



Department of Public Safety and Correctional Services

Office of the Secretary

300 E. JOPPA ROAD • SUITE 1000 • TOWSON, MARYLAND 21286-3020
(410) 339-5000 • FAX (410) 339-5071 • TOLL FREE (877) 379-8636 • V/TTY (800) 735-2258 • www.dpscs.maryland.gov

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QUESTIONS AND RESPONSES #9 SOLICITATION NO. Q0016025

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES PHARMACY SERVICES FEBRUARY 28, 2018

Ladies/Gentlemen:

This list of Questions and Responses #9, questions #274 - #278 is being issued to clarify certain information contained in the above RFP.

In most instances the Department's response to the submitted questions merely serves to clarify the existing requirements of the RFP. Sometimes, however, in submitting questions potential Offerors may make statements or express interpretations of contract requirements that may be inconsistent with the Department's intent. To the extent that the Department recognizes such an incorrect interpretation, the provided answer will note that the interpretation is erroneous and either state that the question is moot once the correct interpretation is explained or provide the answer based upon the correct interpretation.

No provided answer to a question may in and of itself change any requirement of the RFP. If it is determined that any portion of the RFP should be changed based upon a submitted question, the actual change may only be implemented via a formal amendment to the RFP. In this situation the answer provided will reference the amendment containing the RFP change.

Questions and Answers

274. According to Q&A 1:

2. (Section 1.33.1) An overall MBE participation goal has been set at 12% of the total value of the Annual Management Fee excluding drug costs. In accordance with this, will the department prohibit inclusion of purchasing drugs through an MBE wholesaler or repackager from this goal?

RESPONSE: The MBE goal is 12% of the total value of the Annual Management fee, not including the drugs. Drugs purchased from an MBE wholesaler or repackager cannot count towards the MBE goal.

According to Q&A 8:

Response to Question 2 of Q&A 1 states, "The MBE goal is 12% of the total value of the Annual Management fee, not including the drugs. Drugs purchased from an MBE wholesaler or repackager cannot count towards the MBE goal."

Please confirm that any management fees or distribution fees paid to a MBE wholesaler for the procurement of drugs is permitted to be counted towards the 12% MBE goal as long as an Offeror does not count the Actual Acquisition Cost of the drugs as part of the MBE goal.

For example, if an Offeror purchases \$1 million worth of drugs from a MBE wholesaler and there is a 10% distribution fee on those purchases (which is the gross profit of the wholesaler and not the cost of the drugs), is the \$100,000 (10% of \$1 million) permitted to be applied to the 12% goal?

RESPONSE: *No, management fees or distribution fees paid to an MBE wholesaler for the procurement of drugs is not permitted to be counted towards the 12% MBE goal.*

According to Revised MBE Attachment D-1A:

8. Materials and Supplies: New Guidelines Regarding MBE Participation.

*ü **Regular Dealers:** Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions. Generally, a Regular Dealer will be identified as a wholesaler or supplier in the MDOT Directory.*

...

*ü **Brokers:** With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.*

Based on the above information that is part of the RFP, we submit the following question:

Based on the definitions as we understand and interpret them in Revised Attachment D-1A, up to 60% of medications purchased from a MBE "regular dealer" (identified as a wholesaler or supplier in the MDOT Directory) can be counted towards MBE participation goals, **and** if the vendor is a "broker" of medications, the entire amount of fees (such as the distribution fee mentioned in question 273) is applicable toward MBE contract goals. As you can see, the statements in Revised Attachment D-1A appear to conflict with responses to questions 2 and 273. As all Offerors will need to purchase medications that are to be dispensed, and based on the statements in D-1A,

can you please clarify why the statements in Revised Attachment D-1A seem to contradict the position of the procurement office that an MBE-approved wholesaler cannot be utilized to fulfill the MBE participation goals of the contract?

