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QUESTIONS AND RESPONSES #11
SOLICITATION NO. Q0016025
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
PHARMACY SERVICES
MARCH 28, 2018
AMENDED APRIL 3, 2018

Ladies/Gentlemen:

This **AMENDED list of Questions and Responses #11, question #277-287 (excluding #278) is being re-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

277. Unanswered Question - Repackaging Regulations
On December 12, 2017, we submitted the following question:

Question 5 – Interpretation of Law

In Q&A 1, question 109 (as submitted by a potential bidder) states that the DPSCS's Maryland-licensed pharmacy program is fully compliant with all controlling laws and that the DPSCS will receive questions from certain pharmacy vendors claiming that unless you procure urgent non-patient-specific starter medications from an FDA-licensed wholesaler and an FDA repackager that the DPSCS is breaking Federal and State laws.

In Q&A 1, questions 150, 151, and 152 (as submitted by potential bidders) indicate that stock medications need to be provided in blister cards by a FDA-registered repackager.
In Q&A 1, question 193 (as submitted by a potential bidder) indicates that the services of an FDA-registered repackager are needed to provide prescription medications in blister card packaging to be in regulatory compliance.

Your response to question 193 indicates that bidders are to check with their legal counsel regarding this topic. One can assume that all bidders have sought such guidance.

However, repackaging regulations are still being interpreted differently by different bidders.
(1) We kindly request that your legal counsel provide evidence in support of the proposition that **a pharmacy** may repackage the medication sought and sell the repackaged medication as stock to DPSCS facilities.
(2) If the DPSCS counsel believes **that pharmacies** may lawfully repackage medications and sell the repackaged medications as stock to DPSCS facilities, would the DPSCS be willing to indemnify the vendor for fines levied against pharmacies engaged in such practices?

RESPONSE: The State will not provide legal advice to vendors. The State's responses to Questions 150 – 152 do not indicate whether or not the Offeror/Contractor must be an FDA-registered repackager. As indicated in RFP Section 3.2.30.1, DPSCS expects full credit for medications returned with at least three (3) months remaining before the expiration date in its original packaging, sealed and unopened, except for medications that are controlled substances or have deteriorated. However, as stated in RFP Section 4.4.2.6L, we invite Offerors to propose to provide credit for partial blister cards of returned medications. Any Offeror who proposes such a solution, whether the activity is performed by the contractor or subcontractor, must do so in compliance with all applicable laws and regulations which we leave to the Offeror to be cognizant of.

278. DELETED

279. Question 196 / Sunday Deliveries
The response to Question 196 in Q&A 2 appears not to have addressed the following:

Please detail per facility in Attachment AA the number of routine deliveries received each Sunday for the past 180 days, along with the average delivery time per day.

The RFP requires deliveries on Sundays, if requested. Thus, the volume of Sunday orders is important for all Offerors (not just the incumbent vendor) to know so they can project delivery costs.

Can you please respond to this question by providing the information, as it appears to have been accidently overlooked in the original response?

RESPONSE: All medications ordered from the Contractor shall be dispensed and delivered by a delivery service pre-approved by the CMO to the appropriate location within the institution as identified in Attachment R, seven (7) days a week including Holidays, with no order cut-off time. See RFP Sections 3.2.26.1 (as revised in Amendment #5, Item 23) and 3.2.26.7 (as revised in Amendment #6, Item 1).

280. Questions 274 & 277 - MBE Requirement

The response to Question 274 in Q&A 9 reads in part:

> *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.*

Purchased medications are the largest category of materials and supplies required to meet the medication dispensing needs of inmate patients. Thus, the reasons an Offeror cannot provide economic benefit to a Maryland-registered MBE wholesaler are unclear if the premise of the MBE program is to encourage the use of registered and certified Maryland MBEs.

We understand that numerous responses to questions indicate that the cost of medications cannot be attributed toward meeting the MBE goals. However, these responses are unsupported by the DPSCS's reasoning for this prohibition. For this RFP, drugs are largest category of materials/supplies provided to the DPSCS. Therefore, it stands to reason that some portion of drug procurement costs would count toward MBE participation goals, assuming that the drugs are obtained from an approved MBE wholesaler.

Will the DPSCS please clarify its reasoning for excluding drugs from the class of goods eligible to count toward the MBE participation goals?

RESPONSE: After exploring the MBE opportunities on this contract, the State has determined that it is in the State's best interest to maintain its exclusion of drugs by isolating the MBE goal to the Annual Management Fee portion of the contract only.

281. Question 276 in Q&A 10 / Contractor's Program Manager

In pertinent parts, Question 276 reads:

> *Please provide more specifics regarding the Contract Manager's job duties that cannot be performed from anywhere but in the State of Maryland…*

The following response was provided:

> *The Department expects the Contractor's Program Manager to be an integral part of our processes.*

The response does not address the question as submitted. The DPSCS must draft specifications in a manner that encourages maximum practicable competition. However, the geographical restriction placed on the Contractor's Program Manager (CPM) limits the class of potential responders to large Maryland pharmacies currently providing service to

large correctional facilities in Maryland. Therefore, a more detailed explanation of the DPSCS's reasoning for including this specification is necessary so that this offeror may determine whether it must protest the RFP. Please provide this reasoning.

