



Maryland Department of Budget & Management

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**QUESTIONS AND RESPONSES #2
PROJECT NO. 050R5800079
Long Distance Calling Services
October 29, 2004**

Ladies/Gentlemen:

This list of questions and responses is being issued to clarify certain information contained in the above referenced RFP. The statements and interpretations contained in the following answers to questions by potential offerors are not binding to the State, unless an addendum expressly amends the RFP. Nothing in the State's response 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.

43. Can we renew the performance bond on an annual basis versus keeping the bonds over the entire term of the contract?

Answer: The State of Maryland has revised its requirements for the performance bond. See Addendum #2, item # 1.

44. Section 2.16.2 Liquidated Damages – Will the State consider a cap or limit on any liquidated damages if the contractor fails to return long distance calling services within the specified time.

Answer: The State of Maryland has revised its requirements and now has a cap on any liquidated damages. See Addendum #2, item # 6.

45. What percentage of traffic is estimated to be interagency? Is dedicated-to-dedicated intrastate outbound calling considered interagency traffic?

Answer: The State currently does not have the percentage estimated to be interagency. The dedicated-to-dedicated intrastate outbound calling is not necessarily interagency traffic. Most Agencies do not have dedicated facilities.

46. Will the State accept proposal responses without the Bid Bond and Performance Bond requirements?

Answer: The State will not accept any proposal without the Bid Bond and Performance Bond requirements. However, it should be noted that The State of Maryland has revised its requirements for the performance bond. See Addendum #2, item # 1.

47. Can the State provide the methodology used to determine the Performance Bond and Bid Bond amounts?

Answer: It was felt that the failure of our Long Distances Calling Services provider would cause three months of alternate long distance sourcing. The Performance Bond amount was determined by estimating the number of long distance calls each business day (10,000), the incremental added cost for using alternate sourcing (\$1.00 additional per call) and the number of business days in a month (20) over the three-month period. The calculation is $10,000 \times \$1.00 \times 20 \times 3 = \$600,000$. Bid Bonds have historically amounted to 1/5 of the amount of Performance Bonds to insure that an Offeror will, in fact, accept the contract if the State of Maryland offers one to a vendor.

48. Could the State present the Performance Bond as a sliding scale, reducing and or eliminating the amount over the initial 3 year Term?

Answer: The State of Maryland has revised its requirements for the performance bond. See Addendum #2, item # 1.

49. Based on the primary services being requested (Long Distance) which make up approximately 90% of the total value of the State's proposed contract, where for many of the participating vendors LD is a core competency with established SLAs (Service Level Agreements). Has the State considered reducing the Bid Bond and Performance Bond by perhaps reviewing vendors SLAs for these core services?

Answer: The State has not changed the Bid Bond or Performance because of the vendors SLAs. However, the State of Maryland has revised its requirements for the performance bond. See Addendum #2, item # 1.

50. Will all participants whose proposal is accepted by the State, be granted an oral presentation?

Answer: All Offerors who, based on review of their technical proposal, are judged reasonably susceptible of being selected for award, or potentially so, will be granted an oral presentation.

51. Since it was noted during the pre-proposal meeting that the State's primary requirement for this contract is related to Long Distance voice services and no new data networking will be replaced via this contract, are the requirements stated in 2.5.1.11 still valid?

Answer: The requirements in section 2.5.1.11 have been modified. See Addendum #2, item #3.

52. Will there be an extension to the RFP due date?

Answer: The State of Maryland has revised the RFP due date. See Addendum #3, item #1.

53. **Reference Attachment F - Pricing Instructions; Item C under Instructions heading:**

"All Calculations that result in a fraction of a cent must be rounded to the nearest whole cent, i.e., \$1.025 would be rounded to \$1.03 and \$1.024 would be rounded to \$1.02."

