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Office of the Secretary
Division of Policy Analysis

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**Questions and Answers #2 to
Request for Proposals (RFP)
High Capacity Circuit Services (HCCS)
Project No. 050R3800141**

Ladies and Gentlemen:

The State has received the following questions by e-mail which are answered for all offerors to the referenced RFP. The numerical sequencing begins at question #3 since questions up to number two were answered in Q&A #1.

3. **Question:** RFP Section 3.1 - Two-Part Submission. If an Offeror is proposing both DDS and FR/ATM Services, Offeror believes the State is requesting a single Technical Proposal (Volume I) that addresses the requirements for both services and a single Financial Proposal (Volume II) that addresses the requirements for both services (not two separate Technical Proposals and two separate Financial Proposals). Please verify that this is a correct interpretation.

Answer: The interpretation is incorrect. The State requires separate Technical and Financial Proposals for DDS and FR/ATM services. Each proposal will be evaluated separately meaning that each set of proposals for DDS and FR/ATM services is mutually exclusive and must stand alone.

4. **Question:** RFP Section 3.4.2.3.2 - FR/ATM Services. Offeror believes that Section 2.3 should also be answered for FR/ATM Services. Please verify that this is correct.

Answer: You are correct. The RFP has been amended accordingly (Amendment #2).

5. **Question:** RFP Section 3.4.2.3 - Offeror Technical Response to RFP Requirements. If an Offeror is proposing both DDS and FR/ATM Services, for conciseness, can a single response be provided for the sections that are common to both services, specifically Sections 2.3, 2.7, 2.8, and 2.9?

Answer: No. The responses for each set of services will be separately evaluated and accordingly, each set of proposals for DDS and FR/ATM services must stand alone and be complete in accordance with Section 3.1 of the RFP.

6. **Question:** RFP Section 2.7.4 and Section 3.4.2.10. Section 2.7.4 requires that written procedures for reporting problems be provided within 15 days of contract award. Does Section 3.4.2.10 require these procedures to be submitted with the proposal or just confirmation that an Offeror will submit the procedures within 15 days of contract award as required by Section 2.7.4?

Answer: Section 3.4.2.10 requires the procedures be submitted with the proposal so that the procedures can be evaluated in the offeror's Technical Proposal per Section 4.2 of the RFP. The RFP has been amended to reflect the procedures submitted in the Technical Proposal will become part of the contract and meet the Section 2.7.4 requirement (Amendment #2).

7. **Question:** In question two of the first Q&A, the State's response was "The State is just looking for access circuits to its backbone." Please clarify with respect to the following: Is the State looking for an access circuit to interface with the networkMaryland backbone? If so, this would require an NNI. Or does the answer refer to the carrier's backbone/State's cloud?

Answer: Access means to the carrier's point-of-presence (cloud) in any LATA. The State will provide Network-to-Network Interfaces to transport the traffic to the mapped termination point. Your understanding may also be aided by the addition of definitions for "Backbone Network" and "Local Access for FR/ATM" in Amendment #2.

8. **Question:** In order to provide the most cost effective financial proposal, an accurate business case must be prepared to fully understand cost. To that end, please provide the NPA-NXX for all State locations. NPANXX format is fine. The information off of the DGS website is limited; many addresses share the same site contact.

Answer: The State will not provide the requested list due to the volume of NPA-NXX locations. You are welcome to view the Statewide Online Telephone Directory at <http://www.dbm.state.md.us/SearchUtility/> in order to compile information on NPA-NXXs that would represent a majority of State locations. Remember the price the State will pay for service anywhere in the State is dependent upon formulas and mileage criteria from Section 3.4.2.12 and unit price information from Section 3.5.1.10 submitted by the winning Offeror. The formulas and unit rates you propose should appropriately consider your costs.

9. **Question:** Will DBM consider amending Clause 5 of the Attachment A Contract to specify in Subclause 5.1 that the rights granted to the State are subject to the Contractor's perpetual, royalty-free license to use the materials, including the right to sublicense?

Answer: This question concerns the "Rights to Records" clause. The response is no. Offerors that propose any changes to contract terms and conditions will run the risk of having their proposal rejected.

