications Entrance Room, Main CER, Main ESCS, all Sub ESCS/Telecomm rooms and horizontal cable zoning;
 - (ii) Room layouts for Communications Entrance Room, Main CER, Main ESCS and typical Sub ESCS/Telecomm rooms; and
 - (iii) Communications backbone cabling, including redundancy requirements.
- (b) Provide manufacturers' data sheets for the proposed Structured Cabling solution (copper and fiber horizontal and backbone cabling and patch panels).
- (c) Provide predictive wireless LAN simulations for coverage, signal strength, noise, and interference for both 2.4GHz and 5GHz frequencies. The predictive simulations shall be performed on the entire floor plate for each level in the Facility and take into account major wall construction type.
- (d) Provide a description of the proposed Intelligent Infrastructure Management System. Include the manufacturers' product data sheets for the proposed solution.
- (e) Provide any proposed value-added features or functionality of the Communications Systems that would improve the operations and functionality of the Facility.

3.9 Food Services

Provide a written description and diagrams outlining the approach to the organization of Food Services including the following spaces: (a) food and tray preparation; (b) food storage (dry, cooled and frozen goods); and (c) dishwashing and cart storage areas. Diagrams must show equipment locations to scale.

3.10 Site Work

- (a) Site Services: Provide site plan drawings (1:200) showing interconnection with utility services, external electrical infrastructure and outside lighting concept.
- (b) Civil Works: Provide drawings (1:500) and documentation that illustrate the proposed site civil works, including: (i) storm water drainage; (ii) sanitary sewer; (iii) geothermal; (iv) natural gas systems; (v) domestic/fire water; and road and sidewalk designs. For each of the foregoing, describe and provide information on origin of supply, connection points, and distribution and, as appropriate, storage, drainage, and disposal.

3.11 Equipment and Furniture

- (a) For each Proposed Facility, provide a preliminary FF&E list (with proposed manufacturer, model number, and relevant performance specifications) for Lessor-provided FF&E, based on the Preliminary FF&E Scope Matrix provided as Term Sheet Exhibit D-5.
- (b) Describe the Proposer's approach to managing the FF&E procurement process for the Lessor-provided FF&E for each Proposed Facility, including an indicative equipment procurement schedule and indicative FF&E brief identifying major procurement activities and dates for ADOC selection of all FF&E, particularly highlighting those items that are on the critical path for design and construction of the Facility.

4. Facility Management Services Approach and Life Cycle Plan (Package 4)

The Proposer is to provide a written narrative for its approach to delivering the maintenance services (referred to herein as the "**Services**"), including the utilization of major Subcontractors that clearly describes the processes for planning for, managing, implementing and performing the requirements and obligations set out in the Facility Management Specifications provided in Term Sheet Exhibit D-1.

4.1 General Approach

- (a) Provide a general description of the overall concept of operations and approach to the delivery of the Services, including any utilization of major Subcontractors.
- (b) Provide a description of the proposed Quality Assurance Program to be employed after the Occupancy Date, including description of how the Proposer will manage performance of the Service Provider and/or other Subcontractors and create an environment responsive to ADOCs' needs.
- (c) Describe how Services will interface with ADOC's services in every area, including security, waste, supplies, food services, and building and equipment maintenance.
- (d) Provide a description of how scheduled and unscheduled work impacting services in the Facility will be managed.
- (e) Describe the reporting system and the ability for ADOC to access reports.

- (f) Describe the involvement of Service Provider's staff in the development of design and the execution of construction. Provide examples of how the lifecycle and facilities management considerations have influenced the proposed design.

4.2 Organization

Describe the Proposer's proposed organization for delivering the Services during the occupancy period, including details regarding:

- (a) The organizational structure proposed to meet the requirements of Facility Management Specifications, including an organization chart that identifies the key names (to the extent available) and positions that will be responsible for management and delivery of the Services. Include a brief description of each position's responsibilities.
- (b) The number of staff expected to be on site during the regular business hours of the Services team and their roles, and provide rotations.
- (c) How Services will be addressed outside of regular business hours.

4.3 Draft Facility Management Plans

Provide preliminary draft Plans required pursuant to the Facility Management Specifications (other than plans required in connection with other aspects of the Services required to be addressed in the Proposal pursuant to other subsections of this [RFP Ex. C Section 4](#)). The preliminary draft Plans should be clear, practical, and enforceable, and form a complete and workable basis for development of the final Plans in accordance with the required timeframes for the same established in the Facility Management Specifications.

4.4 Start-up Plan

Provide a draft Start-up Plan covering all of the applicable requirements in the Facility Management Specifications (see, e.g., [Appendix I](#) thereto).

4.5 Roads, Grounds, and Landscape Maintenance Services

Describe and provide details of the Roads, Grounds, and Landscape Maintenance Services that will be provided in accordance with the applicable requirements of the Facility Management Specifications (see, e.g., [Appendix B](#) thereto).

4.6 End of Lease Requirements

Describe the approach and strategies to be implemented throughout the Term to ensure the meeting of the End of Lease Requirements as described in the Term Sheet and Facility Management Specifications (see, e.g., [Appendix C](#)).

4.7 Plant Services

Describe and provide details of the Plant Services that will be provided in accordance with the applicable requirements of the Facility Management Specifications (see, e.g., [Appendix D](#) thereto), including:

- (a) The Proposer's approach to maintenance management for the Facility and how the Proposer will ensure that the performance requirements of all Maintained Elements will be met at all times.

- (b) A description of how the CMMS will be employed and how Scheduled Maintenance work will be planned, scheduled, and monitored.
- (c) Provide an example of a preventive maintenance schedule and an individual job plan.
- (d) The Proposer's approach to the management of demand maintenance, including emergencies and how Response Times and Rectification Periods will be met.

4.8 Help Desk Services

Describe and provide details of the proposed approach to delivering Help Desk Services in accordance with the applicable requirements of the Facility Management Specifications (see, e.g., [Appendix F](#) thereto):

- (a) The proposed approach to deliver the Help Desk Services on a 24/7 basis.
- (b) The hardware and software technology to be utilized and how it is integrated to the CMMS if different than the CMMS.
- (c) The business processes and security features related to maintenance of electronic logs, records and response and rectification times and how the business processes are integrated with the CMMS.
- (d) How the Developer will track and monitor Response Times and Rectification of all Events.
- (e) How the Help Desk, as the sole Services user contact for the Site, will interface with the delivery of services by the other services provider, in particular those that are not the responsibility of Developer (e.g., misdirected calls, confusion in who is accountable for delivering a service between ADOC and Developer).

4.9 Utility Management Services

Describe and provide details of the proposed approach to delivery of Utilities Management Services in accordance with the applicable requirements of the Facility Management Specifications (see, e.g., [Appendix G](#) thereto), including:

- (a) Management and administration of all utility services as part of a fully integrated and coordinated facilities management solution.
- (b) The plan to meet Annual Energy Targets including examples of policies to set utilities consumption targets.
- (c) The preliminary Energy model used and methodology for ongoing measurement, analysis, and energy reporting.
- (d) Arrangements for continual optimization of building systems.

4.10 Environmental and Sustainability Services

Describe and provide details of the Environmental and Sustainability Services that will be provided in accordance with the applicable requirements of the Facility Management Specifications (see, e.g., [Appendix F](#) thereto).

4.11 Life Cycle Plan

4.11.1 Preliminary Life Cycle Plan

Provide a preliminary Life Cycle Plan in accordance with the applicable requirements of the Facility Management Specifications. At a minimum, the Life Cycle Plan should:

- (a) Describe and provide details of the approach and methodology to lifecycle building management including a description of decision-making processes, business case analyses, and technology tools.
- (b) Describe the overall approach to optimization of design and construction quality, facility management services, and lifecycle strategies.
- (c) Describe and provide details of the capital expenditures associated with the lifecycle/capital replacement plan.
- (d) Describe and provide details of the approach to the development of the Life Cycle Plan required pursuant to the Facility Management Specifications.

4.11.2 Life Cycle Schedule

Provide a proposed Life Cycle Schedule in Excel spreadsheet format, clearly identifying the assumed asset life, strategy, and replacement schedule for all types of plant and equipment for which Developer will be responsible, including FF&E from the Equipment List. Proposers are responsible to determine the specific components and elements within each division required to support their proposed approach, methodology and cost structure for lifecycle replacement and refurbishment.

4.11.3 Lifecycle Approach

Describe and provide details of how the Service Provider has influenced the proposed design for the Proposed Facilities and in particular, how total lifecycle costs have been optimized.

5. Communications Plan (Package 5)

In Package 5 of the Technical Proposal, provide a draft Communications Plan indicating any public communications or outreach activity the Proposer proposes to undertake during the Term in its lead roles in conformance with requirements of the Term Sheet and Technical Requirements. Subject to ADOC comment and approval during negotiations, the Communications Plan will be coordinated with ADOC's strategic communications plan, which will direct communications activities on the Project.

6. Staffing Plan (Package 6)

In Package 6 of the Technical Proposal, provide a Staffing Plan by space using the template provided in the Technical Requirements as Term Sheet Exhibit D-4. The Staffing Plan must be organized into security staff and support staff as indicated in the form provided and must comport with the Facility staffing criteria included in the staffing plan template.

EXHIBIT D FINANCIAL PROPOSAL REQUIREMENTS

In the Financial Proposal, the Proposer should use the section numbers and corresponding titles shown in this [RFP Exhibit D](#). To the extent that the Proposer believes that any Financial Proposal component, or part thereof, contains trade secret or proprietary information or information that otherwise should be protected from disclosure, please submit it in accordance with [RFP Section 4.6.2](#).

Financial Proposal Component	RFP Reference
Financial Proposal	RFP Exhibit D
1. Key Financial Information	RFP Ex. D, Section 1; Form 4
2. GMP Information	RFP Ex. D, Section 2; Forms 5-7
3. Financing Plan	RFP Ex. D, Section 3
Financial Model	RFP Ex. D, Section 4

1. Key Financial Information

The Financial Proposal must include a completed [RFP Ex. E Form 4](#) for each of the Proposed Facilities, providing key information regarding the Proposer's financial plan and financing plan in accordance with the form's instructions. If the Proposer proposes that any of the [Form 4](#) information be different in the event that the Proposer is selected to deliver both of its Proposed Facilities, the Financial Proposal must also include a separate [Form 4](#) for each of the Proposed Facilities in that scenario.

