



DEPARTMENT OF  
BUDGET & MANAGEMENT

*Martin O'Malley*  
Governor  
*Anthony Brown*  
Lieutenant Governor

*T. Eloise Foster*  
Secretary

QUESTIONS AND RESPONSES # 6  
PROJECT NO. 050B7800011

Microsoft Select and Enterprise Products and Services Large Account Re-Seller  
April 30, 2007

Ladies/Gentlemen:

This List of Questions and Responses #6, questions #18 through #35 is being issued to clarify certain information contained in the above named 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.

*18. Will the State Agencies purchase from a Minority Business Subcontractor and then the Minority Business Subcontractor will purchase from the LAR?*

**RESPONSE:**

No, the State agencies will not purchase from a Minority Business Subcontractor. The State will have a direct contract with the LAR and agencies will purchase directly from the LAR.

*19. What involvement/purpose does the State envision for the Minority Business Enterprises since they would be removed from the procurement process?*

**RESPONSE**

The State is unable to tell the LAR how to coordinate its business practices. Each LAR must decide how to arrange its individual business practice to conform with the requirements of the solicitation. Please review the MBE forms that were sent on 3/27/07 with amendment #2 and be sure to complete the forms correctly so your bid is not rejected. These forms explain the requirements of the MBE program as well as the ability for a vendor to seek a waiver of the MBE goal. If the vendor seeks a waiver, DBM will request a detailed analysis of why the firm believes there are no portions of the work that are subcontractable. Based upon this detailed analysis, DBM will determine whether this constitutes a good faith effort, hence whether the waiver should be granted.

*20. How will the Minority Business Enterprise recognize the revenue and the individual State agencies recognize the Minority Business Spend?*

~Effective Resource Management~

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**RESPONSE**

The State will use attachments J-5 and J-6 to track the MBE subcontractor participation and payments throughout the life of the contract. These forms will have to be submitted to the DBM MBE Liaison Officer by the 15<sup>th</sup> of the month following the month that any services are performed. The LAR will submit the J-5 and the MBE subcontractor will submit the J-6.

*21. Will the State Agencies notate on their Purchase Orders which purchases they would like to make through a Minority Business?*

**RESPONSE**

No, the State agencies will not notate on their purchase orders which purchases they would like to make through a minority business. The LAR will be responsible for achieving the Minority Business Enterprise goal that it committed to on its MBE form J-1 with whatever purchases it deems appropriate.

*22. Please clarify the percentage of business that must be put through/involve a Minority Business Enterprise? Is it 25% of the Revenue?*

**RESPONSE**

The goal is for the LAR to pay 25% of its total invoiced dollars to the Minority Business Enterprise for services rendered. However, depending upon whether the lowest bidder requests and is granted a waiver of some or all of the goal, the achievement may be different.

*23. What purpose, impact, additional services, education, etc have the small, minority businesses added to your current agreement that your LAR has not/could not provide directly and what services will you expect from them on this new agreement?*

**RESPONSE**

The current LAR agreement does not contain an MBE goal. In most MBE subcontractor relationships, the prime contractor has the ability to provide all requisite services directly, however an MBE goal is still set to try and extend contracting opportunities to minority businesses that might not otherwise qualify. While the LAR could feasibly provide all services on this contract, the State still established a goal. As previously stated in the response to no. 19 above, the bidder must determine how to best utilize the MBE to achieve the established goal. If the bidder is unable to achieve a legitimate means to fulfill the goal, the bidder, may request in writing on the Attachment J-1 at the time it submits its bid, a waiver of the goal. As per COMAR 21.11.03.11.A(1), proof of good faith effort starts with the identification of "...portions of the work proposed to be performed by certified MBEs ...in order to increase the likelihood of achieving the stated goal." If you believe that there are no legitimate portions of the work that can be subcontracted, this can be the rationale for a waiver request. If your firm is the lowest bidder for this IFB, DBM will request a detailed analysis of why your firm believes there are no portions of the work that are subcontractable. Based upon this detailed analysis, DBM will

determine whether this constitutes a good faith effort, hence whether the waiver should be granted.

*24. Will the State update your pricing table so that we can provide pricing for purchases that will not include a MBE and purchases that will include a MBE?*

**RESPONSE**

No, the State will not be updating the pricing table to provide different pricing for purchases that do or do not include an MBE. Please bid using the minimum discount that you are able to provide whether an MBE is being used or not. Should the Contractor desire to bid additional discounts, it may do so with the approval of the State during the term of the contract.

*25. Does the State understand that most LAR's will include the minority business markup or the 25% of revenue fee into the discount or price that the State will pay?*

**RESPONSE**

The State does not become involved in the manner by which the LAR calculates the discount that it bids to the State. The State will simply choose the bidder bidding the highest discount when determining which company will be awarded the LAR contract.