10. **Question:** Will DBM consider amending Clause 6 of the Attachment A Contract to add the following language to the end of Subclause 6.2 to clarify that the Contractor's indemnity obligation does not extend to those situations where the infringement was not due to the acts or omissions of the Contractor:
"Notwithstanding the foregoing, the Contractor's indemnification obligations will not apply where the claim or suit arises out of or results from: the State's or User's Content; modifications to the Service or combinations of the Service with non-Contractor services or products, by the State or others; Contractor's adherence to the State's written requirements; or, use of the Service in violation of this Agreement. As used in this Clause 6, "Content" means information (excluding Contractor information) made available, displayed or transmitted (including, without limitation, information made available by means of an HTML "hot link", a third party posting or similar means) in connection with a Service, including all trademarks, service marks and domain names contained therein, the State and User data, and the contents of any bulletin boards or chat forums, and, all updates, upgrades, modifications and other versions of any of the foregoing. As used in this Clause 6, "User" means anyone who uses or accesses any Service purchased by the State under this Agreement, but excluding unauthorized parties that use or access a Service without the State's knowledge and after the State has taken commercially reasonable steps to prevent such unauthorized access."

Answer: This question concerns the "Patents, Copyrights, and Intellectual Property" clause. The response is no. Offerors that propose any changes to contract terms and conditions will run the risk of having their proposal rejected.

11. **Question:** Will DBM consider amending Clause 9 of the Attachment A Contract to limit the Contractor's indemnification obligation in Subclause 9.1 to third party claims for personal injuries, including death, and damage to tangible personal and/or real property proximately caused by the negligence, gross negligence or willful misconduct of the Contractor?

Answer: This question concerns the "Indemnification" clause. The response is no. The contract fairly apportions risk to the Contractor for the actions of Contractor, and its subcontractors, agents, servants, and employees in the performance of the contract. Contractor may insure against such risks. Offerors that propose any changes to contract terms and conditions will run the risk of having their proposal rejected.

12. **Question:** Will DBM consider amending Clause 16 of the Attachment A Contract to clarify that the damages to which the Contractor is subject under Clause 16 following a termination due to an uncured breach are limited to proven direct damages and that such direct damages are subject to a cap, which cap would be specified in the Attachment A Contract?

Answer: This question concerns the “Termination for Cause” clause. The response is no. The contract fairly apportions risk to the Contractor for the actions of Contractor, and its subcontractors, agents, servants, and employees in the performance of the contract. Contractor may insure against such risks. Offerors that propose any changes to contract terms and conditions will run the risk of having their proposal rejected.

13. **Question:** Will DBM consider amending Clause 16 of the Attachment A Contract to include as a cap on the direct damages in Clause 16 the following language: “In the event of termination by the State following any uncured breach by Contractor, Contractor’s liability shall be limited to proven direct damages not to exceed per claim (or in the aggregate during any twelve (12) month period) an amount equal to the total net charges incurred by the State for the affected service in the relevant country during the three (3) months preceding the month in which the damage occurred.”?

Answer: This question concerns the “Termination for Cause” clause. The response is no. The contract fairly apportions risk to the Contractor for the actions of Contractor, and its subcontractors, agents, servants, and employees in the performance of the contract. Contractor may insure against such risks. Offerors that propose any changes to contract terms and conditions will run the risk of having their proposal rejected.

14. **Question:** Will DBM consider including a new clause into the Attachment A Contract that states that, except for the Contractor’s obligations in Clause 6, Contractor has no liability for any indirect, incidental, consequential, punitive, reliance or special damages, including, without limitation, damages for lost profits, advantage, savings or revenues of any kind? Alternatively, would the State consider placing a limitation on consequential damages, in the absence of willful Contractor misconduct, with the effect of capping such exposure in a manner reasonably related to the dollar value of the transactions covered under this Contract?

Answer: The response to both questions is no. The contract fairly apportions risk to the Contractor for the actions of Contractor, and its subcontractors, agents, servants, and employees in the performance of the contract. Contractor may insure against such risks. Offerors that propose any changes to contract terms and conditions will run the risk of having their proposal rejected.

15. **Question:** In order to provide the most cost effective technical solution, we require additional time to evaluate various platforms. Would the State entertain a one-month extension for the submission of proposals?

Answer: The State is not aware of any unusual technical challenges in meeting the requirements of the RFP. If you are able to point out any fundamental flaw or specific issue in the RFP Statement of Work which should cause a change in the proposal due date, the State will consider your arguments but your question provides insufficient information to make that kind of judgment. However, because of additional questions being considered and planned minor amendments to the RFP, the proposal due date is changed to June 18, 2003 at 2:00 P.M.

Date Issued: May 20, 2003

By _____ <signed> _____
Norman H. Grinnell
Procurement Officer