2. GMP Information

The Financial Proposal must include the Proposer's control estimates for various costs proposed to be amortized in the Lease Payments payable over the Term of the Lease as set forth in this [RFP Ex. D Section 2](#). Cost control estimates should be provided in \$2020, unless otherwise noted. Cost control estimates must be provided for each of the Proposer's Proposed Facilities individually, if the Proposer is selected to lease only one Facility, and for each Proposed Facility both separately and in aggregate, if the Proposer is selected to lease both Facilities

2.1 Capital Development Cost Control Estimate

The Financial Proposal must include the completed [RFP Ex. E Form 5](#), providing the Proposer's control estimate of Project capital development costs. Capital development costs are expected to include costs of property acquisition, design, site work, construction, and commissioning, as set forth in [Form 5](#).

2.2 Lifecycle Cost Control Estimate

The Financial Proposal must include the Proposer's control estimate and anticipated schedule of lifecycle costs for the Project over the Term. The schedule should include annual estimates for each year during the Term in both real and nominal dollars, as well as the aggregate cost for each Proposed Facility over the Term, including soft costs. This component of the Financial Proposal should also provide a narrative describing the key assumptions used by the Proposer in preparing the estimate, including the replacement cycle assumptions for various building components and the lifecycle reserve funding methodology.

2.3 Facility Management and Maintenance Cost Control Estimate

The Financial Proposal must include the completed RFP Ex. E Form 6, providing the Proposer's control estimate of annual facility management and maintenance costs.

2.4 FF&E Cost Control Estimate

The Financial Proposal must include the completed RFP Ex. E Form 7, providing the Proposer's control estimate of furniture, fixture, and equipment (FF&E) costs. FF&E costs are expected to include those FF&E costs identified as the Developer/Lessor's responsibility in the Technical Requirements. Such costs shall include the FF&E identified as the Developer/Lessor's responsibility in the preliminary FF&E Scope Matrix provided in the Technical Requirements (Term Sheet Exhibit D-5). Note, however, that the Technical Requirements provided with the Term Sheet are not intended to provide a complete description of all FF&E required for the Project. The Proposer's control estimate must be inclusive all FF&E costs anticipated for the Project (and the Proposer's preliminary FF&E design concepts sufficiently advanced at the time of the Proposal to prepare a reasonably reliable FF&E cost control estimate).

3. Financing Plan

The Financial Proposal must include a preliminary Financing Plan for the Project, describing the Proposer's approach to financing the Project and outlining its proposed schedule and approach to achieving Commercial and Financial Close. The Financing Plan should include at least the elements outlined in this RFP Ex. D Section 3, as applicable and to the extent known with reasonable certainty, or reasonably anticipated or estimated, at the time of the Proposal for purposes of providing reasonably reliable pricing information.

3.1 Sources and Uses

Provide a summary of anticipated sources and uses during development and construction of each Proposed Facility and throughout the Term of the Lease after the Occupancy Date.

3.2 Proposed Debt Facilities

Provide the estimated total amount of project debt. Describe debt facilities proposed by the Proposer, including the estimated total amount of project debt and the nature of the current level of commitment and expectations with regard to rated or non-rated debt. Identify the proposed underwriter or placement agent and any lenders, to the extent known. Provide anticipated drawdown and repayment terms, and interest rates, to the extent available.

3.3 Equity

Identify any equity providers, the total amount of committed equity investments, the type of equity contributions (equity investment or equity member debt), equity distribution, anticipated interest and repayment terms (to the extent available), and return assumptions (including pre-tax equity IRR).

3.4 Assumptions

Describe the key assumptions underlying the Financial Proposal, including anticipated local, state, and federal tax treatment (including property, sales, and use taxes), macroeconomic assumptions, interest-rate hedging strategy, and inflation risk management strategy.

3.5 Legal Structure

Provide a detailed narrative description of the legal structure of each of the Proposer, Developer/Lessor (if

different), and any equity providers. Describe the legal structure for the Lessor organization, including the anticipated Lessor entity; anticipated members of the Lessor (if any); legal/contractual relationships between the Lessor entity, its members (if any), and the Developer Team members (e.g., joint venture, subcontractor, etc.); key terms of any teaming agreement or anticipated partnership, limited liability company, or joint venture agreement, e.g., with respect to decision-making authority and relative responsibilities of partners/members. If any entity is not yet formed or if a modification is contemplated prior to Commercial Close, so state and provide a brief description of the proposed legal structure of such entity. One or more organizational charts may be provided in order to better illustrate the legal structure(s).

3.6 Diligence

Describe the due diligence performed by the Developer Team to the Proposal Due Date, and describe due diligence activities that remain to be completed prior to Commercial and Financial Close.

3.7 Lender Support Letters

Attach any letters of support or commitment from lenders.

4. Financial Model

Each Proposer must submit a base Financial Model for the Project with its Financial Proposal. The Financial Model shall assume the project scope set forth in the Term Sheet, including the Technical Requirements provided therewith, and must reflect the key Financial Model information provided pursuant to RFP Ex. D Section 1. The Financial Model shall assume an Occupancy Date (and Base MLP) for the applicable Facility consistent with ADOC's Facility program as set forth in RFP Section 2.3.

Only that portion of the Maximum Annual Lease Payment (MLP) that is attributable to certain amortized costs will be permitted to vary on an annual basis over the Term of the Lease: (a) lifecycle costs (see RFP Ex. D Section 2.2) for replacements and upgrades, as reflected in the Lifecycle Schedule submitted with the Proposal (subject to modification pursuant to the Negotiation Terms); and (b) facility management and maintenance costs (see RFP Ex. D Section 2.3). The Proposer may not propose adjustments to the variable portion of the MLP exceeding the Inflation Index identified by ADOC. For purposes of the Proposal, the "Inflation Index" will be the All Items Consumer Price Index for All Urban Consumers (CPI-U) in the Alabama Statistical Area, as published by the Bureau of Labor Statistics, using a reference year of 1982-1984 that equals 100.0.

Each Proposer must provide historical and statistical analysis of the Inflation Index for the portion of the MLP that is permitted to vary pursuant to this RFP Ex. D Section 4, including a 65-year and a 20-year trend. Each Proposer must provide an assumed CPI-U forecast based on its research and analysis conducted on such index, and use this assumption as its "base case" in the Financial Model. The Financial Model must also provide an alternate case assuming 2.5% annual inflation.

**EXHIBIT E
PROPOSAL FORMS**

FORM 1 PROPOSAL LETTER

NAME OF PROPOSER: _____ (“Proposer”)

Date: _____

Alabama Department of Corrections
c/o HPM/CGL
Two Metroplex Drive, Suite 300
Birmingham, Alabama 35209
Attention: Ed Whatley

On behalf of Proposer, the undersigned submits the documents described in this letter (collectively, this “**Proposal**”) in response to the Request for Proposals dated December 4, 2019, as amended (the “**RFP**”) issued by the Alabama Department of Corrections (“**ADOC**”) to develop, finance, lease, and maintain the Project. Initially capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the RFP.

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following proposal documents:

- This Proposal Letter;
- The Proposal Security;
- The Statement of Intended Proposal Submission and Alabama Disclosure Statement (Form 8);
- Technical Proposal (including all required Forms), in accordance with RFP Exhibit C;
- The Financial Proposal (including all required Forms and the Financial Mode), in accordance with RFP Exhibit D; and
- Supplemental Appendices, including: (a) new Developer Team and Key Individuals information, (b) changes from Proposer’s SOQ, and (c) the Lease Term Sheet.

By submitting this Proposal, Proposer agrees to be bound by all terms and conditions of the RFP and acknowledges that any exceptions or conditions to the terms and conditions of the RFP Documents must be clearly identified in Proposal and are subject to the acceptance of ADOC.

In consideration for ADOC providing the Proposer the opportunity to submit this Proposal and agreeing to consider this Proposal, Proposer commits to keep this Proposal open for acceptance by ADOC until [●] [*the date that is 120 days after the Proposal Due Date*] and to provide the Proposal Security pursuant to RFP Section 6.4.2 as security for Proposer’s commitments provided pursuant to this Proposal and, if selected by ADOC, to enter into good faith negotiations regarding the terms of Lease and to perform Proposer’s obligations pursuant to and in accordance with the Negotiation Terms (RFP Exhibit F), including compliance with all commitments contained in this Proposal and the SOQ.

Proposer agrees that the SOQ, except as expressly modified by this Proposal, is incorporated as if fully set forth herein. Proposer agrees that ADOC will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in the SOQ or this Proposal.

Proposer acknowledges access to all materials posted on www.doc.alabama.gov/RequestforProposals with respect to the Project, and receipt of all materials emailed or otherwise provided in hard or electronic copy to Proposer by ADOC with respect to the Project, the RFP, the Term Sheet (including the Technical Requirements), or the Lease, including any RIDs provided by ADOC. Proposer represents and warrants that it has read the foregoing, and agrees to abide by the terms of the RFP, including the Negotiation Terms.

Proposer understands that ADOC is not bound to select any Proposer and may reject each Proposal that ADOC may receive. Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the Project procurement process will be borne solely by Proposer.

Proposer covenants that it has disclosed to ADOC, and agrees it is under a continuing obligation to disclose, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or that may conflict in any manner with Proposer's obligations under the RFP or the Developer/Lessor's obligations under a potential future Lease. Proposer also covenants that it will not employ any person with a conflict to perform under any such agreement. Proposer further covenants that no person has an interest in the Proposer's (or any of the Developer Team Members') organization or in the Lease that would violate Alabama law.

By submitting this Proposal, Proposer represents and warrants that the certifications in Attachment A hereto are true, accurate, and correct with respect to each of the Developer Team Members (as "Vendor" thereunder).

Proposer represents and warrants that the Proposer representative identified below is fully authorized to represent the Proposer and its proposed Developer/Lessor in any and all matters related to the Proposal, including by providing clarifications and additional information that may be requested by ADOC pursuant to the RFP.

This Proposal shall be governed by and construed in all respects according to the laws of the State of Alabama.

[Insert appropriate signature block, as well as notary signature block. Proposer must attach evidence of authorization to deliver the Proposal and enter into negotiations pursuant to the Negotiation Terms as required pursuant to RFP Section 6.4.1.]

