



Questions and Answers No. 2
Request for Proposal 060B2490021-2015
Commercial Off-the-Shelf Software (COTS)
December 10, 2015

Ladies/Gentlemen:

This list of questions and responses is being issued to clarify certain information contained in the above referenced RFP. The statements and interpretations contained in the following responses to questions by potential Offerors are final and binding to the State. Nothing in the State's response 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.

1. RFP Section 2.3 (Functional Area I – COTS Software) – Are all COTS Software licensing types/methods within the scope of this Contract (i.e., perpetual, term, subscription, Software as a Service)? If not, please specify the licensing types/methods that are within the scope of the Contract.

RESPONSE: Perpetual, term, and subscription licenses are within the scope of this Contract. Software-as-a-Service is not within the scope of this contract.

2. RFP Section 2.4 (Functional Area II – Installation and Training Services) and Attachment F-2 - Attachment F-2 only provides for installation and training labor rates. Are fixed price Installation and training services within scope? Many software manufacturers offer fixed price "SKUs" for the installation of their software or training for their products. If fixed prices are within scope for installation and training services, how would the state like bidders to propose fixed price Installation and training in the proposal?

RESPONSE: Yes, refer to Section 1.4, Fixed Price (FP) and Labor Hour PORFPs will be issued under the Master Contract as described in each respective PORFP, as appropriate to the type of products and/or services being requested.

3. Additionally, will the state accept different labor rates for each manufacturer or will the state only accept one rate per labor category from the bidder?

RESPONSE: No, the State will not accept different labor rates by manufacturer.

4. General RFP – Will the state consider releasing a Microsoft Word version of the RFP?

RESPONSE: Yes, a word version of the RFP will be posted on eMarylandMarketplace.

5. RFP Section 1.1.5 - Please explain how the DoIT expects manufacturers to license software when the terms and conditions in the RFP and Master Contract conflict with COTS software licenses. How does the state propose this be handled?

RESPONSE: The Master Contract and its exhibits (including the RFP) take precedence in the event of a conflict. To the extent that POs incorporate software agreements, pursuant to Section 2.3 of the Contract, those POs may not change the terms of, or conflict with, the Master Contract or RFP.

6. RFP Section 1.1.6 - We cannot agree to unilaterally be bound by terms yet to be defined at some point in the future. Please explain how the DoIT is committed to reasonably working with manufacturers to address these situations.

RESPONSE: Master Contractors will have an opportunity to review any proposed modification, which would include updates necessitated by changes in applicable law and/or COTS program procedures. At that time, Master Contractors will have the option to determine if they are willing to accept the proposed changes by executing the modification.

7. Will the DoIT agree that no changes during the term will be applicable unless mutually agreed?

RESPONSE: See response to Question #6. Master Contractors will only be bound by changes that they accept through execution of proposed update modifications. However, Offerors should note that acceptance of program and law updates are an eligibility requirement for continued participation in the COTS program and competition at the secondary PORFP level.

8. RFP Section 1.30 Achieving the goals established by the Section 508 and similar regulations will be the result of a partnership effort between government agencies, their suppliers of software and hardware, and information technology service professionals. We intend to help governmental organizations meet these objectives by providing software tools that are capable of producing applications that function within the accessibility standards. The actual compliance of any given application will be dependent upon the proper use of our tools as well as the accessibility compliance of the other hardware and software components with which our software interoperates. To ensure such compliance, specific requirements must be stated in a PO Work Order including the intended audience, technical and functional specifications and associated costs for compliance. Does the State acknowledge that compliance will be a joint effort addressed, if applicable, in any given PORFP and the response thereto?

RESPONSE: RFP Section 1.30.1 requires that Master Contractor respond to a PORFP based on the inherent capabilities of the products and services that it proposes, without

regard to the State’s “proper use” of the products or the characteristics of any other hardware or software that may be used alongside the Master Contractor’s solution.

9. Is the reference to Section E in section 1.43.4.3 a typo? It does not make sense as written. Please clarify DoIT’s intent.

RESPONSE: Please see Amendment #1, Item #3.

