

**Q&A Set #3 to
Request for Proposals (RFP)
Telecommunications Equipment and Services (PBX III)
RFP #060B1400048
January 5, 2011**

Ladies/Gentlemen:

The Department of Information Technology received the following questions by e-mail for the above referenced RFP, and they are answered below for all Offerors:

27. Is the State agreeable to adding a new section to Attachment A, the Master Contract, that limits the Contractor's liability to three times the value of the PORFP out of which the liability arose.

Answer: The State is adding Section 31 to Attachment A. See Addendum #4.

34. Section 3.15 – Labor Categories and Attachment G-2

It is our understanding that a Master Contractor may not add labor categories after the Master Contract is awarded. Is the State open to its own addition of labor categories during the performance period of the contract if the need arises? If so, what would be the process for any potential additions?

Answer: Master Contractors may not add labor categories after the Master Contract is awarded. The State does not expect to add additional labor categories. If Offerors feel this RFP needs additional labor categories, Offerors should propose them with supporting rationale via a question before the proposal due date.

35. Section 3.9.2 – Personnel Qualifications

Section 3.9.2 partly states: "Specific areas of required expertise may be further defined in a PORFP". Is it possible these further defined requirements could lead to the need for one or more additional labor categories in the future? If so, what would be the process for any potential additions?

Answer: The State does not expect to add additional labor categories. See Q&A #34 above.

36. Section 1.1.1 – Purchase Order RFP (PORFP)

Would it be possible for the State to provide a sample or template PORFP?

Answer: The State doesn't have a sample PORFP template at this time. However, for familiarization with PORFP templates, Offerors can view PORFP templates from other State Master Contracts (e.g. COTS Software, Hardware, Microwave Equipment and Services, etc.) on the DoIT website:

<http://doit.maryland.gov/contracts/Pages/AllMasterContracts.aspx>

37. Attachment A – Contract, Infringement Indemnity

Would the State allow the following language to be added to the Attachment A - Contract to specifically address infringement indemnity relating to equipment?

1. Except as provided below, Contractor will defend the State against any claim, suit, action or proceeding alleging that equipment supplied by Contractor to the State under the Contract (“Contractor supplied equipment”) infringes a valid U.S. patent or copyright (“Claim”), and Contractor will indemnify and hold harmless the State against any and all finally awarded costs and expenses, including attorneys’ fees, in connection with any such Claim.

2. If the use of any Contractor supplied equipment is enjoined or subject to a Claim as described above, Contractor may, at its option and expense, either procure for the State the right to continue to use the equipment, replace the equipment, or relevant component, with substantially equivalent, non-infringing equipment, or relevant component, or modify the equipment, or relevant component, so that it becomes non-infringing. In the event that none of the foregoing options is commercially reasonable to Contractor, Contractor will remove the infringing Contractor supplied equipment and refund to the State the purchase price for the equipment less depreciation for its use. Depreciation shall be calculated on a straight-line basis, assuming a useful life of five (5) years.

3. Contractor shall have no obligation for (a) any costs, fees or expenses incurred by the State without Contractor’s prior written consent; (b) any allegation, assertion, or claims of intellectual property infringement, including contributory infringement or inducement to infringe, arising out of or related to any Claim involving: (i) automated call processing, automated voice service, automated customer service or combined live operator/automated systems processing used in processing or completing calls, (ii) automated bridging of more than two callers utilizing some form of "listen only" (unilateral) communication combined with some form of interactive communication, (iii) prepaid calling products or services, (iv) wireless telecommunications services or support therefor, or (v) “music on hold” service; or (c) any indirect, special, consequential or incidental damages arising out of any Claim.

4. Any obligation on the part of Contractor to defend and indemnify shall not apply to any Claim or portion thereof that arises from (i) any negligent or willful act or omission by or attributable to the State; (ii) use or operation of the Contractor supplied equipment in combination with equipment or services provided by the State or any third party; (iii) any addition to or modification of the Contractor supplied equipment by the State, any third party or Contractor at the State’s request; (iv) use of other than the then current unaltered release of any software used in the Contractor supplied equipment; or (v) any equipment, system, product, process, method or service of the State which otherwise infringed the U.S. patent or copyright asserted against the State prior to the supply of the equipment to the State by Contractor under the Contract.

5. The foregoing states the entire obligation of Contractor to the State and is the State’s sole and exclusive remedy with respect to any Claim of infringement of any intellectual property right of any kind, and Contractor disclaims all other warranties and obligations with respect to any such Claims.

6. The State 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 (a) the State’s use of the equipment provided by Contractor other than as expressly indemnified by Contractor pursuant to the Contract the Contract, (b) combination of the equipment provided by Contractor with other equipment, software, products or services not provided by Contractor under this Agreement, (c) modification of the equipment provided by

Contractor, or (d) arising out of the content of communications transmitted by or on behalf of the State in the use of the services or equipment provided by Contractor, including but not limited to libel, slander, and invasion of privacy.