This requirement contradicts the requirement to price in 6-second increments. In order to break a per minute rate out into 6 second increments, vendors will need to go out 3 to 4 decimal places. For example, if the proposed per minute rate was \$0.05, in order to make this rate fit into the states pricing tables, it would have to be input into the table as follows: \$0.005. If the vendors were required to round this number up, then the rate would have to be \$0.01 per 6-second increment. This would result in a per minute rate of \$0.10. Please clarify this requirement and instructions for completing pricing forms?

Answer: The State has issued an addendum to address the rounding issues noted above. See Addendum #2, items #9C and 10 and Addendum #3, item #5.

54. **Reference Attachment F - Pricing Instructions; Item I1 under Instructions Heading:**

This requirement references a VPN being proposed. Please clarify.

Answer: The State has issued an addendum to remove references to a VPN. See Addendum #2, item #9.

55. Reference: RFP Section 2.16

Question: Can the State clarify the liquidated damages requirement? Does the State have a specific dollar value in mind for liquidated damages for interruption of services?

Answer: The State of Maryland has revised its requirements for liquidated damages. See Addendum #2, item # 6.

56. The State is undoubtedly aware that its rigid bonding requirements will preclude smaller companies from bidding. We are requesting that you consider amending the applicability of the bonding requirement to underlying Carriers only and not to value-added companies who use the same bonded Carrier networks to fulfill their proposed solutions.

Answer: The State of Maryland has revised its requirements for the performance bond. See Addendum #2, item # 1. Please note Q&A #48 above. The State's assets are at risk should the selected Contractor no longer be able to provide the services described in this RFP. Bonding lessens that risk.

57. IP telephony (VoIP) may be ideal for this application. Can offerors propose VoIP solutions in their responses to this RFP?

Answer: No, the offerors should not propose VoIP solutions in their proposals.

58. In section 1.25, a minority business enterprise subcontractor participation goal of 5% has been established for this solicitation. The contractor shall structure its awards of subcontracts under the Contract in a good faith effort to achieve the goals in such subcontract awards by businesses certified by the State of Maryland as minority owned and controlled. MBE requirements are specified in Attachment D of this RFP. Question: Will the State accept reporting of indirect dollars for MBE participation as it relates to this contract?

Answer: The 5% subcontracting goal is an aggressive but attainable goal. The easiest way to comply with the MBE commitment is through the direct use of MBE subcontractors. Direct use of MBEs for long distance phone services may require you to make some adjustments to how you have traditionally supported the delivery of such services. Potential offerors should examine their internal business processes to identify areas for potential direct MBE participation. In addition, dollars that are paid to certified MBE subcontractors for work that is allocable (indirect use) to the performance of this contract will be credited towards the goal on a prorated basis.

59. Attachment F Price Sheets, tab F-4 International

Tab F-4 requires a price for the Initial 18 Seconds for International calls. Our International offering includes an initial 30-second interval. How shall we resolve this conflict?

Answer: The State requires a price for the initial 18-seconds and does not plan to address an initial 30-second interval. The 18-second initial charge for domestic, international, and calling card calls shall be equal to the quoted 6-second interval charge times 3. See Addendum #3, item #4.

60. Attachment F Price Sheets, tab F-5 Calling Cards

Tab F-5 requires a cost for each 6-second interval for calling card calls, but does not allow for an initial interval. Our Calling Card offering includes an initial interval of 18 seconds with 6-second additional intervals. How shall we resolve this conflict?

Answer: The State has added an 18-second initial interval for calling cards. Although the successful Contractor can bill this 18-second interval, the State will not use this initial interval to evaluate the Offeror's financial proposes. See Addendum #3, item #4.

61. Section 2.Liquidated Damages for interruption of service:

Reliability of the long distance calling services is of the essence. Downtime on any part of the contracted long distance calling services will be minimized by prompt response and corrective action within the specified timeframes (reference section 2.10) of the detection of a loss of service by the State CM, Agency Telecommunications Project Manager or the Contractor. If the Contractor fails to return long distance calling services within the specified time, then the Contractor shall be responsible for paying any and all costs the State incurs to obtain replacement services outside of the Contractor's system.

