



DEPARTMENT OF
BUDGET & MANAGEMENT

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STATE OF MARYLAND ACCOUNT VERIFICATION SERVICES

IFB No. F10B9400039

Q&A #5
ISSUED NOVEMBER 27, 2019

Ladies/Gentlemen:

This List of Questions and Answers #5, Questions 21 to 48, is being issued to clarify certain information contained in the above named IFB.

In most instances, the submitted questions and the Department's response merely serve to clarify the existing requirements of the IFB. Sometimes, however, in submitting questions, potential Bidders 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 IFB.

The statements and interpretations of contract requirements which are stated in the following questions of potential Bidders are not binding on the State, unless the State expressly amends the IFB. Nothing in the State's responses to these questions is to be construed as agreement to or acceptance by the State of any statement or interpretation on the part of the vendor asking the question as to what the contract does or does not require.

21) Question 18 in Q&A #3, issued November 15, 2019, indicated that vendors should submit their licensing and credentialing documents for review after bid closing. Typically, we would provide our licensing and credentialing documentation as part of our proposal submission. Is this acceptable, or would you prefer to defer the vendor contract documentation to a later time?

ANSWER: As stated in Question 18, IFB Section 2.3.5 states that the State will ask the apparent awardee to submit their licensing and credentialing documentation after the bid closing.

22) The Bidder provides its customers with access to a commercial off-the-shelf subscription product, which required certain terms and conditions. As such, the Bidder incorporates those terms in its response to the State of Maryland Department of Budget and Management (DBM) Invitation for Bids, Account Verification Services, IFB Number F10B9400039 (the "IFB").

ANSWER: As stated in Section 2.3.5 of the IFB, “If necessary, as part of the credentialing process, the Department may agree to limited provisions acceptable to the Department addressing product licensing and proprietary rights.... When a Bidder is notified that it is the apparent successful Bidder, the apparent successful Bidder at that time will submit its limited provisions addressing product licensing and proprietary rights that the Department will consider relative to the credentialing process, provided that the requested provisions conform to the stipulations contained in Section 2.3.5.2.” Therefore, the State will not consider the Bidder’s terms and conditions at this time.

23) Section 2, Scope of Work (page 2) – The Bidder’s offer meets the minimum data requirements; however, there are variances between certain aspects of the Scope of work and our product pricing model and workflow:

- *2.1, Summary Statement – Our batch offer is based on the data requirements and volume estimates as indicated on the IFB price sheet. This price form does not include volumes regarding the initial backlog mentioned in Section 2.1.1; therefore, our offer does not include batch runs for the initial backlog. Is this the correct interpretation of the IFB price sheet?*

ANSWER: That is correct. Pricing is per unit, as noted on the price form.

24) Section 2, Scope of Work (page 2) – The Bidder’s offer meets the minimum data requirements; however, there are variances between certain aspects of the Scope of work and our product pricing model and workflow:

- *2.2, Background and Purpose – Our batch offer is based on the data requirements and volume estimates as indicated on the IFB price sheet, which differ from the estimate provided in Section 2.2. Is this the correct estimate to use?*

ANSWER: The price form indicates the estimated number of each type of search to be done, with pricing for each type of search. The estimate in Section 2.2 is of number of debtors, not related to number of searches. Pricing must comply with the pricing form and bids that do not comply with the bid form format will be rejected.

25) Section 2, Scope of Work (page 2) – The Bidder’s offer meets the minimum data requirements; however, there are variances between certain aspects of the Scope of work and our product pricing model and workflow:

- *2.3, Responsibilities and Tasks*
 - *2.3.1, Preliminary Testing – Our offer is aimed at providing effective workflow to achieve the Department’s objectives; however, our current batch workflow differs from the description in the Scope of Work. Our client management team will work with the user group to determine mutually agreeable batch input/output processes, beginning with the preliminary batch testing. Is this acceptable?*

ANSWER: The Bidder must agree to the workflow described in Section 2.3.1 of the Scope of Work. The State will not negotiate a different batch input/output process after contract award. To the extent that the Department’s requirements are problematic, such problems should have been

explicit raised during the Q&A period sufficiently in advance of the bid due date for the State to consider them.

26) Section 2, Scope of Work (page 2) – *The Bidder’s offer meets the minimum data requirements; however, there are variances between certain aspects of the Scope of work and our product pricing model and workflow:*

- 2.3, Responsibilities and Tasks
 - 2.3.2, Account Processing – *While we have conformed as much as possible by providing per-unit rates in the IFB Excel sheet, our current price model, for Batch Services and for our online tool, is for a fixed monthly rate; therefore, our offer is contingent on the user/usage parameters covered by the offered fixed monthly rates. (Our offer is not based on transactional charges.) Will the State guarantee the user/usage parameters and pay us based on this fixed monthly rate?*

ANSWER: See the answer to Question 24 above. The State requires per-unit pricing and will not guarantee a minimum or maximum number of accounts. The Bidder must agree to provide the services to the State at the rates on its price form regardless of the number of units purchased. Fixed monthly rates are not permitted under this IFB.