1. Sample signature block for corporation or limited liability company:

[Insert Proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership, consortium, or any other form of joint venture (including any entity not yet legally formed):

[Insert Proposer's name]

By: *[Insert general partner's or member's name]*

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate]

3. Sample signature block for attorney in fact:

[Insert Proposer's name]

By: _____

Print Name: _____

_____ Attorney in Fact

FORM 1
ATTACHMENT A
Vendor Certifications

1. Bribery Convictions

Vendor certifies compliance, or agreement to comply, with the following legal requirement and that it is not barred from being awarded a contract or subcontract due to a violation of these requirements or an inability or unwillingness to comply with these requirements:

1.1 No person or business entity will be awarded a contract or subcontract if that person or business entity:

- (a) Has been convicted under the laws of Alabama, or any other state, of bribery or attempting to bribe an officer or employee of the State of Alabama or any other state in that officer's or employee's official capacity; or
- (b) Has made an admission of guilt of such conduct that is a matter of record but has not been prosecuted for such conduct.

1.2 No business will be barred from contracting with ADOC as a result of the bribery conviction of any employee or agent of the business if the employee or agent is no longer employed by the business, and:

- (a) The business has been finally adjudicated not guilty; or
- (b) The business demonstrates to ADOC that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or a high managerial agent on behalf of the business.

1.3 When an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and pursuant to the direction or authorization of a responsible official of the business, the business will be chargeable with the conduct.

2. Felony Conviction

No person or business entity, or officer or director of such business entity, convicted of a felony is eligible to do business with ADOC from the date of conviction until three (3) years after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business.

3. Inducements

Any person who offers or pays any money or valuables to any person to induce him/her not to submit a Proposal in response to the RFP is guilty of a felony. Any person who accepts money or other valuables for not submitting a Proposal in response to the RFP, or who withholds a Proposal in consideration of the promise for the payment of money or other valuables, is guilty of a felony. Vendor certifies that it will not take part in any such conduct.

4. Reporting Anticompetitive Practices

When, for any reason, Vendor or a designee suspect collusion or other anticompetitive practice among any vendors or employees of ADOC, a notice of the relevant facts will be transmitted to the Alabama Attorney

General and the ADOC Commissioner's Office. This includes reporting any chief procurement officer, State purchasing agency, designee, or executive officer who willfully uses or allows the use of specifications, requests for proposal documents, proprietary competitive information, proposals, contracts, or selection information to compromise the fairness or integrity of the procurement or contract process, or any current or former elected or appointed State official or State employee who knowingly uses confidential information, available only by virtue of that office or employment, for actual or anticipated gain for themselves or another person.

5. Compliance

Developer/Lessor will be able to make the representations, warranties, and certifications required pursuant to the RFP under the resulting contract or as conditions precedent to the effectiveness of such contract, including with respect to the Developer/Lessor's compliance with respect to applicable Laws. Such certifications include:

5.1 Developer/Lessor's commitment to:

- (a) Comply with the provisions of the Civil Rights Act of 1964.
- (b) Comply with the nondiscrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all per-sons with regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor.
- (c) Comply with Section 504 of the Federal Rehabilitation Act of 1973 as amended (29 U.S.C. 794), the requirements imposed by the applicable H.E.W. regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.
- (d) Refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination.
- (e) Comply with the regulations, procedures, and requirements of ADOC concerning equal employment opportunities and affirmative action.
- (f) Provide such information with respect to its employees and applicants for employment.
- (g) Have written sexual harassment policies that comply with ADOC's policy, to include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment; (iii) Lessor's internal complaint process, including penalties; (iv) the legal recourse, investigative, and complaint process available through Lessor; (v) directions on how to contact Lessor; and (vi) protection against retaliation.

5.2 Developer/Lessor is currently, or prior to contract execution will be, enrolled with the Department of Homeland Security (DHS) in the E-verify system, and will not knowingly hire or continue to employ a person(s) who are not either citizens of the United States or person(s) who are not in proper and legal immigration status authorizing them to be employed for pay in the United States.

Developer/Lessor will include a provision in all Subcontracts that requires all Subcontractors to utilize the E-Verify system to verify employment eligibility of all persons employed during the contract term. If requested, Subcontractor must provide documentation as identified above.

5.3 In compliance with the Beason-Hammond Alabama Taxpayer and Citizen Protection Act as amended and codified in Ala. Code Section 31-13-1, et seq., by signing the resulting contract, the

contracting parties will affirm, for the duration of the contract, 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 any resulting contract and shall be responsible for all damages resulting therefrom.

5.5 Developer/Lessor will maintain a drug-free workplace. Developer/Lessor will certify, as a condition precedent to the effectiveness of the resulting contract, that no individual engaged in the unlawful manufacture, distribution, dispensation, possession, or use of any illegal drug or controlled substance will be eligible for employment by Developer/Lessor under the resulting contract.

5.6 Vendor acknowledges and understands that any employee or Subcontractor will be subject to, and will comply with, all security regulations and procedures of ADOC. All Vendor employees or subcontractors who may enter any ADOC facility are subject to a background check and security check of his/her person and personal property (including his/her vehicle), and may be prohibited from entering the facility in accordance with ADOC regulations. Additionally, any Vendor employee found to have violated any security regulation may be barred from entering any ADOC facility.

5.7 Developer/Lessor shall comply with Alabama Code Section 14-11-31, as well as 28 C.F.R. Part 115, the Prison Rape Elimination Act (PREA). ADOC has a Zero Tolerance Policy toward all forms of custodial sexual misconduct, sexual abuse, and sexual harassment. See Administrative Regulation 454, Inmate Sexual Assault and Harassment Awareness (Prison Rape Elimination Act (PREA)). Any type of conduct—including suspected conduct—that falls within the context of custodial sexual misconduct/sexual abuse, as defined by either the State or federal laws referenced above, shall be reported immediately to the Warden of the responsive Prison or Division Director his/her designee.

6. Boycott

In compliance with Act 2016-312, as codified by Ala. Code § 41-16-5, Vendor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this State can enjoy open trade.

**FORM 2
PROPOSER AND DEVELOPER TEAM INFORMATION**

- 1. Name of Proposer: _____
- 2. Type of entity: _____
- 3. Name of Developer/Lessor: _____
- 4. Type of entity: _____
- 5. Proposer's address: _____

Telephone: _____ Email: _____

6. Proposer shall review its SOQ previously submitted to ADOC and list below any changes in organization and changed Key Individuals that have been approved by ADOC since the submission of the SOQ. Except as set forth in the summary below and further described elsewhere in this Proposal, the Proposer's SOQ is hereby incorporated as if set forth in full, and the Proposer represents and warrants to ADOC that the information set forth in the SOQ, except as set forth herein, is true, complete, correct, and accurate in all respects and does not contain any misleading or incorrect information or omit to state any material fact necessary in order to make the information not misleading. Attach separate sheets if necessary.

I declare under penalty of perjury under the Laws of the State of Alabama that the foregoing declaration is true, correct, and accurate.

[Insert Developer's name]

Signature: _____

Print Name: _____

Title: _____

Date: _____

**FORM 2 ATTACHMENT
INFORMATION ABOUT DEVELOPER TEAM
AND IDENTIFIED SUBCONTRACTORS**

[This form will be used to provide information about the Developer Team members and any other Subcontractors that have been identified as of the Proposal Due Date.]

Proposer Name: _____

ENTITY NAME AND ADDRESS	CONTACT INFORMATION (representative name, telephone, and email)	Role of Entity	Alabama Licenses, if applicable	Alabama Prequalification, if any

[Add additional sheets as necessary.]

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations resulting in an agreement to enter into any Subcontracts with respect to the Project, except for those listed above. The Proposer agrees that it will follow applicable Lease requirements with respect to Subcontractors.

I declare under penalty of perjury under the Laws of the State of Alabama that the foregoing declaration is true, correct, and accurate.

[Insert Proposer's name]

Signature: _____

Print Name: _____

Title: _____

Date: _____

**FORM 3
KEY INDIVIDUALS**

Proposer Name: _____

Key Individual Assignment	Name of Individual Assigned	Individual's Employer
Team Lead		
Corrections Advisor		
Construction Project Lead		
Design and Construction Project Lead		
Design Lead		
Construction Lead		
Designer's Technology Lead		
Service Provider Lead		

FORM 4 KEY FINANCIAL INFORMATION

Proposer Name: _____

Sum of Total Development Cost for Both Facilities (\$2020)	
Confidence Level of Total Development Cost	+/- [X]%
GMP (\$2020) ¹	
Assumed Amount of Debt Financing	
Assumed Amount of Equity Financing	
Weighted Average Cost of Capital (WACC)	
Estimated Base MLP (\$20__) ²	
Estimated Base MLP per inmate bed	
NPV of MLPs at 5% ⁴	
Proposed Portion of MLP that is Variable ⁵	

Notes:

1. Equal to the sum of the following, each in nominal dollars: (a) the aggregate total capital development costs for each Facility provided in the control estimate in Attachment B-1; (b) the aggregate total annual O&M cost for the Project over the Term, based on the annual O&M cost control estimate for the base year in Attachment B-2; and (c) the aggregate total lifecycle costs for each Facility over the Term provided in the control estimate in Attachment B-3.
2. Assume an Occupancy Date for the applicable Facility consistent with ADOC's Facility program as set forth in RFP Section 2.3.
3. Must use annual discounting.
4. Refer to RFP Ex. D Section 4 regarding permitted variability and applicable Inflation Index.

**FORM 5
CAPITAL DEVELOPMENT COST
CONTROL ESTIMATE**

[To Come]

FORM 6
FACILITY MANAGEMENT AND MAINTENANCE COST
CONTROL ESTIMATE

[To Come]

FORM 7
FF&E COST CONTROL ESTIMATE

[To Come]

FORM 8
STATE OF ALABAMA DISCLOSURE STATEMENT

[See attached]



State of Alabama Disclosure Statement

(Required by Act 2001-955)

ENTITY COMPLETING FORM

ADDRESS

CITY, STATE, ZIP

TELEPHONE NUMBER

()

STATE AGENCY/DEPARTMENT THAT WILL RECEIVE GOODS, SERVICES, OR IS RESPONSIBLE FOR GRANT AWARD

ADDRESS

CITY, STATE, ZIP

TELEPHONE NUMBER

()

This form is provided with:

- Contract
- Proposal
- Request for Proposal
- Invitation to Bid
- Grant Proposal

Have you or any of your partners, divisions, or any related business units previously performed work or provided goods to any State Agency/Department in the current or last fiscal year?