RESPONSE: The language in Revised Attachment D-1A is not in conflict with the responses to questions 2 and 273. The revisions made to Attachment D-1A do not change the MBE requirement that is limited to 7% of the Annual Management Fee, and excludes the drugs. The 60% rule would apply to any MBE subcontractor used to provide materials or supplies for the annual management of the contract (e.g., office supplies, equipment). See 2nd Revised Attachment D-1A.

275. We also request clarification regarding the types of subcontractors whose participation would count toward the MBE goal and whose participation would be excluded from the MBE goal:

The responses to questions indicated that a cleaning service was being used to meet the participation goals of the existing contract. Please clarify that the participation of subcontractors providing cleaning services will be excluded from the MBE goal for the current RFP, since cleaning services are not identified in the RFP's scope of services, but instead are simply part of the prime vendor's facilities and administrative costs, which are included in the cost of doing business (company overhead) to service all of the prime vendor's customers combined and cannot be separated for one particular customer.

RESPONSE: DPSCS declines to list all of the types of subcontracting services whose participation would count towards the MBE goal or whose participation would be categorically excluded from the MBE goal. DPSCS has indicated that certain subcontracted services will not be counted towards the MBE goal (See RFP Section 1.33.1 and Q&A #8, Q273). Cleaning services will not necessarily be excluded from meeting the MBE goal. Cleaning services are a necessary business function and an appropriate administrative cost associated with management's overhead, and clearly not part of the cost of Pharmaceuticals and Supplies. The proportional share of the cleaning service costs attributable to the DPSCS Contract might be appropriate.

276. The RFP required one original unbound copy and 2 copies of the financial proposal. The invoices are included in the financial proposal, and the quantity of invoices is quite extensive. Do we need to submit 3 sets of copies of the invoices? Or, will one set of copies of the invoices be sufficient?

RESPONSE: One electronic copy and one hard copy of the invoices shall be provided with the Financial Proposal. See Amendment #17.

277. If an Offeror submits the 2nd Revised Attachment D-1A – MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule proposing to use a subcontractor for supplies (e.g., office supplies, equipment), what percentage of the total

dollar value of those supplies can be counted towards the MBE goal under the new 60% rule from the Governor's Office of Small, Minority & Women Business Affairs?

RESPONSE: Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions. Generally, a Regular Dealer will be identified as a wholesaler or supplier in the MDOT Directory.

Therefore, as an example, the participation of a subcontractor who is a regular dealer of office supplies who will provide \$10,000 of office supplies to the Contractor to be used specifically on the State's contract during the term of the contract may have up to $\$10,000 * 60\% = \$6,000$ counted towards the MBE goal.

However, Pharmaceuticals and Supplies purchased from an MBE wholesaler or repackager cannot count towards the MBE goal. The MBE goal has been set on the total value of the Annual Management Fee excluding the cost of Pharmaceuticals and Supplies.

278. If an Offeror submits the 2nd Revised Attachment D-1A – MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule proposing to use a subcontractor for supplies (e.g., office supplies, equipment) and services (e.g., cleaning services), what percentage of the total dollar value of those supplies and services can be counted towards the MBE goal?

RESPONSE: Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions. Generally, a Regular Dealer will be identified as a wholesaler or supplier in the MDOT Directory.

Therefore, the participation of a subcontractor who is a regular dealer of office supplies who will provide \$10,000 of office supplies to the Contractor during the term of the Contract may have up to $\$10,000 * 60\% = \$6,000$ counted towards the MBE goal.

If a subcontractor is also proposed to provide subcontracted services, then those services can be counted at up to 100%. The participation of a subcontractor who is performing \$10,000 of services for the Contractor during the term of the Contract may have up to $\$10,000 * 100\% = \$10,000$ counted towards the MBE goal.

Thus the participation of a subcontractor who is providing \$10,000 of office supplies and \$10,000 of services to the Contractor during the term of the Contract may have up to $\$6,000 + \$10,000 = \$16,000$ counted towards the MBE goal.