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MARYLAND DEPARTMENT OF GENERAL SERVICES
OFFICE OF THE SECRETARY

**REQUEST FOR PROPOSALS (RFP)
TELECOMMUNICATIONS EQUIPMENT AND SERVICES (PBX IV) MASTER CONTRACT**

**Solicitation No. 001B0600162
February 4, 2020**

QUESTIONS AND RESPONSES #2

- Question 1: Section 3.7.2 – Contract Personnel General Substitution Provisions
Proposer is committed to the State’s satisfaction and recognizes the importance of reliable, qualified and experienced account teams servicing our customers. Proposer shall assign qualified personnel who possess appropriate skills for performance of the assignment.
- Will the State consider revising this section, removing the State’s unilateral authority to accept or deny any proposed replacement, and acknowledge that if the replacement is equal or better than the existing person performing the duty then he/she should be automatically approved?
- Response: Section 3.7.2 remains as is.**
- Question 2: Section 3.7.3.A – Directed Personnel Replacement
Would the State allow its replacement oversight authority, under this provision, be subject to a cause standard that is not in its sole discretion?
- Response: Section 3.7.3A remains as is.**
- Question 3: Section 3.7.3.A – Directed Personnel Replacement
Would the State consider a mutually agreed upon Mandated Remediation Plan as a condition precedent prior to ordering the replacement of personnel?
- Response: Section 3.7.3A remains as is.**
- Question 4: Attachment M – Section 4.3: Will the State consider deleting Section 4.3 and limit itself to withholding payment only on disputed amounts?
- Response: Section 4.3 is standard and remains as is.**
- Question 5: Attachment M – Section 5.1 & 5.2. Rights to Records: Would the State consider replacing Section 5.1 & 5.2 with language similar to the following:

Ownership of Deliverables. Under this Contract, Contractor may provide written reports, manuals and/or similar documents to State in connection with the Deliverables. To the extent it is within the authority of Contractor (as used here, “Contractor” excludes its suppliers and contractors) to grant it, State will own the



copyright in that portion of the Deliverables that is unique to State, first created by Contractor during the Term in the performance of this Contract, and delivered to State under this Contract (“State Information Copyright”). Other than any copyright assigned to State in the previous sentence, all intellectual property rights in the Deliverables, or based thereon, are and shall remain the sole and exclusive property of Contractor or its suppliers or contractors (“Contractor Retained IP”).

License to Contractor. State hereby grants Contractor, its affiliates and their contractors a worldwide, non-exclusive, royalty-free, non-transferable, non-sublicensable license to use, disclose, copy, display, and create derivative works of the State Information Copyright during the Term of the Contract in connection with the provision of Services and products by Contractor to State under this Contract.

Response: Attachment M remains as is.

Question 6: Attachment M –Section 6. Exclusive Use: Would the state consider deleting Section 6 based on revisions to Section 5.1 & 5.2?

Response: Attachment M Section 6 remains as is.

Question 7: Attachment M –Section 7.2: Would the State consider revising Section 7.2 of Attachment M with language similar to the following:

Except for (1) information created or otherwise owned by the Department or licensed by the Department from third parties, including all information provided by the Department to Contractor; (2) ~~materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre Existing Intellectual Property included therein such rights provided in Section 5 above;~~ and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Department will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. Contractor hereby grants State a limited, revocable, non-exclusive, non-sublicensable, non-transferable (other than as part of a permitted assignment of this Contract), royalty-free license during the Term to use the Contractor Retained IP, including any technical elements integrated into a Deliverable, solely for use in connection with the Services and products provided by Contractor to State under this Contract, provided that such Contractor Retained IP may not be separated from or used other than as part of such Deliverable. State may disclose the Contractor Retained IP to a third party as long as such third party is subject to a written nondisclosure agreement, requiring such third party to maintain the confidentiality of such Contractor Retained IP and use same solely for the benefit of State. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.

Response: Attachment M section 7.2 remains as is.

Question 8: Attachment M –Section 7.3. Patents, Copyrights, and Intellectual Property: Would the State consider revising Section 7.2 of Attachment M by adding the below language for the purposes of equity?