- Yes
- No

If yes, identify below the State Agency/Department that received the goods or services, the type(s) of goods or services previously provided, and the amount received for the provision of such goods or services.

STATE AGENCY/DEPARTMENT	TYPE OF GOODS/SERVICES	AMOUNT RECEIVED

Have you or any of your partners, divisions, or any related business units previously applied and received any grants from any State Agency/Department in the current or last fiscal year?

- Yes
- No

If yes, identify the State Agency/Department that awarded the grant, the date such grant was awarded, and the amount of the grant.

STATE AGENCY/DEPARTMENT	DATE GRANT AWARDED	AMOUNT OF GRANT

- List below the name(s) and address(es) of all public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF PUBLIC OFFICIAL/EMPLOYEE	ADDRESS	STATE DEPARTMENT/AGENCY

- List below the name(s) and address(es) of all family members of public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the public officials/public employees and State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF FAMILY MEMBER	ADDRESS	NAME OF PUBLIC OFFICIAL/ PUBLIC EMPLOYEE	STATE DEPARTMENT/ AGENCY WHERE EMPLOYED

If you identified individuals in items one and/or two above, describe in detail below the direct financial benefit to be gained by the public officials, public employees, and/or their family members as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

Describe in detail below any indirect financial benefits to be gained by any public official, public employee, and/or family members of the public official or public employee as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

List below the name(s) and address(es) of all paid consultants and/or lobbyists utilized to obtain the contract, proposal, request for proposal, invitation to bid, or grant proposal:

NAME OF PAID CONSULTANT/LOBBYIST	ADDRESS

By signing below, I certify under oath and penalty of perjury that all statements on or attached to this form are true and correct to the best of my knowledge. I further understand that a civil penalty of ten percent (10%) of the amount of the transaction, not to exceed \$10,000.00, is applied for knowingly providing incorrect or misleading information.

Signature	Date	
Notary's Signature	Date	Date Notary Expires

Act 2001-955 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000.

FORM 9
SPACE LIST RECONCILIATION FORM

[See separate Excel files]

EXHIBIT F NEGOTIATION TERMS

ARTICLE 1 GENERAL PROVISIONS

1.1 Governing Law. As with all other aspects of the RFP, these Negotiation Terms will be governed by and construed in accordance with the laws of the State of Alabama.

1.2 Assignment. ADOC has specifically selected the Proposer to enter into negotiations for a Lease for the Facility in accordance with the RFP. Accordingly, the Proposer may not assign its rights and obligations under these Negotiation Terms, or subcontract its activities hereunder to persons other than as provided in RFP Ex. F Section 3.2.3, without the prior written consent of ADOC in its discretion; it being understood, however, that ADOC will not unreasonably withhold its consent to assignment by the Proposer to the Lessor entity contemplated by the Proposer's at such time as such entity is properly organized, authorized to transact business in the State of Alabama, and, as applicable, licensed in accordance with applicable Law to perform the activities contemplated hereunder.

1.3 Independent Contractor. The Proposer shall at all times under these Negotiation Terms act in the capacity of an independent contractor and shall not, as a result of any Preliminary Work undertaken hereunder, in any respect be deemed to be (or to act as) an agent of ADOC for any purpose or reason whatsoever.

1.4 Work at Risk. All Preliminary Work authorized pursuant to these Negotiation Terms and performed prior to any termination of negotiations is at the Proposer's sole risk. In the case of any termination of negotiations under RFP Ex. F Section 7.2, ADOC's sole obligation to the Proposer shall be the return of the Proposer's Proposal Security, subject to the terms and conditions of RFP Ex. F Section 7.1, and the payment of any Design Change Fee owing pursuant to RFP Ex. F Section 7.3.

1.5 Approvals. Any approval, consent, acceptance, determination, or decision by ADOC or the Proposer will not be unreasonably withheld, conditioned, or delayed, unless these Negotiation Terms provide that the same is subject to such party's discretion. Any matter that is subject to a party's discretion is final and binding in that party's sole and absolute discretion and is not subject to dispute.

ARTICLE 2 LEASE DEVELOPMENT; COMMERCIAL CLOSE

2.1 Negotiation of Lease. Upon the Proposer's receipt of written notice from ADOC that ADOC has selected the Proposer to enter into negotiations for a Lease pursuant to the RFP, ADOC and the Proposer agree to negotiate, in good faith, and finalize the terms of a Lease for the Project, which shall include the Proposer's obligation to develop, design, construct, finance, and maintain the Facility. ADOC and the Proposer further agree to put forth a good faith effort to complete such negotiations and achieve Commercial and Financial Close as soon as reasonably possible.

2.1.1 The Lease shall conform substantially to the terms and conditions set forth in the Term Sheet, with only such changes as are mutually agreed by ADOC and the Proposer, and shall be consistent with the Proposer's Proposal for the Project. In negotiating the Lease and performing the Preliminary Work, the Proposer agrees to maintain commitments made to ADOC in the Proposer's Proposal for the Project, except to the extent that a variation in, modification to, or deviation from a Proposal commitment

represents, in both parties' view, an improvement in quality, performance, utility, safety, reliability, or cost-effectiveness, or as otherwise agreed by the parties (including pursuant to the Proposer Conference process or the development and refinement of the GMP, Final Price Proposal, and Financing Plan, either before or after the Proposer's selection). Proposal commitments, as agreed by ADOC, will be incorporated in the Lease Documents.

2.1.2 The parties agree to work in good faith to address reasonable comments of the Proposer's lenders and lenders' counsel in respect of the Lease and financing terms.

2.2 Applicability of Term Sheet to Preliminary Work. Upon execution of the Lease Agreement and Commercial Close, the Preliminary Work shall become part of the Work described in the Lease. Until such time, the Preliminary Work shall be governed by, and performed in accordance with, the terms and conditions set forth in the Lease Term Sheet, including, with respect to design development services performed by the Proposer prior to Commercial Close, in accordance with the warranty obligations and all applicable labor and contracting requirements set forth therein; *provided, however*, that in the event of any conflict or inconsistency between the Term Sheet and these Negotiation Terms, these Negotiation Terms shall govern.

2.3 Commercial Close

2.3.1 Lease Requirements and Other Conditions Precedent. The following are required for finalization of the Lease and are conditions precedent to Commercial Close thereof: (a) ADOC's acceptance of 90% complete Construction Documents for the Project; (b) ADOC's acceptance of the Proposer's Final Price Proposal and Financing Plan; (c) completion of negotiations and finalization of the form of Lease, including all exhibits thereto (which completion shall be evidenced by the execution and delivery of the Lease by each party to the Lease to the other party); (d) ADOC's acceptance of the proposed Project Site and evidence that the Proposer has acquired and is in possession of the Project Site and any other real property interests necessary for design and construction of the Facility; (e) receipt of all approvals necessary or appropriate for ADOC to enter into the Lease, including approval of the Lease Agreement and Construction Documents by the Commissioner of ADOC (the "**Commissioner**"), the Alabama Department of Financing, Leasing Management Division ("**DLM**"), and the Governor of Alabama; and (f) any other conditions to Commercial Close required by applicable Law or agreed by the parties.

2.3.2 Commercial Close Process

2.3.2.1 Prior to or concurrently with, and as a condition precedent to, Commercial Close, the Proposer will deliver customary closing documents and other documents that ADOC may reasonably request for Commercial Close or require as a condition precedent to or in connection with ADOC's execution of the Lease Agreement. Such documents may include evidence of authority to transact business in Alabama and of approval of the final form of Lease, customary opinions of counsel, copies of key subcontracts and ancillary agreements, and any guarantees or bonds required under the Lease Documents as conditions precedent to Commercial Close.

2.3.2.2 At ADOC's request, the Proposer will submit to ADOC for review and approval draft forms of any of documents referenced in RFP Ex. F Section 2.3.2.1. ADOC will provide comments promptly to the Proposer regarding any such drafts.

2.3.2.3 Prior to or concurrently with Commercial Close, ADOC will deliver customary closing documents and other documents that the Proposer may reasonably request for Commercial Close.

2.3.3 Delay in Commercial Close. In the event that ADOC and the Proposer, proceeding in good faith, are not able to complete negotiations of the Lease and achieve Commercial Close on or before [●]², the parties' continued negotiation of the terms of the Lease shall include good faith negotiations regarding any impacts caused by such delay in Commercial Close, including any adjustments to the Project Schedule or Project milestones or change in scope of the Preliminary Work that may be necessary or appropriate to recover from such delay.

ARTICLE 3 PRELIMINARY WORK

3.1 Preliminary Work. The Proposer shall commence performance of the "**Preliminary Work**" on the terms and conditions set forth in these Negotiation Terms and in the Lease Term Sheet (including the Technical Requirements), with such Preliminary Work comprising: (a) the good faith negotiation of the Lease and achievement of Commercial Close as described in RFP Ex. F Article 2; (b) Project Site acquisition and other property acquisition activities required for construction of the Facility, to the extent not previously completed; (c) the design development services described in RFP Ex. F Section 3.3; (d) the cost estimating and price development efforts described in RFP Ex. F Article 4; (e) site diligence activities in support of the design development services and cost estimating and price development efforts described herein; and (f) development of the Financing Plan for the Project and related activities described in RFP Ex. F Article 5. The Preliminary Work shall be consistent in nature and quality with the Work as set forth in the Term Sheet (and as will be further described in the ultimate Lease Documents). All Preliminary Work performed prior to the Effective Date of the Lease or earlier termination of negotiations is at the Proposer's sole risk. The Proposer acknowledges and agrees that it will not be paid by ADOC for any Work, including Preliminary Work, pursuant to these Negotiation Terms, except to the extent that a Design Change Fee is payable on termination of negotiations pursuant to RFP Ex. F Section 7.3. Except as provided in RFP Ex. F Article 7, any compensation payable by ADOC to the Proposer for Preliminary Work will be established pursuant to, and payable only under, the Lease. The cost incurred by the Proposer prior to Commercial Close to prepare Design Documents, cost estimates and Price Proposals, a Financing Plan, Financial Model, reports, opinions, and Commercial Close documents shall be borne by the Proposer, except as otherwise provided in the Lease.