We appreciate the critical nature of the services being provided. We believe that this requirement is not necessary since the contractor has to post an annually renewable \$600,000 performance bond. Also, these Liquidated Damages are undeterminable. We request the State remove this section in its entirety.

Answer: The Performance Bond will not reimburse the State for the added costs it incurs when the provider loses Long Distance service, requiring to State to use alternative more costly Long Distance sourcing. Liquidated Damages will allow the State to recover the added costs caused by interruption of service. However, please note that the State of Maryland has revised its requirements for liquidated damages. See Addendum #2, item # 6.

62. Section 3.4.14 Certificate of Insurance

We would like to request the following changes to this section:

The State will be named as an Additional Insured on ~~all liability policies (Workman's Compensation excepted)~~ and Certificates of Insurance (~~Workman's Compensation excepted~~) evidencing this coverage will be provided prior to the commencement of any activities. Upon execution of a contract with the State, then current certificates of insurance will be provided to the State from time to time, as directed by the State.

The State shall receive written notification of non-renewal from the issuer of the Insurance policies at least ~~one hundred sixty (60)~~ **thirty (30)** days before the expiration of the then-effective Insurance policies. ~~In the event the State receives a notice of non-renewal, the Contractor must provide the State with an Insurance policy from another carrier at least thirty (30) days prior to the expiration of the Insurance policy then in effect.~~

Answer: The State will not change the language or requirements of this Section.

63. Attachment A Contract – Item 25 Subcontracting; Assignment

We must take exception to this section and respectfully request the substitution of following language:

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State of Maryland, ~~nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State.~~ The assignment of this contract to successors or any other parties by the Contractor for any reason, without the expressed written approval of the State of Maryland, is hereby specifically prohibited except when said assignment is made to an affiliate of the Contractor. For purposes of this Section, "affiliate" shall mean a person or entity that directly or indirectly controls or is controlled by or is under common control with Contractor. Any attempt to assign this Agreement in contravention of this Section shall be void and of no force and effect. Any such subcontract or assignment shall include the terms of Sections 9 and 11 through 24 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

Answer: The State will not change the language or requirements of this Section.

64. Attachment A Contract – Item 26 Indemnification
We propose the following changes to this section:

~~The Contractor shall indemnify the State against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.~~

26.1 Each party (the "indemnitor") shall defend, indemnify, and hold harmless the other party (the "indemnitee") against all claims and liabilities for direct damages imposed on the indemnitee for bodily injuries, including death, and for damages to real or tangible personal property to the extent caused by the negligent or otherwise tortious acts or omissions of the indemnitor, its agents or employees in the course of performance of this Agreement while on the indemnitor's premises

26.2 The State of Maryland shall defend, indemnify and hold harmless Contractor, its employees, officers, directors, agents and affiliates for damages, costs and attorneys fees in connection with any claim arising out of the State of Maryland's use of the equipment provided by Contractor other than as specified in this Agreement, the State of Maryland's combination of the equipment provided by Contractor with other equipment or services not provided by Contractor, the State of Maryland's modification of the equipment provided by Contractor, or arising out of the content of communications transmitted by the State of Maryland in its use of the services or equipment provided by Contractor, including but not limited to libel, slander, and invasion of privacy.

26.3 Notwithstanding Section's 26.1 and 26.2 above, the State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Agreement against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

26.4 Notwithstanding Section's 26.1 and 26.2 above, the State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

26.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

Answer: The State will not change the language or requirements of this Section.

65. Attachment A Contract – Item 27 Limitation of Liability
We propose the following changes to this section:

27.1 For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

A. For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 6 ("Patents, Copyrights, Intellectual Property") of this Contract;

B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;

C. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited ~~to three (3) times~~ the total dollar amount invoiced under this Contract up to the date of settlement or final award of any such claim. Third party claims arising under Section 26 ("Indemnification"), of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising under Section 26 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 26.