*26. Since amendment 2 has been issued there are quite a few more questions that can be asked. Would the State be open to possibly setting up another pre-bid conference for this IFB?*

**RESPONSE**

At this time the State does not intend to schedule another pre-bid conference for this IFB. All timely questions received will be answered through a formal question and response such as this one.

*27. If indeed the protest was denied, should not the bid have been opened, rather than amended? What would be the basis of changing a very salient characteristic of the bid if the basis of the protest was denied?*

**RESPONSE**

The basis of the protest, the lack of an MBE goal, was denied in accordance with COMAR 21.11.03.14 which states that "A protest under COMAR 21.10.02 may not be filed ... concerning any act or omission by a procurement agency under this [MBE] chapter." See *Southern Maryland Cable, Inc.*, MSBCA No. 2538, \_\_ MSBCA ¶ 15\_\_ (July 28, 2006). Therefore, although procedurally MBE determinations by the procurement officer and the procuring agency are not protestable issues, the State still has the sole discretion to amend its MBE determination. In addition, it was proper protocol for the State to delay bid opening until the protest was resolved. The subsequent amendment to the IFB required MBE documentation that the bids received would not have contained. As a result, the opening of the bids would not have been appropriate.

28. *If under the current LAR contract they were not acting as a subcontractor, but rather as a prime under a different contract, what was their relationship with the LAR contract? How were they able to bill to and collect monies from the State of Maryland if there was no relationship with the current LAR (SHI)? Did the other 6 companies referenced in the protest letter participate in the same way?*

**RESPONSE**

An amendment to the current LAR contract provided that the LAR would go through the pre-existing DBM-2020-Desktop Contract software vendors to fulfill all of its orders from the State. The process is as follows: An agency issues a purchase order to a 2020 vendor, the 2020 vendor places the order and purchases the license from the LAR who then purchases the license from Microsoft. The 2020 vendor then pays the LAR for the license and the LAR transfers the license to the agency. All six 2020 master contractors referenced in the protest letter participate in the same way.

29. *If there is not an MBE subcontractor participation goal in the current LAR contract, what would be the basis for including it in the proposed LAR contract? The basis of Select and Enterprise haven't changed, nor have opportunities for subcontracting.*

**RESPONSE**

The lack of an MBE goal in the current LAR contract does not preclude the State from establishing a goal for the new LAR contract. Please review question 19 above.

30. *In terms of using MBE's for the Select and Enterprise licensing, aside from qualifying as an MBE under the state of Maryland regulations, are there any other standards/regulations/certifications that the State of Maryland requires for an MBE to act as a reseller to the State of Maryland. Usually only LAR's qualify on EA's but with the MBE component I am not sure which MBE'S would be a better fit for Maryland's standards?*

**RESPONSE**

The only requirement is that the MBE is a certified minority contractor by the Office of Minority Business Enterprise at the Maryland Department of Transportation and that the work it provides is consistent with IFB requirements. As stated in section 1.32 of the IFB as revised by Amendment #2 item 3: "A current directory of MBEs is available through the Maryland State Department of Transportation, Office of Minority Business Enterprise, P.O. Box 8755, B.W.I. Airport, Maryland 21240-0755. The phone number is 410-865-1269. The directory is also available at <http://www.mdot.state.md.us> . Select the MBE Program label. The most current and up-to-date information on MBEs is available via the web site."

31. *Does MD require this level of MBE participation for all IT contracts? If not, why not and under what circumstances?*

**RESPONSE**

The State sets individual Minority Subcontractor Participation Goals for each solicitation before it is released according to the estimated percentage of subcontractor opportunities.

32. *Has MD granted waivers to any IT contractors? Is it willing to grant one here?*

**RESPONSE**

Maryland grants waiver to contractors in accordance with COMAR 21.11.03.11.A(1). Please review the response to question #23.

33. *What is the true purpose of the MBE requirement? I understand the MBE requirement for services performed on other state contracts, but what services is the MBE supposed to be performing on this contract for their 25%? What is their value add?*

**RESPONSE**

Please review the response to question #23.

34. *Why is there an MBE requirement for the Microsoft IFB, yet there does not seem to be one for the other major software vendor contract, Novell?*

**RESPONSE**

The State has the option to determine whether to set an MBE goal for each individual contract. The lack of a goal on one contract does not preclude the State from assigning a goal to another similar contract. Please review the response to question #23.

35. *Would the state consider a cost proposal that is 25% above MSRP to cover the cost of the MBE?*

**RESPONSE**

Please review the response to question #25.

**Remember bids are due on May 11, 2007 no later than 2:00 p.m.** If there are questions concerning this solicitation, please contact me via e-mail at [khall@dbm.state.md.us](mailto:khall@dbm.state.md.us) or call me at (410) 260-7414 as soon as possible.

Date Issued: 4/30/07

By

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Kimmeria Hall  
Procurement Officer