3.2 Proposer Covenants and Responsibilities for Preliminary Work

3.2.1 General Obligations. The Proposer acknowledges that ADOC's selection of and determination to enter into negotiations with the Proposer pursuant to the RFP is based on the expectation of a relationship of trust and confidence between ADOC and the Proposer. By submitting a Proposal, the Proposer has accepted this relationship and covenants and agrees to cooperate in all respects with ADOC and to act at all times in a professional capacity in providing the Preliminary Work hereunder, all with the objective of achieving Commercial and Financial Close expeditiously and delivering the Project timely, efficiently, and in a manner consistent with the interests and goals of ADOC for the Project. The Proposer shall comply, and shall cause its subcontractors to comply, with all applicable Laws, governmental approvals and permits, and good industry practice. For the avoidance of doubt, all architectural, engineering, and other design services furnished by the Proposer hereunder shall be performed in accordance with the Professional Standard by, or under the direction of, architects and engineers properly licensed as required by applicable Laws and the Technical Requirements and who are skilled, experienced, and competent for their respective professions and who will assume professional responsibility for the Design Documents prepared or checked by them. The Proposer is fully responsible for the actions, omissions, negligence, willful

² **Note to Proposers:** Date to be provided by ADOC in subsequent Addendum to RFP.

misconduct, or breach of applicable Law or contract by persons performing or furnishing Preliminary Work, including by the Proposer's subcontractors, members, and employees.

3.2.2 Schedule. If not included with the Proposal, the Proposer shall prepare a Preliminary Project Development Schedule. The Preliminary Project Development Schedule shall be subject to ADOC's approval. The Proposer shall perform the Preliminary Work expeditiously and in accordance with the approved Preliminary Project Development Schedule and shall endeavor, in good faith, to progress the development, design, and financing of the Project so that the Project milestones set forth in the Preliminary Project Development Schedule and the Occupancy Date for the Facility may be timely achieved. The Proposer shall not exceed time limits established in the approved Preliminary Project Development Schedule for completion of Preliminary Work except with ADOC's consent; it being understood and agreed that ADOC will not withhold its consent to a reasonable extension of time for any delays in the Preliminary Work (a) that would be excused under the Term Sheet, as applicable, or (b) the extent attributable to a delay in a Project approval that is the responsibility of ADOC pursuant to RFP Ex. F Section 3.4, provided, in each case, that such delay is not caused wholly or substantially by the fraud, bad faith, willful misconduct, or negligence of any Proposer-Related Entity and, with respect to delays in Project approvals, the Proposer has satisfied its obligations under RFP Ex. F Section 3.2.4.

3.2.3 Proposer Team and Key Individuals. The Proposer will utilize the Developer Team members and Key Individuals identified in Forms 2 and 3 in its Proposal. The Proposer shall not change or substitute such a firm or individual without prior approval by ADOC.

3.2.4 Project Approvals. At all times during the negotiation phase described in these Negotiation Terms, the Proposer shall cooperate with and assist ADOC (and its representatives, employees, consultants, attorneys, and agents) in timely obtaining, and meeting any conditions of, all necessary or appropriate approvals for the Project or for ADOC to enter into the Lease (including those approvals referenced in RFP Section 2.3.1(e) as conditions precedent to Commercial Close). The Proposer acknowledges that such assistance may include the making of reasonable modifications to the Design Documents and the preparation of such other design, pricing, financing, and other supporting documentation as is reasonably requested by ADOC in seeking, obtaining, and meeting any conditions of any necessary or appropriate Project approvals.

3.3 Design Development

3.3.1 Review of Technical Requirements and Site Conditions. Submission of the Proposal by the Proposer pursuant to this RFP is a representation that (a) the Proposer has carefully and thoroughly reviewed, analyzed, compared, and familiarized itself with the Technical Requirements and any RIDs provided by ADOC; and (b) the Proposer has become familiar with the conditions and applicable Laws under which the Work is to be performed and has correlated its observations with the Technical Requirements applicable to the Facility.

3.3.1.1 To the best of the Proposer's knowledge, as of the Proposal Due Date, ADOC's Design Criteria and the Design Development Documents prepared by the Proposer and included in the Proposal do not contain any errors, omissions, mistakes, discrepancies, or defects. In the event that the Proposer discovers any error, omission, mistake, discrepancy, or defect, or any variance from applicable Laws, in the Design Criteria or Design Development Documents, the Proposer shall promptly report the same to ADOC. ADOC and the Proposer shall then discuss such error, omission, mistake, discrepancy, defect, or variance from applicable Laws, and ADOC shall issue written directions specifying the mutually agreed resolution of the same. The Proposer covenants and agrees that it will not seek any extension of the approved Preliminary Project Development Schedule based on any purported errors, omissions, mistakes, discrepancies, or defects, or variances from applicable Laws in such materials, except to the extent that the

Proposer reported to ADOC a specific error, omission, mistake, discrepancy, defect, or variance from applicable Laws in such materials prior to being notified of ADOC's selection of the Proposer for negotiations. For the avoidance of doubt, contingency amounts included in the Proposer's control estimates may be used to address errors, omissions, mistakes, discrepancies, defects, or variances from applicable Laws in the Design Criteria or applicable Laws of which the Proposer was unaware as of the Proposal Due Date; such use of contingency will not be considered an "increase in the GMP" for purposes of these Negotiation Terms *provided* that the Affordability Limit, total GMP, and applicable control estimate total are not exceeded.

3.3.1.2 The Proposer represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and familiarized itself as to the general and local conditions of the Project Site that can affect the Project, the Facility, or the performance of the Work.

3.3.1.3 The Proposer specifically covenants that the Proposer has reviewed any geotechnical report(s) and site survey(s) that are available with respect to each parcel of land constituting a portion of the Project Site, or will commission and review any such reports and surveys as are reasonably necessary or appropriate (in accordance with the Professional Standard) for the Project, and shall take into account all conditions described or discovered in any such geotechnical report(s) and site survey(s) in preparing its Final Price Proposal and entering into the Lease, regardless of whether that condition appears at a location other than where it was discovered by the geotechnical investigation(s) or survey(s).

3.3.1.4 ADOC shall not be responsible or liable in any respect for any causes of action, claims, or losses whatsoever suffered by the Proposer by reason of any use of information contained in, or any action or forbearance in reliance on, any RIDs provided by ADOC to the Proposer. ADOC does not represent or warrant that the information contained in any such RIDs is complete or accurate or that such information is in conformity with the requirements of the Term Sheet (including the Technical Requirements), required approvals, or applicable Laws. Except as expressly set forth in the Term Sheet and ultimately in the Lease Documents, the Proposer shall have no right to additional compensation or time extension based on any incompleteness or inaccuracy in any such RIDs.

3.3.2 Proposer Responsibility for Design

3.3.2.1 In accordance with the approved Preliminary Project Development Schedule, the Proposer shall prepare, for acceptance by ADOC, Design Documents based on ADOC's Design Criteria and other applicable Technical Requirements. The Design Documents shall include all drawings, specifications, schedules, diagrams, and plans, and such content and detail, as is necessary to obtain appropriate government approvals and permits and to properly complete the development of the Project and construction of the Facility.

3.3.2.2 The Proposer covenants and agrees that the Design Documents shall be accurate and free from material errors or omissions and shall be in compliance with and accurately reflect all applicable Laws. The Proposer shall, at no expense to ADOC, modify any such documents that are not in accordance with such Laws or are inaccurate or contain errors or omissions promptly upon the Proposer becoming aware of any such non-compliance, inaccuracy, error, or omission.

3.3.2.3 Review, comment, and acceptance of Design Packages by ADOC and, as appropriate, other State agencies and officials is for the purpose of mutually establishing a conformed set of Design Documents compatible with the requirements of the Work. No review, comment, acceptance, or approval of any Design Packages or Design Documents by ADOC or any other State agency or official shall be deemed to transfer any design liability from the Proposer to ADOC or the State.

3.3.3 Design Package Development

3.3.3.1 In preparing the Design Documents, the Proposer shall, consistent with the approved Preliminary Project Development Schedule, submit to ADOC for its review, comment, and acceptance any such interim design submissions as are agreed by the parties, which interim design submissions may include drawings, plans, diagrams, and specifications setting forth the Project requirements (each such interim design submission being a "**Design Package**"). The Proposer shall, at a minimum, prepare the Design Packages described in this RFP Ex. F Section 3.3.3.

3.3.3.2 Based on ADOC's Design Criteria and other Technical Requirements, the Proposer has prepared and submitted with its Proposal Design Development Documents consisting of drawings and other documents describing the Project design objectives, staffing, space and FF&E requirements, and functional relationships, and illustrating the scale and relationship of Facility components in accordance with RFP Exhibit D. In seeking ADOC's acceptance of the Design Development Documents, the Proposer shall, promptly after selection and as reasonably requested by ADOC, review with ADOC various elements of the Project design, including the proposed design and construction approaches, design principles, staffing plan, Project Site information, building materials selection, FF&E, and project management and safety plans. By submitting its Proposal, the Proposer confirms that, in preparing the Design Development Documents, it has verified Facility dimensions and field conditions at the proposed Project Site.

3.3.3.3 Based on the accepted Design Development Documents, the Proposer shall prepare, for review and acceptance by ADOC, 90% complete Construction Documents consisting of drawings and other documents that fix and describe the size and character of the Facility as to architectural, structural, mechanical, plumbing and electrical systems, materials, and such other elements as may be appropriate. The Construction Documents shall include all drawings and specifications, and such content and detail, as is necessary to obtain required governmental approvals and permits and to properly complete the development of the Project and the construction of the Facility, and shall provide information customarily necessary for the use of such documents by those in the building trades. Such documents shall include: site plans for all disciplines (e.g., landscape, civil, electrical/lighting, telecommunications), floor plans for all disciplines (e.g., architectural, civil, structural, plumbing, mechanical, electrical/lighting, fire alarm, fire protection, information communications, A/V, security electronics, and FF&E), roof plans, interior elevations, building sections, wall sections, details, and finish schedule, as well as details, diagrams, and schedules for all engineering disciplines, maintenance of traffic plans (if applicable for the Project Site), and a project manual including material and systems specifications. Building information modeling (BIM) shall be prepared in accordance with the Technical Requirements.

