



Wes Moore, Governor · Aruna Miller, Lt. Governor · Atif Chaudhry, Secretary

Amendment #2
RFP # BPM036949
Cable and Wiring Outside Plant Installation, Relocation, Preventative and Routine
Maintenance of Fiber Optic and Communication Cable
September 26, 2023

Ladies and Gentlemen:

This Amendment is issued to amend and clarify certain information contained in the above-referenced Request for Proposals (RFP). All information contained herein is binding on all Offerors who respond to this RFP. The following changes/additions are listed below; new language has been double underlined and marked in red bold (ex: **new language**) and language deleted has been marked with a strikethrough (e.g., ~~language deleted~~). COMAR 21.05.03.02.E requires offerors to acknowledge all amendments.

REVISIONS:

1. Revise Section 2.3.1 D (General) as follows:
2.3.1 General

D. The Contractor shall assume total responsibility for project design, work, permits, licenses, bonds, **inspection fees**, and liability insurance of any required items for the Contractor and any required Subcontractors, including but not limited to traffic control permits.
2. Revise Section 3.10.4A (Contractor Point of Contact (Contractor POC) Labor Categories) as follows:

A. The Labor Categories are identified and described in Section 2.4. To be responsive to this RFP, Offerors must be capable of providing personnel meeting the minimum requirements for all the labor categories listed. Offerors shall submit a Financial Proposal Form (**Attachment B**) that provides labor rates for all labor categories for all Contract years (initial term and any option periods). Actual resumes shall be provided only for Key Personnel as described in **Section 3.11.3**. Resumes for resources provided later shall be coordinated by the Contract Manager per the Technical Proposal **and if requested in a Work Order, shall be governed by the Work Order process.**
3. Revise Section 3.14 (Work Orders) as follows:

~~THIS SECTION IS INAPPLICABLE TO THIS RFP.~~

- A. Using Agencies shall obtain services via a Work Order process. Work shall not begin in advance of a fully executed Work Order. A Work Order shall be issued for fixed price in accordance with pre-approved Labor Categories with the fully loaded rates proposed in Attachment B.
- B. Work Order Requests (see sample at http://doit.maryland.gov/contracts/Documents/_procurementForms/WorkOrderSample.pdf) for the provision of services or resources that are within the scope of this RFP will be issued to the Contractor. The Work Order Request will include:
- 1) Technical requirements and description of the service or resources needed;
 - 2) The materials needed for the project;
 - 3) Testing requirements;
 - 4) Performance objectives and/or deliverables, as applicable;
 - 5) Lead time for material to be purchased and stored;
 - 6) Due date and time for submitting a response to the request; and
 - 7) Required place(s) where work must be performed.
- C. The Contractor shall e-mail a response to the Contract Monitor within the specified time and include at a minimum:
- 1) A response that details the Contractor's understanding of the work;
 - 2) A price to complete the Work Order Request in accordance with Attachment B;
 - 3) A description of proposed resources required to perform the requested tasks, with labor categories listed in accordance with Attachment B.
 - 4) An explanation of how tasks shall be completed. This description shall include proposed subcontractors and related tasks.
 - 5) Contractor's expectations for State-furnished information, work site, and/or access to equipment, facilities, or personnel.
 - 6) The Proposed personnel resources, including any subcontractor personnel, to complete the task.
- D. For a fixed-price Work Order, the Contract Monitor will review the response and will confirm the proposed prices are acceptable and in line with the pricing proposed in Attachment B.
- E. The Contractor will purchase and install the materials.
- F. A written approval will be required from the Contract Manager or Designee to determine compliance with the Contract.
- G. Proposed personnel on any type of Work Order shall be subject to the State approval. The Contractor shall furnish resumes of proposed personnel specifying the labor category(ies) proposed. The Contract Monitor shall have the option to

interview the proposed personnel and, in the event of an interview or not, shall notify the Contractor of acceptance or denial of the personnel.

H. Performance of services under a Work Order shall commence consistent with an NTP issued by the Contract Monitor for such Work Order.