27) Section 3.1, Contract Initiation Requirements (page 6) – *As indicated above in Section 2.3, the Bidder will be glad to provide a test batch of 1,000 subjects per our standard preliminary batch protocol. We understand the test batch will be conducted prior to contract execution.*

ANSWER: That is correct. The test batch is before contract execution.

28) Section 3.2.4(c) (page 6) – *Transition services – The Bidder will work with the customer until the termination of the agreement to effect a smooth transition of service. Upon termination of the agreement, the Bidder will have no obligation beyond the agreement period. Will the State revised this section to reflect this?*

ANSWER: No. As stated in Section 3.2.4(c), the State shall be entitled to any post-termination/expiration assistance generally made available by the Bidder with respect to the services.

29) Section 3.3 (page 7) – *The Bidder’s invoicing is automated and systemic. We will continue invoicing for this contract consistently with our current invoicing practice, with adjustments as needed for differences in product type.*

ANSWER: Invoicing must comply with requirements of Section 3.3 of the IFB.

30) Section 3.5 (page 8) – *The Bidder takes exception to this section. We will follow our corporate security protocols, which can be included with our bid. Will the State remove this section or revise it to indicate that the Contractor will follow its corporate security protocols?*

ANSWER: As stated above, once the State has determined the apparent awardee, limited negotiations will be held during the credentialing process addressing product licensing and

proprietary rights. The Bidder must agree to comply with all other terms and conditions of the IFB, including Section 3.5, Disaster Recovery and Data.

*31) **Section 3.6.3 (page 10)** – The Bidder requests that the following section be modified as referenced below:*

*3.6.3 All insurance policies shall be endorsed to include a clause requiring the insurance carrier **shall endeavor** to provide the Procurement Officer, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. The Contractor shall **endeavor to** notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.*

ANSWER: The State will not modify Section 3.6.3 in the manner requested. Because it is important for the State to have notice of a Contractor's canceled insurance policies, the State requires that the Procurement Officer receive notice of any cancellation.

*32) **Section 3.7 (page 11)** – As a provider of off-the-shelf online subscription products, the Bidder provides each of its customers with the same high level of security and cannot make modifications or accept changes to its practices for individual customers. The products being proposed have undergone rigorous security and privacy assessments and the Bidder has implemented technical and procedural safeguards appropriate for each product. The Bidder respectfully requests removal of Section 3.7 in its entirety and replacement with our security protocol, which will be included with our Bid.*

ANSWER: As stated above, once the State has determined the apparent awardee, limited negotiations will be held during the credentialing process addressing product licensing and proprietary rights. The Bidder must agree to comply with all other terms and conditions of the IFB, including Section 3.7, Security Requirements.

*33) **Section 4.17 (page 22)** – The Bidder respectfully requests deletion of this provision in its entirety because it is not applicable. This agreement is for online services and does not involve labor categories. Regarding the sales and client management team that will provide support for the offered subscription products, the Bidder unilaterally makes all personnel assignments and cannot agree to seek customer consent prior to those internal decisions.*

ANSWER: Section 4.17 states “If the solicitation requires that a particular individual or personnel be designated ...” While the provision is not applicable to this Contract, it is part of the State’s standard Contract terms and conditions, which are not typically altered because of a particular term’s inapplicability to a particular contract.

*34) **Attachment M – Contract (page 42)** – This Contractor understands this is a sample contract. Please note that it is industry practice for products such as those being offered to be governed by a subscriber agreement that protects both the State and the Contractor. The data requested by the IFB and included in this proposal is highly regulated and subject to licensing; as such, these terms must be incorporated into any resulting contract via this Contractor’s subscriber agreement.*

ANSWER: As stated in the answer to Question 21 above, once the State has determined the apparent awardee, limited negotiations will be held during the credentialing process addressing product licensing and proprietary rights. The results of these negotiations will be incorporated into the Contract as Exhibit D, per Section 2.1 of Attachment M.

35) Attachment I: Non-Disclosure Agreement (page 46) – The Bidder respectfully requests that, to the extent a non-disclosure agreement is required, a mutual non-disclosure agreement be signed by both parties. The Bidder will provide its standard mutual agreement with its Bid.

ANSWER: The State requires the Contractor to sign the Non-Disclosure Agreement (Contractor) in Attachment I. It will not agree to sign the Bidder’s form.

36) Attachment M, Section 2.1, Scope of Contract (page 50) – The Bidder respectfully requests the explicit incorporation of the Bidder’s General Terms and Conditions, Order Form, and AVC Form into Exhibit D. To the extent these Agreements, Conditions, and Exceptions are accepted, they should also be incorporated into the Agreement.

ANSWER: Attachment M lists Exhibit D as “Any product licensing or proprietary rights agreement of the vendor signed as part of the credentialing process per IFB Section 2.3.5.2” This covers the above identified documents if they are agreed to by the State. The specific documents would not be named in the sample contract because each Bidder has its own names for such documents.