3.3.3.4 The Proposer acknowledges and agrees that the 90% Construction Documents must be consistent with, and develop in detail, the intent of the Design Criteria, the other Technical Requirements, and the accepted Design Development Documents.

3.3.3.5 The Proposer acknowledges that, consistent with the approved Preliminary Project Development Schedule, the parties are anticipated to achieve Commercial Close before the Construction Documents are 100% complete. In the event that the Proposer commences construction of any part or portion of the Project prior to Commercial Close and written acceptance by ADOC of 100% complete Construction Documents for the Facility, ADOC shall bear no responsibility to the Proposer in connection with, and the Proposer shall bear the sole risk associated with, any such construction activity. For such purposes, Construction Documents shall be deemed 100% complete once they have been stamped "issued for permit" or "issued for construction" by the Proposer's appropriately licensed and qualified design

subconsultant. Once issued and accepted, the Proposer may not modify, alter, or change any of the 100% complete Construction Documents except as provided in the Lease Documents.

3.3.3.6 To the extent not prohibited by applicable Law, the Construction Documents need not be submitted to ADOC as a single complete set, but may be prepared and submitted in successive Design Packages, each of which addresses separate construction trades applicable to the Project, in order to allow for design development and construction to proceed in phases in accordance with the approved Preliminary Project Development Schedule. Notwithstanding the foregoing, the Proposer shall be responsible to prepare and submit to ADOC a complete reference set of the Construction Documents and to keep such complete set on-hand at all times during construction of the Facility.

3.3.4 Design Review

3.3.4.1 Throughout the preparation of the Design Documents, the Proposer shall confer on a regular basis with ADOC (and such other stakeholders in the Project that ADOC may identify) in order to review and discuss the documents then in the process of being prepared. On or about the time of the scheduled submission of each Design Package, the Proposer and ADOC will meet and confer on the applicable Design Package, with the Proposer identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Design Criteria, Design Development Documents, or, if applicable, previously submitted Design Packages.

3.3.4.2 Following the design review meeting, ADOC shall review and comment the Design Package in a reasonable time consistent with the turnaround times set forth in the approved Preliminary Project Development Schedule or as otherwise agreed by the Parties. Promptly after ADOC's review of the Design Package and the corresponding refinements to the control estimates described in RFP Ex. F Article 4, ADOC will provide written notice to the Proposer that either (a) ADOC accepts such Design Package or (b) such Design Package is incomplete or does not comply with the requirements of this RFP Ex. F Article 3. In the latter case, the Proposer shall promptly correct any incompleteness or noncompliance with respect to such Design Package. Upon completing the correction of the Design Package, the Proposer shall resubmit the applicable materials to ADOC and the foregoing procedures shall be repeated until ADOC accepts the Design Package in question.

3.3.4.3 Except as otherwise agreed by the parties, ADOC will use commercially reasonable efforts to provide comments on Design Packages within seven Business Days after receipt by ADOC. Upon the conclusion of the seven Business Day (or other agreed) review period, if ADOC has not yet responded to the Design Package, the Proposer may proceed to advance design consistent with the Design Package, subject to ADOC's reasonable comment thereafter; *provided, however*, that the 90% Construction Documents shall remain subject to ADOC's affirmative acceptance, and any work on Construction Documents for a Facility (or a portion thereof) prior to ADOC's acceptance of the 90% Construction Documents] for such Facility (or portion thereof) shall be at the Proposer's risk, subject only to any obligation of ADOC to pay the Design Change Fee pursuant to RFP Ex. F Section 7.3.

3.3.5 Value Engineering Services. Throughout the design and engineering Preliminary Work, the Proposer shall provide value engineering services, all of which services shall be performed so as to assist the Proposer and ADOC in achieving the Project objectives, including those related to schedule, cost, functional performance, and aesthetics. Factors to be considered by the Proposer in providing such services shall include: site use; selection of building materials, equipment, and systems; availability of labor; methods and means of construction and installation; and any other similar items creating economies or cost savings for the Project. Particular attention shall be given to alternative design proposals, possible economies, and identification of options that would maximize the benefits and achieve the goals of the Project.

3.3.6 Project Plans. During the design process, the Proposer shall advance work, to the extent reasonably practicable, on Project plans required for design, construction, commissioning, and maintenance of the Facility pursuant to the Technical Requirements (Term Sheet Exhibit D).

3.4 ADOC Responsibilities. ADOC shall be responsible for obtaining, with the cooperation and assistance of the Proposer, necessary and appropriate approvals for ADOC to enter into the Lease and proceed with the Project (including those approvals referenced in RFP Ex. F Section 2.3.1(e) as conditions precedent to Commercial Close). With respect to ADOC's responsibility for Project approvals, and whenever ADOC's cooperation is otherwise required by the Proposer to enable the Proposer to carry out its obligations under these Negotiation Terms, ADOC agrees that it shall act in good faith in seeking such approvals and in so cooperating with the Proposer, with the objective of achieving Commercial and Financial Close expeditiously and delivering the Project timely, efficiently, and in a manner consistent with the interests and goals of ADOC for the Project.

ARTICLE 4 GMP, AFFORDABILITY LIMIT, AND PRICE DEVELOPMENT

4.1 Initial GMP. The Proposer has submitted, and ADOC has accepted, an initial GMP for the Project as set forth in its Financial Proposal pursuant to RFP Ex. C Section 2. The GMP consists of the Proposer's control estimates of the Project capital development costs, total lifecycle costs, and total FF&E costs over the Lease Term, and of the total facility management and maintenance costs throughout the Term based on the Proposer's control estimate of base-year routine maintenance costs, in each case in sufficient detail and accompanied by such supporting information and data as is reasonably required by ADOC in the Proposal or after selection of the Proposer for negotiations.

4.2 Development of the Price. Coincident with the development of the Design Documents, the Proposer shall update and refine its capital development, lifecycle, FF&E, and facility management and maintenance cost estimates relative to the control estimates and shall submit, for ADOC's review and acceptance, updated Price Proposals that reflect the Proposer's reasonable, good faith estimate of Project costs based on the evolving Design Documents.

4.2.1 The Proposer shall submit interim Price Proposals in accordance with the approved Preliminary Project Development Schedule, as the same may be modified by the agreement of ADOC and the Proposer. On or before the earlier of (a) 10 Business Days prior to the anticipated Commercial Close date agreed by the parties or (b) five Business Days after ADOC's acceptance of the 90% Construction Documents for the Facility, or otherwise as mutually agreed, the Proposer shall prepare and submit its Final Price Proposal for the Project, which shall be incorporated into the Proposer's Financing Plan as provided in RFP Ex. F Article 5.

4.2.2 Prior to the Proposer's submission of each post-selection Price Proposal to ADOC, the Proposer shall meet with ADOC to review its revised estimates, the proposed Price, and documentation of their bases. The Proposer shall include with such documentation a list of the current Design Package materials used in connection with the preparation of the cost estimates. In the event that any inconsistencies or inaccuracies in the information are discovered, ADOC will promptly notify the Proposer, who shall make appropriate adjustments to the estimates and proposed Price, their bases, or both.

4.2.3 In preparing revised cost estimates, the Proposer is permitted to include contingencies for design, bidding, and cost escalation; to propose materials, equipment, component systems, and types of construction to be included in the Construction Documents in accordance with the Technical Requirements (or as otherwise agreed by ADOC in writing); to suggest for ADOC's consideration reasonable adjustments

in the Design Criteria, specifications, scope, and other Technical Requirements for the Project; and to recommend design alternates; in each case, as may be necessary or appropriate to adjust the estimated costs to comply with the Affordability Limit, remain under the GMP, and reduce costs under the control estimates.

4.2.4 ADOC is entitled to reasonable access to the details of the Proposer's process for developing any Price Proposals, including any revised cost estimates.

4.3 Costs Estimated to Exceed the GMP

4.3.1 If at any time the Proposer's cost estimates exceed the GMP or the applicable control estimate, the Proposer shall provide an explanation for each cost exceeding prior estimates or projections and shall make appropriate recommendations to ADOC (a) to adjust the GMP and/or control estimate(s), and (b) as to potential economies or reasonable strategies to reduce costs, including reasonable revisions to the Project Design Criteria, specifications, scope, or other Technical Requirements or adjustments to the Project's size or quality as required to achieve cost savings.

4.3.2 In the event that the Proposer's cost estimates exceed the GMP or applicable control estimate, ADOC may elect to (a) consent to increase the GMP and/or control estimate(s) or (b) direct the Proposer to continue to participate in design development, value engineering, and cost estimating exercises and negotiation activities and to revise the Design Documents so that the Proposer can submit another Price Proposal at a reduced cost. Increases in the GMP and/or control estimate(s) shall be at ADOC's discretion; *provided, however*, that ADOC must act reasonably with respect to any ADOC changes in the scope of Work that increase costs. ADOC changes in the scope of Work for the Project shall only be deemed to have occurred if ADOC directs or approves a change after the Proposal Due Date that requires a material change in the Project Site location or site preparation work or requires Work of a materially different nature, character, scope, size, or quality than the general scope of the Work reasonably inferable by the Proposer, in accordance with the Professional Standard, from the RFP Documents, including the Term Sheet (including ADOC's Design Criteria and the other Technical Requirements) and any RIDs provided by ADOC to the Proposer prior to the Proposal Due Date.

4.3.3 The Proposer shall, at its own cost, modify the Project design and revise the applicable Design Documents as necessary to comply with the GMP (as such may be adjusted with ADOC's consent) and to incorporate or accommodate value engineering proposals or otherwise achieve cost savings as recommended by the Proposer and approved by ADOC.

4.4 Affordability Limit. In no event shall the Proposer's proposed Price exceed the Affordability Limit established by ADOC for the Facility.

4.5 Agreement on Price. If ADOC and the Proposer agree upon a Final Price Proposal, the Price included in such Final Price Proposal shall be incorporated into the Proposer's Financing Plan in accordance with RFP Ex. F Article 5, and the parties may proceed to Commercial and Financial Close.