10. RFP Section 2.3.1 Does the DoIT acknowledge that the terms and conditions of the software license agreement provided by the manufacturer will govern the software licensed? Certain software have special terms and conditions that are necessary and may conflict with the terms and conditions of a standard form State-issued master contract. Does the DoIT acknowledge that there are times when this is appropriate? How does the DoIT propose that these situations be addressed, so that there are no surprises for either party?

RESPONSE: Please see response to Question #5. Manufacturer license agreements will govern a Requesting Agency’s use of COTS software to the extent that there is no conflict with the Master Contract and its exhibits. In the event of a conflict with the Master Contract and its exhibits, the Master Contract will control.

11. RFP Section 2.5.1 How should a manufacturer respond when the requested services are not optional?

RESPONSE: Please clarify the question.

12. RFP Section 2.6 Is this question an either/or as remote access would be included for current software maintenance? How should a manufacturer respond when the requested services are not optional?

RESPONSE: Please clarify the question.

13. RFP Section 2.8.2 The requesting agency will be required to execute the applicable master software license agreement and license Rider. Please confirm that this Section covers where that will occur.

RESPONSE: RFP Section 2.8.2 describes the pre-award process for submission of a PORFP response. Any necessary software agreements would be executed by the Requesting Agency and manufacturer post-award; therefore, that would not be covered by RFP Section 2.8.2.

14. Can the state provide more context on the type of detail it would like to see as part of the technical volume for each COTS product. For example Name of product, description of product capabilities, hardware product must be installed on, what business/technical problems does the

COTS software solve. Specifically is there any particular level of detail the state requires as well as any other information outside of what was listed above for the State to consider the product.

RESPONSE: RFP Section 3.4.2.3 Manufacturer's Letter of Authorization specifically requires that the Offeror state each manufacturer product line proposed. In addition RFP Section 3.4.2.3.B provides direction for what is to be presented in the Letters of Authorization. In addition, Attachments F-1 and F-2 require that Offerors state the manufacturer of the COTS software proposed.

There is no requirement to provide a description of the product capabilities, hardware to be installed on, what business/technical problems the product would solve.

15. As the Manufacturer of the products can the State describe what if any response is needed for sections 3.4.2.3 and 3.4.2.4? We are unclear how we provide letter of certification for our own products as well as fulfillment.

RESPONSE: Please submit a letter on your company letterhead that explains that you will be selling your own product.

16. Can we include our Software as a Service Portfolio as part of this response?

RESPONSE: No, Software as a Service is not within the scope of RFP 060B2490021-2015.

17. Can we include our mainframe software as part of this response?

RESPONSE: No, mainframe software is not within the scope of RFP 060B2490021-2015.

18. For Functional Area II - Labor Rate Schedule; do we have to adhere to the 3 categories outlined in the table? We'd like to include additional labor categories if possible.

RESPONSE: Offerors may not add additional labor categories to Attachment F-2 – Functional Area II.

19. Is the state willing to waive the non-visual access requirements in both the RFP (Section 1.30.1) and the Contract (Section 18.19)?

RESPONSE: No.

20. Is the state willing to qualify the continuing obligation that Contractor comply with State policies, standards and guidelines (Section 2.2.1 of the RFP) to only those policies, standards and guidelines which are made known in advance to Contractor, and which do not otherwise conflict with the terms of the RFP or Contract?

RESPONSE: No. Master Contractors have a continuing and unqualified obligation to comply with all laws, regulations, ordinances, policies, standards, and guidelines applicable to performance under the Contract.

21. Is the 3-day delivery time set forth under Section 2.3.3 firm, or is the state willing to accommodate other commercially reasonable delivery time frames based on contingencies outside of Contractor's control (carrier delays, supplier delays, etc)?

RESPONSE: As stated in RFP Section 2.3.3, a PORFP may specify other requirements for delivery.

22. Is the State willing to accept Personnel substitutions in the event of job-related changes (RFP Section 2.12.2) such as resignations, terminations, promotions, etc.?

RESPONSE: Substitution of personnel will be considered in accordance with RFP Section 2.12.2.