27.2 As provided in this section, the limitations contained in this section are the maximum for which the Contractor and its subcontractors are collectively responsible for damages arising as a result of this Contract.

Answer: The State has changed the Contractor's liability to two times the total dollar amount invoiced. See Addendum #3, Item #7

66. Will the State please provide the format of the deliverables mentioned in requirement 2.11.1 or provide a new link? The web address provided in section 2.11.1 is not clearly linking to a deliverable format description.

Answer: The correct web link referenced in section 2.11.1 is:

http://www.dbm.maryland.gov/portal/server.pt?space=Dir&spaceID=2&parentname=CommunityPage&parentid=0&in_hi_userid=1332&control=OpenSubFolder&subfolderID=4900&DirMode=1

See Addendum #3, Item #8.

67. In section 2.16.2 (Liquidated Damages) on page 27, it states that "If the Contractor fails to return long distance calling services within the specified time, then the contractor shall be responsible for paying any and all costs the State incurs to obtain replacement services outside of the contractor's system.

As discussed at the pre-proposal conference, several vendors have a concern because there is no financial cap or limit on this requirement.

Would it be possible to put a financial limit per outage or a maximum cost per year to the vendor? Plus, there are no exceptions to this section. If the disruption was outside of the vendors control such as natural disaster or the fault of a 3rd party, it could make the vendor very vulnerable.

I would recommend instituting an annual cap of \$100,000 on this section or excluding incidents outside of the vendor's control (inclement weather, natural disasters, 3rd party intervention, etc.)

Answer: The State of Maryland has revised its requirements and now has a cap on any liquidated damages. Also, natural disasters have been addressed. See Addendum #2, item #6.

68. Section 1.25 of the RFP, "Minority Business Enterprises," states that the MBE goal of 5% shall become a "contractual participation obligation" upon execution of the Agreement. Does the State intend to impose the full amount of the goal (5%) as a contractual participation obligation on all contractors? Or will the contractual participation obligation match the MBE percentage that the awardee offered in its bid? Long distance service is provided thru existing facilities and infrastructure and does not require additional personnel to provide new service. This project does not lend itself to subcontracting of any type, MBE or otherwise. Consequently, Contractor is concerned that imposing the full 5% MBE subcontractor rate as a "contractual participation obligation" limits competition to very few potential vendors.

Answer: The State expects Offerors to commit to achieve the MBE goal. If the Offeror cannot attain the 5% goal, the Offeror must fully document the steps it took in attempting to achieve the MBE goal in its waiver request. See COMAR 21.11.03.11. The awardee will be contractually obligated to meet any MBE goal, which is approved in a waiver, should one be granted.

69. Industry standards for initial billing increments are 18 seconds for domestic calling and 30 seconds for international calling. Can the pricing sheets please reflect this industry standard?

Answer: The State currently has an initial interval of 18 seconds for both domestic and international calls. The State intends to keep these initial intervals for both domestic and international calls. The 18-second initial charge for domestic, international, and calling card calls shall be equal to the quoted 6-second interval charge times 3. See Addendum #3, item #4.

70. The RFP pricing guidelines require us to price at the nearest whole cent. Industry standard is to carry that pricing at least to the next decimal point. Can the per minute pricing sheets please reflect 10th of a cent increments rather than rounding to the nearest cent value?

Answer: The pricing sheet guideline has been modified. See Addendum #2, item #9C and Addendum #3, item #5.

71. Can you please provide us with call duration statistics for your LD calling?

Answer: The State cannot readily obtain the information to answer this question.

72. What is the ratio of calling minutes between Ded-Ded and Ded-Switched?

Answer: The State cannot readily obtain the information to answer this question.

73. Audio conferencing and calling cards are billed on per minute basis and not six second increments. Can you change your requirement to an industry standard for audio conferencing and calling card?

Answer: The Teleconferencing was revised to a per minute basis; see Addendum #2, item #10C. The State is not planning to revise the requirements for calling card billing, which is currently at 6-second increments.