I. Performance and Payment Bond will be required at the Work Order level. If required for a Work Order, the Contractor must deliver to the State an executed Payment and Performance Bond in an amount equal to the Work Order Price. The contractor shall supply such bonds within 7 days after receiving a request for such bonds. The bonds shall be identical in all respects to the form of bonds approved by the State with no variations, additions, or deletions. Note the cost for any bonds are to be included as a pass-through cost in the fully loaded pricing.

4. Revise section 3.15.4 A (Electronic Transaction Fee) as follows:

A. Contractors shall pay an electronic transaction fee to the State equal to one percent (1%) of the amount paid to the Contractor by the State for accepted work. The electronic transaction fee shall not be charged directly to the customer, e.g., as a separate line item, fee or surcharge, but shall be included in the price listed in the Contractor's Proposed price.

5. Revise Section 4.9.2 (Assignment of Work) to include the provision "D" as follows:

A. For multiple contract awards, the Contractor with the highest overall ranking will be given the right of first refusal to provide the requested services.

B. If the Contractor with the highest overall ranking is unwilling or unable to perform the requested services, the Contractor with the next highest overall ranking will be asked to provide the requested services.

C. The Contractor will have 48 hours to respond to a service request before a request is made to the next subsequent Contractor.

D. If neither Contractor can provide the requested services, the State, in its best interest, will either 1) obtain services through alternate means; or 2) go back to the Contractor with the highest overall ranking and repeat the right of first refusal process.

6. Revised Section 4.26 (MBE Participation) as follows:

4.26.2 Attachment

Contractors responding to a Work Order shall complete, sign and submit all required MBE documentation.

A. D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:

1. Attachment D-1AMBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**must be submitted with Proposal**)

2. Attachment D-1B Waiver Guidance

3. Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request
 4. Attachment D-2 Outreach Efforts Compliance Statement
 5. Attachment D-3 AMBE Subcontractor Project Participation Certification
 6. Attachment D-3B MBE Prime Project Participation Certification
 7. Attachment D-4A Prime Contractor Paid/Unpaid MBE Invoice Report
 8. Attachment D-4B MBE Prime Contractor Report
 9. Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report
- B. The Contractor shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:
1. The **Contractor** ~~Offeror~~ acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
 2. The **Contractor** ~~Offerors~~ responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
 3. The Contractor requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.
7. Revise the RFP to add Section 4.39 (Bonds) as follows:

4.39.1 Performance Bond and Payment Bond

- A. **The Contractor may be required to deliver a Performance Bond to the State at the Work Order Level.**
- B. **If a specific Work Order is estimated at \$100,000 or more, the Contractor shall furnish 100% Performance and Payment bonds prior to the Work Order response in the form specified, guaranteeing that the Contractor shall well and truly perform the Contract. Note the cost for any bonds are to be included as a pass-through cost in fully loaded pricing.**
- C. **The Performance Bond shall be in the form provided in Appendix 4d and underwritten by a surety company authorized to do business in the**

State and shall be subject to approval by the State, or other acceptable security for bond as described in COMAR 21.06.07.

- D. The Performance Bond shall be maintained throughout the term of the Contract, and any exercised renewal option period(s). Evidence of renewal of the Performance Bond and payment of the required premium shall be provided to the State.
- E. The Performance Bond may be renewable annually. The Contractor shall provide to the State, 30 days before the annual expiration of the bond, confirmation from the surety that the bond will be renewed for the following year. Failure to timely provide this notice shall constitute an event of default under the Contract. Such a default may be remedied if the Contractor obtains a replacement bond that conforms to the requirements of the Contract and provides that replacement bond to the State prior to the expiration of the existing Performance Bond.
- F. The cost of this bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item. This does not apply to the cumulative total of work in progress but rather to a single project. The Offeror's technical proposal shall contain a letter from the Offeror's bonding company stating that the company will bond the Offeror for proposal bonds, performance, and payment bonds on various Work Orders that exceed an estimated \$100,000.00. Failure of the contractor to secure necessary bonding shall be considered a breach of contract subject to default and termination.
- G. After the first year of the Contract, the Contractor may request a reduction in the amount of the Performance Bond. The amount and the duration of the reduction, if any, will be at the State's sole discretion. If any reduction is granted, the State shall have the right to increase the amount of the Performance Bond to any amount, up to the original amount, at any time and at the State's sole discretion.