23. Under Section 4.5 of the Contract, is the State willing to limit its right to withhold payment to breaches which can be objectively proven (rather than simply subject to the opinion of State personnel) and are incapable of cure within a 30 day cure period?

RESPONSE: No.

24. For third party software, how does the State intend to accommodate software EULA's governing third party COTS which Contractor sells to the state under this Contract? Specifically, how does the state intend to comply with the rights, restrictions, warranties and disclaimers set-forth in such EULA's, even if they conflict with the terms of the Contract?

RESPONSE: Please see response to Questions #5 and #10.

25. Is it the State's position that COTS itself constitutes "Work Product" as defined in Section 5.2 of the Contract?

RESPONSE: No.

26. As this is not a works-for-hire contract, what Work Product does the State expect or anticipate that Contractor will produce under this Contract?

RESPONSE: By way of example only, a Master Contractor might produce training or basic configuration documentation under a PO.

27. With respect to Section 5.4 and 5.5 of the Contract, is the State willing to limit the effect of these provisions to COTS manufactured by Contractor and not that manufactured by third parties? In general, Contractor cannot grant licenses, warrant products or provide indemnities in excess of

those rights provided under the third party's EULA, or as provided in Contractor's reseller agreement with the manufacturer.

RESPONSE: The State will not limit the terms of Sections 5.4 and 5.5 of the Contract. However, the State recognizes that Master Contractors cannot grant licenses, warrant products, or provide rights that are greater than those offered by the manufacturer.

28. In general, will the State consider third party COTS designers/manufacturers to be a "subcontractor" of Contractor, as that term is used throughout the Agreement and RFP, simply by virtue of Contractor selling said party's products?

RESPONSE: No.

29. Under Section 7, please confirm that only the following claims would be excepted from the damages cap established under Section 7.3: third party indemnity claims, IP claims and claims arising from personal injury or physical loss.

RESPONSE: The circumstances under which a Master Contractor's liability is limited are described in Section 7.3 of the Master Contract.

30. Is the State willing to agree to a categorical prohibition on claiming or recovering consequential, indirect, special and punitive damages?

RESPONSE: No.

31. Contractor cannot grant subcontractors authority to act as its legal agent; please advise whether the state is willing to alter or remove the last sentence in Section 7.4 to reflect as much.

RESPONSE: No, the State will not modify Section 7.4 of the Contract.

32. Would the state consider a software error/bug, or hardware/connectivity failure that results in data loss to be an omission or act of negligence that would render Contractor responsible for data recreation under Section 11?

RESPONSE: A Contractor is only responsible for recreation of State data in the event of data loss that is due to the intentional act, omission, or negligence of the Contractor. This determination would be fact-specific, so the State will not speculate as to a potential outcome based on the scenario presented in the question.

33. Is the State willing to strike Section 17 of the Contract in Contractor's case?

RESPONSE: Section 17 will only be effective as to those Contractors to whom it applies.

34. Is the State willing to confine its termination rights under Section 18.6 of the Contract to material breaches?

RESPONSE: No.

35. Also, is the State willing to provide the Contractor with a defined notice and cure period before resorting to termination?

RESPONSE: As stated in Section 18.6, the full scope of the State's right to terminate for default shall be governed by COMAR 21.07.01.11B.

36. Is the state willing to provide notice reasonably in advance of terminating the Contract under Section 18.7? Is the state willing to provide a reciprocal termination for convenience right to Contractor?

RESPONSE: As stated in Section 18.7, the full scope of the State's right to terminate for convenience shall be governed by COMAR 21.07.01.12A(2) The State will not provide a reciprocal right to the Contractor.

37. Due to the cost of retaining resources on stand-by during a work stoppage, is the State willing to contractually limit the maximum duration of a work suspension under Section 18.18 of the Contract, or alternatively, allow the Contractor to terminate the work without consequence if the work stoppage exceeds a certain defined period through no fault of Contractors?

RESPONSE: No.

38. Is the state willing to make an exception to the restriction in the second sentence in Section 18.22 of the Contract if the delay or hindrance results from the acts or omissions of the State?