4.6 Failure to Agree on Price. If (a) the proposed Price in the Proposer's Final Price Proposal exceeds the Affordability Limit, (b) the Proposer's cost estimates in its Final Price Proposal exceed the GMP cost control estimates (subject to adjustment pursuant to RFP Ex. F Sections 4.2 and 4.3 or as otherwise agreed by ADOC prior to submission of the Final Price Proposal), or (c) ADOC otherwise determines that the ADOC and the Proposer are unable to agree upon a Final Price Proposal, ADOC may, at its election, take one or more of the following actions:

4.6.1 Terminate negotiations with the Proposer hereunder (it being understood that failure of the Parties to agree in good faith upon a Price Proposal shall not, in itself, entitle ADOC to terminate for

cause without any of the reasons for which ADOC may draw on the Proposer's Proposal Security under RFP Ex. F Section 7.1 being present).

4.6.2 Direct the Proposer to continue to participate in design development, value engineering, and cost estimating exercises and negotiation activities and to revise the Design Documents so that the Proposer can submit another Final Price Proposal at a reduced cost, in which case ADOC shall decide whether to accept the revised Final Price Proposal or terminate negotiations hereunder. With respect to any such revised Final Price Proposal, ADOC shall have the same rights to proceed or to terminate negotiations under this RFP Ex. F Section 4.6.

ARTICLE 5 FINANCING

5.1 Proposer's Responsibility for Financing. The Proposer will be solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse to ADOC, necessary for the Project, except to the extent expressly provided otherwise by the Term Sheet or, ultimately, the Lease Documents.

5.2 Financing Plan. The Proposer will pursue the necessary financing in compliance with applicable provisions of the Term Sheet (including the terms and conditions applicable to Financial Close) and in accordance with its proposed Financing Plan and Financial Model submitted with the Proposer's Proposal. The proposed Financing Plan and Financial Model in the Proposal remain subject to ADOC's acceptance and may be modified by mutual agreement as part of the good faith negotiation of the Lease and development of the Price Proposal in accordance with these Negotiation Terms. The ultimate Financing Plan and Financial Model will also be subject to adjustment as provided in the Term Sheet and, once effective, the Lease Documents.

ARTICLE 6 INSURANCE; INDEMNITY

6.1 Insurance Coverage Requirements. The Proposer, at its own expense, shall procure and maintain liability insurance for its activities and operations in connection with the Preliminary Work, including commercial general liability/umbrella coverage and professional liability insurance at coverage levels customary for similar work on similar projects. The Term Sheet may specify insurance coverages required for the Work. Before commencing the Preliminary Work, the Proposer must provide to ADOC for review and approval certificate(s) of insurance reflecting the coverages required by hereunder, which insurance coverages (with the exception of professional liability insurance coverage) must be endorsed to name ADOC and such other parties as may be reasonably requested by ADOC as additional insureds. The Proposer shall keep such coverages in effect throughout the performance of the Preliminary Work.

6.2 Proposer Indemnity

6.2.1 To the extent permitted by applicable Law, the Proposer will release, protect, defend, indemnify, and hold harmless ADOC, the State of Alabama, and each of their respective successors, assigns, officeholders, officers, directors, representatives, agents, consultants, and employees (the "**ADOC Indemnitees**") from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands, and losses, in each case, made by any third party (including for loss of or physical damage to property or assets, or in respect of the death, personal injury, disease, or illness of any person), arising out of, relating to, or resulting from: (a) breach of these Negotiation Terms by the Proposer; (b) breach of or non-compliance with applicable Law or any governmental approval by any

Proposer-Related Entity; (c) the fraud, bad faith, willful misconduct, or negligent act or omission by any Proposer-Related Entity; (d) infringement or improper appropriation or use of any third-party Intellectual Property Right by Proposer-Related Entity in the performance of the Work or in connection with the Project or Design Documents, *provided, however*, that this indemnity shall not apply to any such infringement or use resulting from ADOC's failure to comply with specific written instructions regarding use provided to ADOC by the Proposer; and (e) liens, claims, or encumbrances filed by any Proposer-Related Entity in connection with the Work, including all expenses and attorneys', accountants', and expert witness fees and costs incurred in discharging any such lien, claim, or encumbrance, and any other liability to subcontractors or suppliers for failure to pay sums due for their work, services, materials, goods, equipment, or supplies; *provided, however*, that the Proposer's indemnity obligations under this RFP Ex. F Section 6.2 shall not extend to any third-party damage, loss, or expense to the extent directly caused by the fraud, bad faith, willful misconduct, or sole negligence, or violation of applicable Law by an ADOC Indemnitee or by ADOC's breach of its obligations under these Negotiation Terms.

6.2.2 The Proposer's obligations under this RFP Ex. F Section 6.2 shall survive the termination of negotiations hereunder and shall not be limited to the extent that any damage, loss, or expense is paid from the proceeds of insurance required to be maintained pursuant to these Negotiation Terms.

6.2.3 In claims by an employee of Proposer, Developer/Lessor, its subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this RFP Ex. F Section 6.2 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Proposer or a subcontractor under workers' compensation, disability benefit, or other employee benefits laws.

ARTICLE 7 PROPOSAL SECURITY; TERMINATION; DESIGN CHANGE FEE; DISPUTES

7.1 Proposal Security. As part of its Proposal and as a condition precedent to ADOC's selection of the Proposer for negotiations pursuant to the RFP, the Proposer has provided a Proposal Security in an aggregate amount equal to \$5 million for Proposed Facility. Promptly upon receiving notice from ADOC of its selection of the Proposer for negotiations, and as a condition precedent to commencing negotiations pursuant to these Negotiation Terms, the Proposer shall renew or replace the Proposal Security for the applicable Facility, increasing the aggregate amount of the Proposal Security provided in connection with such Facility to \$20 million and extending its validity to the date that is 180 days after the date that ADOC issued notice of its determination to select the Proposer for negotiations. Such Proposal Security is intended to secure the Proposer's good faith performance of its obligations under these Negotiation Terms and shall remain valid through such extended validity period, unless earlier forfeited or returned pursuant to these Negotiation Terms.

7.1.1 As with the Proposal Security provided with the Proposal, the increased and extended Proposal Security provided pursuant to this RFP Ex. F Section 7.1 shall be provided as one or more bonds in form and substance reasonably acceptable to ADOC. Each of the bonds must be issued by a surety company that is (a) authorized to do business in the State of Alabama, (b) has a rating of "A-" or better and Class VIII or better by A.M. Best Company or is rated in the top two categories by two nationally recognized rating agencies, and (c) is listed on the U.S. Department of the Treasury's Listing of Approved Sureties (Department Circular 570) (<http://www.fms.treas.gov/c570/c570.html>).

7.1.1.1 Notwithstanding the foregoing, the Proposer may request to provide one or more letters of credit, in lieu of a bond, as an alternate form of security to serve as the Proposer Security,

provided that, at a minimum, such security will (a) be in the same aggregate amount of \$20 million, (b) provide substantially similar security and liquidity such that ADOC has substantially similar rights in terms of access funds, and (c) be issued by a financial institution (i) having long-term, unsecured debt ratings of at least "A-" or A3 from a reputable rating agency and (ii) with an office or correspondent bank in Montgomery, Alabama at which the letter of credit can be presented for payment, or, if the financial institution does not have such an office, or if the letter of credit is an electronic or "paperless" letter of credit, it expressly permits presentation of the letter of credit, sight draft and certificate by electronic means or by facsimile to a location in the United States. Any alternate form of security must be approved by ADOC in writing prior to delivery and commencement of negotiations pursuant to these Negotiation Terms. ADOC is under no obligation to approve such requests and may approve or disapprove the request.

7.1.1.2 It is the Proposer's sole responsibility to ensure that it is able to deliver an ADOC-approved form of Proposal Security upon selection by ADOC for negotiations.

7.1.2 The Proposer acknowledges and agrees that it shall forfeit its Proposal Security in its entirety, and ADOC may on three days' prior written notice draw on the Proposal Security, if any of the following occur and remain uncured at the conclusion of the three-day notice period:

- (a) The Proposer refuses or fails to negotiate the Lease in good faith;
- (b) The Proposer withdraws, or attempts to withdraw, its GMP or refuses, fails, or is unable to honor any material commitment made in its Proposal for the Project at any time prior to the date specified in RFP Ex. F Section 7.2.4 (as such may be extended by the mutual agreement of ADOC and the Proposer), except (i) in connection with the Proposer's good faith participation in the Preliminary Work hereunder, including the negotiation of the Lease, development of the Design Documents, refinement of cost estimates, and development of an agreed Price Proposal and Financing Plan for the Project, or (ii) as otherwise permitted by ADOC in its discretion;
- (c) The Proposer's proposed Price in its Final Price Proposal exceeds the Affordability Limit;
- (d) The Proposer refuses, fails, or is unable to achieve Commercial Close or to finalize or execute any Commercial Close document to which it is a party because the Proposer demands terms and conditions that are materially inconsistent with the Term Sheet or that impose additional, material obligations on ADOC that are inconsistent with risk allocation or financing requirements customary for similar projects;
- (e) The Proposer refuses, fails, or is unable to achieve or satisfy the conditions to Commercial Close by [●]³ (as such deadline may be extended by the mutual agreement of the Parties), where such refusal, failure, or inability is caused in whole or substantially by the fraud, bad faith, willful misconduct, or negligence of any Proposer-Related Entity; or
- (f) The Proposer persistently or materially breaches any other material obligations of the Proposer under these Negotiation Terms, or materially violates applicable Law,

³ **Note to Proposers:** Date to be provided by ADOC in subsequent Addendum to RFP. To be coordinated with deadline for Commercial Close above.

in each case subject to an opportunity to cure that is reasonable under the circumstances.

7.1.3 Forfeiture of or draw on the Proposal Security in accordance with this RFP Ex. F Section 7.1 will constitute liquidated damages. The Proposer acknowledges and agrees that such liquidated damages are reasonable in order to compensate ADOC for damages that ADOC will incur as a result of the Proposer's failure to satisfy its obligations under these Negotiation Terms as described in RFP Ex. F Section 7.1.2. Such damages include delays to the delivery of the Facility, additional costs of administering this or a new procurement for the Project (including engineering, legal, accounting, overhead, and other administrative costs), and potential harm to the credibility and reputation of ADOC with the federal government, policy makers, other stakeholders, and the general public. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that ADOC would incur as a result of the Proposer's failure to satisfy its obligations hereunder and do not constitute a penalty. The Proposer further acknowledges that these damages would be difficult and impracticable to measure and prove and are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it and to develop the Project hereunder, and the unavailability of a substitute for those efforts. The Proposer agrees to such liquidated damages in order to fix and limit the Proposer's costs and to avoid later disputes over what amounts of damages are properly chargeable to the Proposer.

