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Deputy Secretary

**QUESTIONS AND RESPONSES # 2**  
**PROJECT NO. F10B4400003**  
**Department of Budget and Management, Central Collection Unit**  
**Account Verification Services**  
**Aug. 29, 2013**

Ladies/Gentlemen:

This List of Questions and Responses, questions #24 through #27, is issued to clarify certain information contained in the above named IFB.

In most instances the submitted questions and the Department's responses merely serve to clarify the existing requirements of the IFB. Sometimes, however, in submitting questions potential Offerors may make statements or express interpretations of contract requirements that may be inconsistent with the Department's intent. To the extent that the Department recognizes such an incorrect interpretation, the provided answer will note that the interpretation is erroneous and either state that the question is moot once the correct interpretation is explained or provide the answer based upon the correct interpretation.

No provided answer to a question may in and of itself change any requirement of the IFB. If, based upon a submitted question, it is determined that any portion of the IFB should be changed, the actual change may only be implemented via a formal amendment to the IFB. In this situation, the answer provided will reference the amendment which contains the IFB change.

The statements and interpretations of contract requirements which are stated in the following questions of potential Offerors 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.

*24. Given the many regulations governing the data requested by the IFB, will the Department accept a Bidder's licensing agreement in lieu of or as part of the Contract, Attachment A?*

**RESPONSE:** The Department cannot adopt Bidder-submitted contracts wholesale without raising conflicts with Maryland law, and it is not feasible to incorporate provisions submitted by each Bidder into the Contract before bid closing. Accordingly, we have reviewed sample

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contracts submitted by Bidders and amended the State's Contract to the extent legally permissible to address individual concerns raised by Bidders. It is anticipated, however, that the Department will sign a limited agreement acceptable to the Department addressing product licensing and proprietary rights if requested to do so as part of the credentialing process for the awarded Bidder after Contract signing. Any such agreement would be subordinate to the terms of the Contract and IFB and cannot contain provisions that raise conflicts with Maryland law or the Contract, including but not limited to choice of law, indemnification, general disclaimers of warranties, and modification of fees clauses, etc. See Amendment #2 Items 1 and 2.

*25. Will the Department remove Section 2.2 of the Contract, Attachment A, in its entirety and agree that any changes to the scope of the contract must be mutually agreed upon by both parties such that Section 2.3, with modification govern: "The Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained."?*

**RESPONSE:** The Department cannot remove Section 2.2 of the Contract, Attachment A, because it is mandated by Maryland law. See, e.g., State Finance and Procurement Article § 13-218 (a) (6) and COMAR 21.07.01.02.

*26. Will the Department remove Section 6 of the Contract, Attachment A, governing Exclusive Use in favor of a Bidder's licensing agreement?*

**RESPONSE: Yes and no.** The Department has removed Section 6 of the Contract, Attachment A, governing Exclusive Use. See Amendment #2 Item 3. The Department, however, has not removed that provision "in favor of a Bidder's licensing agreement." See Response to #24.

*27. Will the Department modify Section 10.1 of the Contract, Attachment A, to read as follows: "...are in connection with or are attributable to the willful misconduct or intentional acts of the Contractor..."?*

**RESPONSE:** The Department has removed the provisions of Section 10 of the Contract, Attachment A, entirely. See Amendment #1 Item 15.

**Remember bids are due on September 10, 2013 (per Amendment #1 Items 1, 5 and 6) no later than 12:00 p.m.** If there are questions concerning this solicitation, please contact me via e-mail at [rachel.hershey@maryland.gov](mailto:rachel.hershey@maryland.gov) or call me at (410) 260-7681 as soon as possible.

Date Issued: 08/29/2013

By:

Rachel Hershey  
Procurement Officer