7. Notwithstanding Section 24.1, Contractor (the “indemnitor”) shall defend, indemnify, and hold harmless the State (the “indemnatee”) against all claims and liabilities for direct damages imposed on the indemnatee 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 the Contract.

8. The defense and indemnification obligations set forth in this Section are contingent upon (1) the indemnatee providing the indemnitor prompt, written, and reasonable notice of the claims, demands, and/or causes of action subject to indemnification, (2) the indemnatee granting the indemnitor the right to control the defense of the same, and (3) the indemnatee’s full cooperation with the indemnitor in defense of the claim, including providing information and assistance in defending the claim. Nothing herein, however, shall restrict the indemnatee from participating, on a non-interfering basis, in the defense of the claim, demand, and/or cause of action at its own cost and expense with counsel of its own choosing. No settlement may be entered into by the indemnitor on behalf of the indemnatee that includes obligations to be performed by the indemnatee (other than payment of money that will be fully paid by the indemnitor without indemnatee's prior written approval).

Answer: No. However, the State is adding Section 32 to Attachment A. See Addendum #4.

38. Attachment A – Contract, Disclaimer of Consequential Damages:
Would DoIT consider adding the following Disclaimer of Consequential Damages to the contract as the State did under the current Local Telecommunications Services contract?

EXCEPT FOR PAYMENTS OWED UNDER THIS CONTRACT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING A PARTY’S NEGLIGENCE) OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM DELAY, LOSS OF GOODWILL, LOSS OF OR DAMAGE TO DATA, LOST PROFITS (ACTUAL OR ANTICIPATED), UNAVAILABILITY OF ALL OR PART OF THE SYSTEM, OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Answer: No. The State is not adding this language to Attachment A.

39. Attachment A – Contract, Limitation of Liability:
The State does not address Limitation of Liability in this RFP. In the past, Maryland has agreed in its Statewide Contracts to a Limitation of Liability clause. Would the State allow the following language to be added as a “Limitation of Liability” clause to the Attachment A - Contract?

EXCEPT WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET OUT IN SECTION 24, CONTRACTOR’S ENTIRE LIABILITY FOR ANY OTHER DAMAGE WHICH MAY ARISE HEREUNDER, FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF

ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING CONTRACTOR'S NEGLIGENCE, OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE PURCHASE PRICE OF THE SPECIFIC EQUIPMENT, SOFTWARE OR SERVICES GIVING RISE TO THE CLAIM. CONTRACTOR SHALL BEAR NO LIABILITY FOR USE OF EQUIPMENT, SOFTWARE OR SERVICES PROVIDED UNDER THIS CONTRACT IN CONNECTION WITH LIFE SUPPORT SYSTEMS OR DEVICES OR PUBLIC SAFETY SYSTEMS. EXCEPT AS EXPRESSLY STATED OTHERWISE HEREIN, CONTRACTOR SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR INTEROPERABILITY OR COMPATIBILITY OF THE SYSTEM WITH THIRD-PARTY PRODUCTS OR SYSTEMS THAT THE STATE MAY UTILIZE IN CONJUNCTION WITH THE SYSTEM OR TO WHICH THE STATE MAY CONNECT THE SYSTEM.

Answer: No. See Addendum #4.

40. Attachment A – Contract, Hazardous Substances:

Would the State allow the following additional section to be added to the Attachment A - Contract since delays resulting from the presence of hazardous substances are not addressed in section 17 of the State's proposed Attachment A - Contract?

Hazardous Substances. Except as disclosed to and acknowledged in writing by Contractor, the State certifies that it is not aware of the presence of any asbestos or other hazardous substance (as defined by any applicable state, federal or local hazardous waste or environmental law or regulation) at any location where Contractor is to perform services under the Contract. If during such performance Contractor employees or agents encounter any such substance, the State agrees to take all necessary steps, at its own expense, to remove or contain the asbestos or other hazardous substance and to test the premises to ensure that exposure does not exceed the lowest exposure limit for the protection of workers. Contractor may suspend performance under the Contract until the removal or containment has been completed and approved by the appropriate governmental agency and Contractor. Performance obligations under the Contract shall be extended for the period of delay caused by said cleanup or removal. The State's failure to remove or contain hazardous substances shall entitle Contractor to terminate the Contract without further liability, in which event the State shall permit Contractor to remove any equipment that has not been accepted, shall reimburse Contractor for expenses incurred in performing the Contract until termination (including but not limited to expenses associated with such termination, such as removing equipment, terminating leases, demobilization, etc.), and shall complete payment for any portion of the System that has been accepted.

Answer: No. The State is not adding this language to Attachment A.