37) Attachment M, Section 2.2, Scope of Contract (page 51) – The Bidder respectfully requests this section be deleted in its entirety. The State cannot make changes that are outside the scope of the product’s capabilities or provided for under the agreement, unless a Bidder Order Form reflecting the changes is submitted for processing. The Bidder reserves the right to reject any written order that is not consistent with the capability of the products offered herein.

ANSWER

Code of Maryland Regulations (COMAR) 21.07.01.2 states that Scope of Contract is a mandatory provision for all contracts. This provisions shall reflect the unilateral right of the State to order in writing changes in the work within the scope of the contract. Therefore, the State will not delete this provision.

38) Attachment M, Section 5, Rights to Records (page 52) – The product(s) referenced in this proposal are commercial products and as such not a work made for hire as it is interpreted under U.S. Copyright law. Therefore, this Contractor respectfully requests that this section be stricken from any potential agreement between the parties.

ANSWER: The State acknowledges that the services provided under this Contract will not be “works for hire” and, as such, the work for hire language is inapplicable to this Contract. Other portions of Section 5 may be applicable, however. Additionally, the provisions are part of the State’s standard Contract terms and conditions, which are not typically altered because of a particular term’s inapplicability to a particular contract.

39) **Attachment M, Section 6, Exclusive Use (page 53)** – *The data provided to the State under any resulting contract is subject to the licensing terms as provided in this bid. As such, this Contractor respectfully requests this provision is removed in its entirety.*

ANSWER: This Section is deleted by Amendment 4, issued concurrently with this document.

40) **Attachment M, Section 7, Patents, Copyrights, and Intellectual Property (page 53)** – *The data provided to the State under any resulting contract is subject to a license provided by the Bidder’s General Terms and Conditions. As such, the Bidder respectfully requests this section be removed.*

ANSWER: The State will not delete this provision. .

41) **Attachment M, Section 9, Loss of Data (page 55)** – *In light of the exception to Section 3.7 (Security Requirements), the Bidder respectfully requests this section be deleted in its entirety and replaced with the Bidder’s Security Addendum.*

ANSWER: As indicated in the Answer to Question 32 above, Section 3.7 will not be deleted. The State will not delete this contract term and replace it with the Bidder’s Security Addendum.

42) **Attachment M, Section 10.1, Indemnification (page 55)** – *The Bidder respectfully requests this paragraph be modified to read “which arise out of or relate to the Contractor’s or subcontractor’s willful misconduct or intentionally negligent acts in the performance of the Contract....”*

ANSWER: The State will not revise the Section 10.1 of Attachment M as requested by the Bidder at this time. However, the State will reconsider the language of the provision as necessary when it reviews the apparent awardee’s licensing and credentialing materials.

43) **Attachment M, Section 18, Termination for Convenience (page 57)** – *The Bidder respectfully requests this termination for convenience provision be deleted. The Bidder is able to provide the offered pricing contingent on the customer’s commitment to a specific minimum term. The State’s interests are adequately protected under Sections 16 and 17 which allows the State to terminate for non-availability of funding or for cause.*

ANSWER: COMAR 21.07.01.12 states that Termination for Convenience is a mandatory provision for all contracts. Therefore, the State will not delete this provision.

44) **Attachment M, Section 20, Suspension of Work (page 58)** – *The Bidder respectfully requests this section be deleted in its entirety. The Bidder’s pricing is predicated on the full-term commitment without any lapse in coverage. The State would still retain the right to terminate for default of for the non-appropriation of funds.*

ANSWER: COMAR 21.07.01.16 states that the Suspension of Work provisions is a mandatory provision for all contracts. Therefore, the State will not delete this provision.

45) **Attachment M, Section 25, Right to Audit (page 59)** – *The Bidder respectfully requests deletion of this provision in its entirety and replaced with “The State, or its authorized agents,*

upon 30 days written notice to Contractor, may audit Contractor's fiscal records related to the performance of the Contract."

ANSWER: The State denies the Bidder's request. It will not waive its right to audit.

46) Attachment M, Section 29, Limitation of Liability (page 60) – The Bidder respectfully requests removal of this clause in its entirety, as the Bidder sets forth its limitation of liability provision in the General Terms and Conditions, which it will incorporate into the Contract.

ANSWER: The State denies the Bidder's request. It will not accept the Bidder's limitation of liability provision. However, the State will reconsider the language of the provision as necessary when it reviews the apparent awardee's licensing and credentialing materials.

47) Attachment M, Section 35, Effect of Contractor Bankruptcy (page 63) – The Bidder respectfully notes there are no intellectual property rights transferring to the customer, so no rights would transfer as the result of any bankruptcy proceeding. As such, this provision is not applicable.

ANSWER: This provision is part of the State's standard Contract terms and conditions, which are not typically altered due a particular term not being applicable to a particular contract. The State will not seek greater transfer rights than its entitlement as a matter of law

48) Attachment M, Section 39, Parent Company Guarantee (page 64) – The Bidder respectfully requests removal of this section as not applicable.

ANSWER: This is a sample contract that contains all terms and conditions that might be in the actual Contract. If the Bidder is selected for award and no parent company guarantee is required, the actual Contract will not contain the Parent Company Guarantee provision.