7.1.4 Except to the extent the Proposal Security has been forfeited or drawn down in accordance with these Negotiation Terms, ADOC will return the Proposal Security to the Proposer (a) upon Commercial Close, except as otherwise provided by the Lease, or (b) earlier termination of negotiations without cause or upon Proposer termination of negotiations for cause, as provided in RFP Ex. F Section 7.2.

7.2 Termination of Negotiations

7.2.1 Termination by ADOC for Convenience. ADOC may terminate negotiations with the Proposer for ADOC's convenience and without cause at any time on not less than seven days' prior written notice.

7.2.2 Termination by ADOC for Cause. ADOC may terminate negotiations with the Proposer for cause and without prejudice to any other rights or remedies of ADOC, on not less than seven days' prior written notice, if any of the reasons for which ADOC may draw on the Proposer's Proposal Security under RFP Ex. F Section 7.1 exist. Upon the conclusion of the seven-day period for notice of termination, if cause to draw on the Proposal Security under RFP Ex. F Section 7.1 still exists, ADOC may draw on the Proposal Security pursuant to such section immediately upon notice and demand in accordance with the terms of such Proposal Security. The Proposer shall retain the right to dispute ADOC's assertion that there exists reason entitling ADOC to draw on the Proposal Security pursuant to RFP Ex. F Section 7.1, and such right shall survive termination of negotiation and any draw by ADOC on the Proposal Security hereunder.

7.2.3 Termination by the Proposer for Cause. The Proposer may terminate negotiations with ADOC for cause and without prejudice to any other rights or remedies of the Proposer, on not less than seven days' prior written notice, if ADOC is in breach of any of its material obligations under these Negotiation Terms and has not cured such breach within such seven-day notice period, *provided* that the Proposer has satisfied its obligations under these Negotiation Terms and that no reason exists entitling ADOC to draw on the Proposal Security pursuant to RFP Ex. F Section 7.1; *provided, however*, that ADOC shall retain the right to dispute the Proposer's assertion that no cause to draw on the Proposal Security exists and to draw on the Proposal Security to the extent that ADOC is entitled to do so under RFP Ex. F Section 7.1.

7.2.4 Termination Following Failure to Agree Upon the Terms of a Lease. If ADOC and the Proposer, negotiating in good faith, are not able to agree upon the terms of a Lease (including a Final Price Proposal and Price), negotiations may be terminated at any time after [●]⁴ on seven days' prior written notice, by:

7.2.4.1 ADOC; or

7.2.4.2 The Proposer, *provided* that the Proposer has satisfied its obligations under these Negotiation Terms and that no reason exists entitling ADOC to draw on the Proposal Security pursuant to RFP Ex. F Section 7.1; *provided, however*, that ADOC shall retain the right to dispute the Proposer's assertion that no cause to draw on the Proposal Security exists and to draw on the Proposal Security to the extent that ADOC is entitled to do so under RFP Ex. F Section 7.1.

7.2.5 Design Change Fee. If ADOC terminates negotiations pursuant to RFP Ex. F Section 7.2.1 or 7.2.4 for any reason in ADOC's control, or for no stated reasonable reason, or if the Proposer terminates negotiations pursuant to RFP Ex. F Section 7.2.3, ADOC shall enter into a contract with the Proposer pursuant to which ADOC will pay the Proposer a "**Design Change Fee**" for professional services actually performed by the Proposer hereunder in respect of (a) any ADOC changes in the scope of Work as described in RFP Ex. F Section 4.3.2 or (b) Design Materials prepared solely for the purpose of assisting ADOC in obtaining approvals for which ADOC is responsible as described in RFP Ex. F Section 3.4. Such Design Change Fee shall be an amount equal to the lesser of (x) the Proposer's actual costs incurred in performing such professional services and preparing Design Materials in connection with the same prior to termination of negotiations, and (y) \$250,000. ADOC's payment of any such Design Change Fee shall be subject to appropriation by the State Legislature and receipt of all required governmental approvals.

7.2.6 Dispute Resolution. Should a dispute between ADOC and the Proposer relate to the payment of funds to the Proposer or the Proposer's forfeiture of the Proposal Security, the sole remedy of the Proposer will be to file a claim with the State of Alabama Board of Adjustment. With respect to any other dispute between ADOC and the Proposer with respect to these Negotiation Terms or the Preliminary Work undertaken hereunder, senior officials of ADOC and the Proposer, who have the authority to bind their principals to any agreement they should reach, shall meet and engage in a good faith attempt to resolve such dispute.

ARTICLE 8 OWNERSHIP OF DESIGN MATERIALS

8.1 Rights to Design Materials in Negotiation Phase

8.1.1 The copies and other tangible embodiments of the Design Documents and any other documents prepared by or on behalf of ADOC, the Proposer, or their subconsultants pursuant to these Negotiation Terms in connection with the design of the Project hereunder (collectively, the "**Design Materials**") shall be the exclusive property of ADOC. The Proposer may maintain copies of the Design Materials for its records, but shall not use such copies for any purpose other than with respect to the Project without ADOC's prior written consent.

8.1.2 The Intellectual Property Rights (as defined below), if any, relating to the Design Materials, or the contents of or concepts embodied in the Design Materials shall remain with and belong to the Proposer; *provided, however*, that only those Design Materials that are stamped or marked as "proprietary"

⁴ **Note to Proposers:** Date to be provided by ADOC in subsequent Addendum to RFP. Date anticipated to be later than date in RFP Ex. F Section 2.3.3.

shall be deemed subject to Intellectual Property Rights, and failure of the Proposer to stamp or mark Design Materials as such shall be deemed a waiver by the Proposer with respect to any current or future claim of any such Intellectual Property Rights against ADOC.

8.1.3 To the extent Design Materials are not stamped or marked as “proprietary”, the Proposer hereby assigns, transfers, releases, and conveys to ADOC all worldwide right, title, and interest of the Proposer in and to any Intellectual Property Rights associated with such Design Materials, and shall cause its subconsultants to do the same with respect to all of their respective worldwide rights, titles, and interests in and to any Intellectual Property Rights associated with such Design Materials.

8.1.4 As to those Design Materials deemed subject to any form of Intellectual Property Rights belonging to the Proposer, the Proposer hereby grants, and will cause to be granted and delivered by its subconsultants, as applicable, to ADOC a nonexclusive, transferable, worldwide, irrevocable, fully paid-up license, for the term of the Intellectual Property Rights, for ADOC to use, reproduce and have reproduced, modify, adapt, and disclose, and for ADOC to sublicense others to use, reproduce and have reproduced, modify, adapt, and disclose, such Design Materials and any derivative thereof, subject to the restrictions set forth below:

8.1.4.1 All Intellectual Property Rights in or relating to any of the Design Materials shall remain the property of the Proposer or another Proposer-related author, as applicable, whether or not the Project is constructed;

8.1.4.2 ADOC may, at no cost to ADOC, use such Design Materials (a) for completion of the applicable Facility by others upon termination of negotiations hereunder; (b) for the construction, operation, maintenance, and repair of (and for additions, improvements, changes, or alterations to) the Facility after its completion by others upon termination of negotiations hereunder; and (c) for the construction of other ADOC projects, *provided, however*, that in the event ADOC uses any Design Materials in respect of another Facility without retaining the author(s) of such Design Materials, ADOC releases the Proposer and its subconsultants from all claims and causes of action arising from such uses; and

8.1.4.3 ADOC shall not assign, delegate, sublicense, pledge, or otherwise transfer any Intellectual Property Right owned by the Proposer or another Proposer-related author to another party without the prior written consent of the owner of such Intellectual Property Right.

8.1.5 In confirmation and furtherance of the terms and provisions of this RFP Ex. F Section 8.1, ownership and title to the Design Materials shall vest in ADOC immediately upon creation of such materials, as shall ownership and title to the Intellectual Property Rights relating thereto, to the extent such Intellectual Property Rights are assigned, transferred, released, and conveyed to ADOC above. In addition, the license granted to ADOC above shall be deemed granted immediately upon creation of any of the Intellectual Property Rights to which it pertains.

8.2 On Termination of Negotiations

8.2.1 Upon Commercial Close, the terms of the Lease shall apply with respect to the ownership, title, Intellectual Property Rights, and licensing of the Design Documents, the other Design Materials, and such other Project-related intellectual property as is specified in the Lease Documents.

8.2.2 The rights and obligations of ADOC and the Proposer under this RFP Ex. F Article 8 shall survive the termination of negotiations between ADOC and the Proposer for any reason other than Commercial Close, including termination for failure to agree on a Price pursuant to RFP Ex. F Section 4.6 or termination under RFP Ex. F Section 7.2.

8.3 "Intellectual Property Rights" shall mean and refer to all patents, copyrights, trademarks, service marks, trade secrets and all similar and related intellectual property rights protected under any Law

8.4 Nothing in this RFP Ex. F Article 8 shall excuse the Proposer's liability under these Negotiation Terms or the RFP or otherwise at law for errors, omissions, or inconsistencies by the Proposer or its subconsultants in preparing Design Materials hereunder.

ARTICLE 9 RECORDS AND AUDITS

9.1 Maintenance of Records. The Proposer will keep and maintain records relating to the Preliminary Work and these Negotiation Terms at a location in Alabama (or in another location so long as ADOC is provided reasonable electronic access to such records). The Proposer will retain Project records for the applicable minimum period of time required under the Term Sheet and its exhibits.

9.2 Inspection and Audit. The Proposer will make all Project records available for inspection by ADOC or its representative, without charge, at mutually convenient times. ADOC will also have the right to review and audit the books and records of the Proposer and its subcontractors relating to the Preliminary Work when ADOC deems necessary for verifying compliance with these Negotiation Terms and applicable Law.

9.3 Open Records Act. The Proposer acknowledges and agrees that, except as provided in the Alabama Open Records Act, Alabama Code § 36-12-40 (the "**Open Records Act**"), all Project records in ADOC's possession, including materials submitted by the Proposer to ADOC, are subject to the provisions of the Open Records Act. The Proposer is responsible for denoting any confidential documents and providing any information or analysis to ADOC to assert an exemption from public disclosure under the Open Records Act.

9.4 Survival on Termination. The Proposer's obligations under this RFP Ex. F Article 9 shall survive the termination of negotiations hereunder.