41. Corporate Affiliates

If a large corporation has several affiliate subsidiaries that are qualified to respond to the PBX III RFP independently, would the State prefer they respond to the RFP jointly and both be entities on a single state awarded master contract (similar to the State's current

Local Telecommunications Services Contract), or would DoIT prefer the affiliates respond separately to this RFP and each potentially be awarded its own separate master contract with the State?

Answer: Affiliates should respond separately to this RFP.

42. Attachment A – Contract, Subcontracting; Assignment

In light of today's environment of mergers and acquisitions and due to the long term nature of this contract, would DoIT consider adding the following language to section 25, Subcontracting; Assignment in its Attachment A - Contract?

"Notwithstanding the foregoing, Contractor may, without prior notice, assign this contract, in whole or in part, to any Contractor affiliate or successor. 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. Contractor agrees to execute an amendment to this Contract to ensure that the name of the Contractor affiliate(s) performing under this contract is accurately reflected as parties to the contract. Unless performance is separately and expressly waived in writing, an assignment does not release the contractor from responsibility for performance of this contract."

Answer: No. The State is not adding this language to Section 25 of the Attachment A.

43. Attachment A – Contract, Disputes and subsection 4.3 Consideration and Payment

Shouldn't all disputes arising under the Contract be resolved as required under Title 15, Subtitle 2, of the State Finance and Procurement Article of COMAR 21.10 as stated in Attachment A – Contract, Section 10, Disputes? It would appear the Attachment A - Contract Section 4.3 requirement that, "In addition to any other available remedies if, in the opinion of the Procurement Officer, the Contractor fails to perform under this Contract in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld..." is excessive and inconsistent with Section 10, "Disputes" of the State's Contract in Attachment A and COMAR. Secondly, if the Procurement Officer refused or limited the approval of any properly documented invoice for payment or caused payments to the Contractor to be reduced or withheld, wouldn't the nonpayment or reduction be subject to charges for late payment as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article of COMAR? Therefore shouldn't the State delete Subsection 4.3 of Attachment A – Contract?

Answer: No. The State is not deleting Section 4.3 of Attachment A.

44. Attachment A – Contract, Limitation of Liability

DoIT does not address Limitation of Liability in its Attachment A - Contract as the State did in the current PBX I contract. Will DoIT consider adding the State's standard language and Limit Liability to the total amount invoiced under each PORFP? This would also be consistent with DoIT's CATS I and II Contracts.

Answer: See Addendum #4.

45. Attachment A – Contract, Loss of Data

Would DoIT consider deleting Section 8, Loss of Data in Attachment A - Contract and address this issue in subsequent PORFPs based on the applicability of such a clause to the services being provided under a specific PORFP?

Answer: No. The State is not deleting Section 8 of Attachment A.

46. Attachment C –Contract Affidavit – Must be completed and returned with our response to this RFP (Please note the Section 4.4.2.9 does not address Attachment C)

Answer: Per Section 1.24, the successful Offeror will be required to complete a Contract Affidavit. If your company is offered an award, you must sign the State's Master Contract, Attachment A, and the Contract Affidavit, Attachment C. Offerors are NOT to return the State's Master Contract or the Contract Affidavit with their proposal.

47. Attachment D, D1A and Attachment I– Must be completed and returned with this RFP if we are responding to Functional Area 2 and 3.

Answer: Per Section 1.24, only Attachment D1A must be completed and returned with an Offeror's proposal. Attachment D is not to be returned. See Addendum #2 for more information on Attachment I.

48. Attachments D1, D2, D3, D4, D5, D6, E, F, H, and J – Do not need to be included with our response to the RFP; they are for informational purposes only and will be applicable and/or required only with subsequent PORFP's issued after Master Contractor's are awarded.

Answer: Attachments D1, D2, D3, D4, D5, D6, E, F, and J need not be included with Offerors proposals. Attachment H should be included with Offerors' proposals. See Addendum #2 for more information on Attachment H. Also, see Q&A #50 below.

49. Financial Proposal: Attachments G, G1 and G2 (only) must be included with our response to this RFP if we are responding to Functional Areas 1, 2 & 3.

Answer: Attachment G1 must be included for Offerors sending in a proposal for Functional Area 1 and/or Functional Area 2. Attachment G2 must be included for Offerors sending in a proposal for Functional Area 3.

50. Does the Mercury Affidavit need to be included with our bid response to this solicitation due Jan 12th, or only for individual PORFP requests? Cisco makes thousands of products which would fall under this contract. It will be extremely difficult, if not impossible to get materials/mercury information on all of them as a group. It is manageable to validate and provide such information for a product list response to an individual PORFP.

Answer: Send in your Mercury Affidavit (Attachment H) with your proposal. On it, state that you will comply at the PORFP level and sign the form.