RESPONSE: DPSCS expects the Contractor's Program Manager to be actively involved on a daily basis with the provision of Pharmacy Services, including being physically present for all meetings called by DPSCS, to include but is not limited to; e.g. Wardens MAC Meetings, patient care concerns meetings, death reviews, EHR meetings related to bi-directional medication orders; and medication audit processes. The Contractor's Program Manager and Clinical Liaison are expected to provide a high-contact, high-touch service on a continuous basis, and to engage with the Other Healthcare Contractors throughout the regular course of business of contract performance. DPSCS also expects the Contractor's Program Manager to be available by phone 24/7/365 for emergencies, as well as on-site as needed for daily operational issues regarding site facilities statewide, internal auditing contract issues, and any after-hours crisis or additional facility requests regarding problems. The Contractor's Program Manager shall also designate/identify personnel to contact in times of short term absence, vacation, or sick leave. If the timeframe shall be greater than two (2) weeks, the Contractor's Program Manager must also provide a list of personnel contact names in the priority order of contact. See RFP Section 1.2.63. See also RFP Section 3.2.17.5 G as revised in Amendment #21, Item 3.

282. State vs. Contractor Employees

Has the DPSCS considered having the Clinical Liaison, and Clinical PharmDs (required in the RFP) as state employees, similar to other DPSCS administrative personnel and the Chief Medical Officer?

Filling these positions with state employees would avert the need for contractors to search for personnel, should your vendors change with subsequent contracts. Filling these positions with contractor personnel is not typically required in most correctional pharmacy procurements.

The requirements for these positions are specific to the state of Maryland in terms of the candidates' licensure and preferred credentials. Finding personnel with these exact credentials or with the preferred credentials and obtaining their resumes would prove difficult for potential Offerors that are not the incumbent pharmacy services provider. Additionally, the state may actually gain economic benefit in having these positions as direct hires, as the true costs to hire these personnel would not be inflated or hidden in a monthly management fee to extract additional profits by a potential Offeror. Further, formulary management decisions would be driven by the best interests of the state instead of the interests of a vendor that could possibly influence formulary recommendations that favor their own profit. Having these positions be employees of the contractor provides a distinct advantage to the incumbent provider who likely has personnel in place with the exact credentials required. Further, as written, the requirements as amended through Amendment 17 actually disadvantage potential Offerors and may compel potential Offerors to not even participate in the RFP process.

As a means to attain economic benefit to the state, (more importantly) to avert an unfair advantage to the incumbent services provider, and to ensure that qualified firms will actually participate in the procurement process, would the DPSCS consider delaying the proposal due date to allow potential Offerors sufficient time to consider whether these required positions would better be served in the state's interests by having them be state employees, not contractor employees, which would necessitate this requirement being removed from the RFP?

RESPONSE: The proposal due date was extended to April 13, 2018. Using Contractor personnel is in the best interest of the State. The State declines to change the RFP staffing requirements. See Amendment #21, Item 1.

283. Meaning of "Employed By"

In pertinent parts, RFP Section 1.2.16 defines *Contractor Clinical Pharm.D.* as being *employed by the contractor*.

Please confirm that *employed by* includes persons employed by an Offeror's subcontractor.

RESPONSE: Yes, "Employed By" includes personnel employed by the Contractor as well as by the Contractor's subcontractor(s). See Amendment #21, Item 2.

284. Outdated and Inaccurate Utilization

Attachment F is comprised of utilization from 2016 and requests unit price for each drug as of June 2017. The cost and utilization is not fixed. This total will not accurately represent the medications and quantities that will be purchased over the seven years of this contract. Many factors cause changes to drug utilization including: services (technical proposal), new medications, discontinued medications, formulary updates, new treatment protocols, population changes, etc. Attachment F is unable to capture changes over time. It assumes that the prescribers will write orders for the same medications in the same quantities regardless of the pharmacy, medical or mental health vendor for the same patient population every month for the next seven years. Even today, drug utilization has deviated from Attachment F due to the factors listed above.

We respectfully request that the State use more recent Utilization and Pricing dating for Attachment F.

RESPONSE: The State declines to revise Attachment F – Financial Proposal Form.

285. 7x Multiplier

Attachment F is designed to provide a total drug cost for each of the potential seven years of this contract. Using static numbers for dynamic equations creates false projected expenditures. A small difference in one column becomes a magnified number when a seven time multiplier is applied. This exacerbates an already present problem with Annual Total Drug Spend as determined by Attachment F.

We respectfully request that the 7x multiplier be eliminated from Attachment F and consideration when comparing pricing between Offerors.

RESPONSE: The State declines to remove the seven years of pricing ("7x multiplier"), which includes the five-year base term and two-year renewal option from the Financial Proposal Form.

286. Unavailable Drugs

Currently, Attachment F has items discontinued by the manufacturer. If the Department eliminates discontinued medications from Attachment F it will ensure that all vendors are evaluated for the same number of drugs.

Leaving it to the Offerors ensures that the number of lines compared will not be uniform among the Offerors. We respectfully request the removal of the drugs listed above from Attachment F and instruct Offerors to provide a price for all remaining line items.

RESPONSE: The State declines to revise the Financial Proposal Form prior to the proposal due date.

287. Weighting vs. Technical Pricing

This concern is by far the most important. The problem is simple; only one small portion of the RFP is fixed in price while 90% of price is variable. More importantly, it is the technical component that will impact the large variable costs.

The danger in an RFP when the pricing component is given greater weighting than the technical, is that vendors are incentivized to offer discounted prices at the expense of services or risk losing. Without the proper investment in service, any vendor will struggle to fulfill their contractual obligations of this contract. Decreased services lead to breaches in patient care, increased scrutiny and oversight, and exposure to litigation. The Department will be charged with uncovering non-compliance, monitoring corrective action plans and enforcing penalties, liquidated damages and defending itself in court.

RESPONSE: The RFP requirements have been stringently drafted to assure the quality of services. In making the most advantageous proposal determination, financial factors will receive greater consideration than technical factors. The State declines to change the award determination language in RFP Section 5.5.3.

Date Issued: **MARCH 28, 2018** Issued and Authorized By: <signed>
AMENDED APRIL, 3, 2018 Andrea R. Lockett
Procurement Officer