4.39.2 Acceptable security

Acceptable security shall be as described below, identified within and excerpted from COMAR 21.06.07:

- A. Acceptable security for Proposal, performance, and payment bonds is limited to:
 - 1) A bond in a form satisfactory to the State underwritten by a surety company authorized to do business in this State;
 - 2) A bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account;
 - 3) Pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State;

- 4) An irrevocable letter of credit in a form satisfactory to the Attorney General and issued by a financial institution approved by the State Treasurer.

4.39.3 Surety Bond Assistance Program

Assistance in obtaining proposal, performance and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDEFA). MSBDEFA can directly issue proposal, performance, or payment bonds up to \$750,000. MSBDEFA may also guarantee up to 90% of a surety's losses as a result of a Contractor's breach of Contract; MSBDEFA exposure on any bond guaranteed may not, however, exceed \$900,000. Bonds issued directly by the program will remain in effect for the duration of the Contract, and those surety bonds that are guaranteed by the program will remain in effect for the duration of the surety's exposure under the Contract. To be eligible for bonding assistance, a business must first be denied bonding by at least one surety on both the standard and specialty markets within 90 days of submitting a bonding application to MSBDEFA. The applicant must employ fewer than 500 full-time employees or have gross sales of less than \$50 million annually, have its principal place of business in Maryland or be a Maryland resident, must not subcontract more than 75 percent of the work, and the business or its principals must have a reputation of good moral character and financial responsibility. Finally, it must be demonstrated that the bonding or guarantee will have a measurable economic impact, through job creation and expansion of the state's tax base. Applicants are required to work through their respective bonding agents in applying for assistance under the program. Questions regarding the bonding assistance program should be referred to:

Maryland Department of Commerce
Maryland Small Business Development Financing Authority
MMG Ventures
826 E. Baltimore Street
Baltimore, Maryland 21202
Phone: (410) 333-4270
Fax: (410) 333-2552

8. Revise Section 5.2.6 (Under Proposal Delivery and Packaging) as follows:

5.2.6 Offerors shall provide their Proposals in two separate envelopes through eMMA following the [Quick Reference Guides](#) (QRG) labelled "5 - eMMA **Note:** Offerors shall submit only one Technical Proposal that covers all the regions for which they are proposing.

9. Revise Section 7 (RFP Attachments Appendices) to include the following:

Applies?	Submit With	Label	Attachment Name
Appendices			
Y	n/a	1	Abbreviations and Definitions (included in this RFP)
Y	With Proposal	2	Offeror Information Sheet (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf)
N	N/A	3	Fiber Market Specification
<u>Y</u>	<u>5 Business Days after recommended award</u>	<u>4</u>	<u>Performance Bond</u> <u>(see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-z-Performance-Bond.dotx)</u>
<u>Y</u>	<u>5 Business Days after recommended award</u>	<u>5</u>	<u>Payment Bond</u> <u>(see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-yy-Payment-Bond.dotx)</u>

10. Revise Attachment M (Contract), Section 39 (Liquidated Damages for MBE) as follows:

39. Liquidated Damages for MBE

39.1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

39.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$24.33 <<insert value>> per day until the monthly report is submitted as required.

- (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): ~~\$82.34~~ <<insert value>> per MBE subcontractor.
- (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- (e) ~~Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$<<insert appropriate rate following calculation instructions from GOSBA>> per day until the undisputed amount due to the MBE subcontractor is paid. [[Remove this sub-clause if this Contract is subject to section 15-226 of the State Finance and Procurement Article—Construction Contracts—Prompt Payment of subcontractors.]]~~

39.23 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

11. Revise Appendix 1. (Abbreviation and definitions) to add the following:

GG. Work Order - A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, and which may not require a Contract Modification. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Work Order.

Note: Offerors are to acknowledge amendments in the transmittal letters they submit with their proposals

Issued by:

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