CONTRACTOR IS NOT RESPONSIBLE FOR ANY CLAIMS TO THE EXTENT CAUSED BY:

1. CONTENT SUBMITTED TO THE SERVICE BY STATE (OR THEIR END USERS) INCLUDING BUT NOT LIMITED TO CONTENT INVOLVING LIBEL, SLANDER, AND INVASION OF PRIVACY; OR
2. MODIFICATIONS MADE TO THE SERVICE IN QUESTION BY ANY PARTY OTHER THAN CONTRACTOR OR ITS AGENTS OR SUBCONTRACTORS, OR BY CONTRACTOR WORKING AT THE DIRECTION OF STATE AND/OR THEIR AGENTS AND IN ACCORDANCE WITH ANOTHER VENDORS' SPECIFICATIONS; OR
3. THE COMBINATION, OPERATION, OR USE OF THE SERVICE WITH OTHER ITEMS IF CONTRACTOR DID NOT SUPPLY OR APPROVE FOR USE THE ITEM TO THE EXTENT ANY INFRINGEMENT CLAIM IS ATTRIBUTABLE SOLELY TO THE OTHER ITEMS CONTRACTOR DID NOT SUPPLY OR APPROVE OF; OR
4. CONTRACTOR'S ADHERENCE TO WRITTEN SPECIFICATIONS PROVIDED BY STATE TO THE EXTENT THE INFRINGEMENT CLAIM IS ATTRIBUTABLE SOLELY TO THE STATE'S WRITTEN SPECIFICATIONS; OR
5. USE OR OPERATION OF THE SERVICE BY OR ON BEHALF OF STATE THAT IS INCONSISTENT WITH THIS AGREEMENT OR CONTRACTOR'S WRITTEN INSTRUCTIONS;
6. STATE'S FAILURE TO USE ANY NEW OR CORRECTED VERSIONS OF THE SERVICE MADE AVAILABLE OR PROVIDED BY CONTRACTOR WITHIN A REASONABLE PERIOD OF TIME, PROVIDED THAT CONTRACTOR NOTIFIED THE DIRECTOR, IN WRITING, THAT ANY NEW OR CORRECTED VERSIONS WERE MADE AVAILABLE OR PROVIDED IN CONNECTION WITH ANY POTENTIAL, ALLEGED, OR SUSPECTED CLAIMS OF INFRINGEMENT OR MISAPPROPRIATIONS; OR
7. ANY EQUIPMENT, SYSTEM, PRODUCT, PROCESS, METHOD OR SERVICE OF STATE WHICH OTHERWISE INFRINGED ANY PATENT OR COPYRIGHT OR MISAPPROPRIATED ANY OTHER INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY REGARDLESS OF THE SUPPLY OF THE SERVICE TO STATE HEREUNDER.

THE FOREGOING STATES THE ENTIRE OBLIGATION OF CONTRACTOR TO STATE AND IS 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 THERETO.

Response: Attachment M section 7.2 remains as is.

Question 9: Attachment M –Section 9, Loss of Data
Would the State consider deleting Section 9, Loss of Data in Attachment M - 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?

Response: Attachment M section 9 remains as is.

Question 10: Attachment M – Section 10. Indemnification and Notification of Legal Requests
Will the State consider the following language as a revision to the Indemnification section?

The Contractor shall indemnify the State, its respective elected/appointed officials, employees, departments, agencies, agents and volunteers from any and all third party claims, demands, suits, actions, recoveries, judgements, damages and actions of any kind or nature, whether in law or in equity, arising out of any personal injury or any real or tangible property damage that is a result of the willful misconduct or negligent acts or omissions of Contractor in its performance of this Agreement; provided that Contractor shall have no liability for costs and damages to the State, its officers, agents and employees or any other person for any

claim arising out of this Agreement, as that is a result of the willful, or negligent misconduct or omission of the State, its officers, agents and employees or volunteers.

Response: Attachment M section 10 remains as is.

Question 11: Attachment M – Section 11. Non-Hiring of Employees
Is the State’s intent that the Contractor cannot hire former State officials or employees during the term of the Contract whose duties while serving the State affected the subject matter of this Contract?

Response: Attachment M section 11 remains as is.

Question 12: Attachment M – Section 17. Termination for Default
For purposes of equity, would the State consider revising Section 17 of Attachment M similar to the following:

Contractor Default. In addition to the rights reserved in the Contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any material term or condition of the Contract. The State shall provide written notice to Contractor of the State’s intent to terminate along with a description of the alleged material non-compliance. The Contractor shall have thirty (30) days in which to cure the breach.

The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor’s breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B

State Default. In addition to the rights reserved in the Contract, the Contractor may terminate the Contract in whole or in part due to the failure of the State to comply with any material term or condition of the Contract. The Contractor shall provide written notice to State of the Contractor’s intent to terminate along with a description of the alleged material non-compliance. The State shall have thirty (30) days in which to cure the breach.