RESPONSE: No.

39. Will the State's living wage laws and regulations apply to Contractor or this Contract?

RESPONSE: No. Please see Amendment #1.

40. Does a software application in an appliance form factor qualify in the COTS Software category? An example would be something like Fortinet products (purchase a license and a box that you install)

RESPONSE: No, software application in an appliance form does not qualify for inclusion in the COTS program.

41. Can [Manufacturers] update the Product List annually?

RESPONSE: Please refer to RFP Section 2.7 Procedure for Adding a Manufacturer's Product Line.

42. Does "Foreign Corporation" refer to US law...meaning a company not incorporated in MD?

RESPONSE: Under Md. Code Ann., Corps. & Ass'ns § 1-101, a "Foreign Corporation" is a corporation, association, or joint-stock company organized under the laws of the United States, another state of the United States, a territory, possession, or district of the United States, or a foreign country.

43. Signature pages 76 & 78 for Software and Maintenance in the RFP both have the statement "*I acknowledge by signing this attachment, the requirement of providing pricing no higher than MSRP as of the date of the PORFP proposal submission.*" Does the State just want verification that we will not charge above MSRP and is not asking for a price list?

RESPONSE: Yes, Attachment F-1 – Functional Area I and Attachment F-2 – Functional Area III only require the MSRP acknowledgement for MSRP pricing at the PORFP level. Neither Attachment requires submission of a price list.

44. On Attachment F-2, (page 77) the State wants hourly rates for Installation and Training but also refers to completing D-1, D-2, and/or D-3. Where are these forms?

RESPONSE: This is an error in the RFP which was corrected in Amendment #1 to the RFP.

45. If an Offeror doesn't respond to Functional Area II at the time of the initial bid submission, will they be able to request that Functional Area II be added post contract award?

RESPONSE: Functional Areas may only be added during Expansion Windows offered every three years by DoIT. For more information, please refer to the second paragraph in RFP Section 1.5 Master Contract Duration. If an Offeror does not propose to a particular Functional Area at the time of proposal submission, the Offeror would have to wait until the next expansion window to propose that Functional Area.

46. Many publishers provide their own installation and training services and those services are sold through a reseller via a part number. If an Offeror doesn't respond to Functional Area II, will they still be able to resell publisher-provided services via a part number?

RESPONSE: An Offeror must propose and receive an award under Functional Areas II in order to provide installation and training services.

47. Provide three (3) examples of the Offeror's **organization experience**, type of COTS software and/or services provided and the length of time the organization has been providing the COTS software and/or services. What is "organization experience" in this context?

RESPONSE: The RFP Section 3.4.2.5A is referring to the nature of the experience of the Offeror in providing services within the scope of those identified in the RFP.

48. 3.4.2.5 – Is POC information regarding past experiences required?

RESPONSE: No.

49. Are the labor categories in section 2.13 only *examples* of labor categories that you would like proposed? Or are you asking that bidders propose these and **only these** 3 labor categories in our response?

RESPONSE: Please see response to Question 18.

50. Can bidders propose additional labor categories if we believe they are necessary?

RESPONSE: Please see response to Question 18.

51. Is there a Technical Proposal Page limit?

RESPONSE: No, there is not a page limit for Technical Proposals.

52. We have the following question on 060B2490021-2015 regarding Attachment P – Offeror Information Sheet: We do not have a Federal VOSB# and as far as I know there is no such thing. However, we can provide the certification letter from the Department of Veterans Affairs showing that we are in good standing. Will this suffice in place of providing a certificate number on the form?

RESPONSE: The Federal VOSB# is only required if the Offeror is a Veteran-Owned Small Business Enterprise.

53. Are we allowed to make exceptions to the Terms and Conditions of Attachment A of the RFP?

RESPONSE: Pursuant to RFP Section 1.21 Mandatory Contractual Terms and RFP Section 3.4.2.2 Executive Summary, any exceptions to this RFP, the Contract, and/or any attachments shall be clearly identified in the Executive Summary of the Technical Proposal..

Thank -you,

Gayle Mealy
Procurement Officer



End of Question and Answer #2