Response: Attachment M section 17 remains as is.

Question 13: Attachment M – Section 25.2. Right to Audit
Would the State consider making the notice period under Section 25.2 based on a ‘reasonableness’ standard?

Response: Attachment M section 25.2 remains as is.

Question 14 Attachment M – Section 28, Subcontracting; Assignment
In light of today’s environment of mergers and acquisitions and due to the long term nature of this contract, would State consider adding the following language to Section 28?

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.

Response: No. Attachment M section 25.2 remains as is.

Question 15: Attachment M – Section 29. Limitations of Liability

29.1C. Did the State intend to include a reference to Section 6 within this section?

Attachment M – Section 29. Limitations of Liability

Will the State consider the following language for the Limitations of Liability Section?

In our 2011 response we asked the following: 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.

Limitation of Liability. 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.

EXCEPT WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET OUT IN SECTION 29, 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.

Response: Attachment M section 29 remains as is.

Question 16: Attachment M – Section 30.3. Commercial Nondiscrimination

Proposers may be restricted or prohibited under confidentiality agreements to disclose some of the described information for some of its subcontractors, vendors and suppliers within the State of Maryland.

Would the State consider revising this language to exclude the disclosure of information that the contractor is contractually prohibited from disclosing?

Response: Attachment M section 30.3 remains as is.

Question 17: Attachment M – Section 39.2. Liquidated Damages for MBE

Would the State consider removing the liquidated damages provision and instead use its other contractual remedies to enforce MBE compliance?

Response: No. Attachment M section 39.2 remains as is.

Question 18: Attachment M – Section 39.2. Liquidated Damages for MBE

Would State consider adding a cure period prior to enforcing liquidated damages for MBE compliance?

Response: Attachment M section 39.2 remains as is.

Question 19: Please explain what pricing information DGS expects the Offeror to complete and submit in the Excel Spreadsheet titled: 1-Response #1-Response Pricing Form.xls that was provided with the solicitation documents?

Response: **The state has no knowledge of the Excel spreadsheet titled: 1-Response #1-Response Pricing Form.xls. Please refer to the eMMA for the correct pricing form labeled Attachment B.**

Question 20: Please confirm what type of Organization Chart is requested? (i.e. Order Fulfillment Flow Chart or Organizational Chart of Offeror's Company)

Response 20: Organizational Chart of Offeror's Company

Question 21 What level of detail needs to be included in this Organization Chart?

Response: **Detailed as possible as you see fit.**

Questions 22: Per this RFP Section 5.2.3, the Offeror may submit Proposals (both Technical and Price) by electronic means, which would be directly to the Procurement Officer by e-mail or hand-delivery, which would have to be set up in advance. However, on the eMMA website, it appears there is a listing on the left-hand side of the screen that states Prepare Response and Pricing. In addition, there is a green button for the tabs that states "Validate & Submit". Please confirm if the Offeror is expected to submit via e-mail to the Procurement Officer **or via upload** on the eMMA website?

Response: **The RFP indicated that proposal can be submitted via email to the procurement officer or mail a hardcopy to the procurement officer in the address listed in the RFP. Do not submit your proposal in eMMA.**

Question 23: On the Government-provided Attachment B – Financial_Proposal_LaborRateSchedule – PBX IV.xls, the Signature line at the bottom of this pricing form is right justified and locked and cannot be adjusted to the left. Please correct this to allow Offerors to clearly add their signature and title.

Response: **Both signature and title can be added. Attachment B remains as is.**

Question 24: On the bottom left side of Attachment B, where the Offeror is to complete their Company information, when populating this space, there is a restriction to the number of characters, therefore, there is not enough space to complete. If Attachment B can be corrected by merging the left and middle blocks of space for this information, it will allow plenty of room to type the Offeror's information. Please correct Attachment B to remedy this issue as the RFP explicitly states in RFP Section 5.4, page 50 of 102, that Offerors are not to alter the forms.

Response: **Attachment B, remains as is. For difficulty, enter company's information as see fit or print.**

Question 25: In the RFP page 47 of 102, Section 5.2.5, the instructions require the Offeror to submit our financial proposal in a Microsoft Excel format, an Adobe PDF, and an Adobe PDF with redacted confidential/proprietary information. Please confirm that the original signature is only required on the PDF formats as we cannot sign an electronic Microsoft Excel file.

Response: **The state acknowledges signature on the PDF format.**