Support Maryland Health Benefit Exchange to Implement the Affordable Care Act (ACA)
Maryland Health Benefit Exchange (Exchange)
SOLICITATION NO. EXCHANGE – (DHMSO294031)
Vendor Question Responses (6th Set) - Published 12/09/2011

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The Offeror shall provide prices in Attachment F based upon information set forth in the RFP. By submitting its Technical Proposal and its Financial Proposal, the Offeror acknowledges there are unknown aspects of the scope of work due to, among other things, the lack of finalized regulations and guidance from CMS regarding ACA implementation. The Offeror further acknowledges that it understands that the pricing of all items, including the overall prices, must fully take into account all risks and contingencies that are necessary for the State to have a fully operational system by no later than December 31, 2012	While some risk and contingencies can be identified and planned for, the State seeks to transfers all risks to the Offeror. Will the State revise this requirement to provide that changes resulting from CMS regulations/guidance that change the planned performance will be addressed via change order? In addition it will be necessary to agree on the other unknown aspects and/or contingencies for which the Offeror assumes financial/performance responsibility as part of the Contract. Will the State revise this requirement to permit that agreement to be reached?	While some risk and contingencies can be identified and planned for, the State seeks to transfers all risks to the Offeror. Will the State revise this requirement to provide that changes resulting from CMS regulations/guidance that change the planned performance will be addressed via change order? In addition it will be necessary to agree on the other unknown aspects and/or contingencies for which the Offeror assumes financial/performance responsibility as part of the Contract. Will the State revise this requirement to permit that agreement to be reached?	In the event that CMS updates its regulatory guidance in a way that substantially and unforeseeably increases the scope of work or cost of performance, the Exchange will consider an equitable adjustment to scope of work or contract price, or other appropriate modifications to the terms and conditions. The Offerors' Financial Proposals should take into account the fact that CMS will be issuing regulatory guidance and that the selected Offeror nonethless needs to provide a system that satisfies all legal and regulatory requirements as well as the requirements set forth in the RFP.
	Regarding item (e), consideration of an invoice as "properly submitted" should not depend on whether the State disputes it – the State can dispute any invoice, whether wrongly or correctly, but ultimately it is should be an objective standard as to whether the invoice was originally "properly submitted". Instead it could say "The invoice is correct." We would also like clarification relative to why an additional 30 days might be required after funding from the applicable federal agencies/grants, if the invoice was already properly submitted and the services accepted, and why late payment, no matter how late, should not entitle Contractor to interest	Regarding item (e), consideration of an invoice as "properly submitted" should not depend on whether the State disputes it – the State can dispute any invoice, whether wrongly or correctly, but ultimately it is should be an objective standard as to whether the invoice was originally "properly submitted". Instead it could say "The invoice is correct." We would also like clarification relative to why an additional 30 days might be required after funding from the applicable federal agencies/grants, if the invoice was already properly submitted and the services accepted, and why late payment, no matter how late, should not entitle Contractor to interest	PRIOR ANSWER (PUBLISHED ON 12/18) Additionally, Exchange agrees. Section 4.2 of Attachment A will be updated to state, "If the Contractor fails to perform its obligations in a timely manner in accordance with the terms of the Contract, the Procurement Officer may refuse or limit approval of any invoice for payment for such delayed or deficient Services, and may cause payments to the Contractor for such Services to be reduced or withheld until such time as the Contractor meets the requirements of the Contract with respect to such Services" REVISED ANSWER (PUBLISHED ON 12/9/2011) Section 4.3 of Attachment A will be updated to state, "If, in the opinion of the Procurement Officer, the Contractor fails to perform its obligations in a satisfactory and timely manner in accordance with the terms of the Contract, the Procurement Officer may refuse or limit approval of any invoice for payment for such delayed or deficient services, and may cause payments to the Contractor for such services to be reduced or withheld until such time as the Procurement Officer determines that the Contractor has met the requirements of the Contract with respect to such services." 30 days processing time is established under this contract.
	Not all documents relating to the project are the property of the State – the intellectual property sections of the agreement govern what is the property of the State. We also request additional time to collect such documents – 3 calendar days would very likely be too short. And the documentation should be subject to the confidentiality section of the agreement, not to different confidentiality terms (Section 23.3).	Not all documents relating to the project are the property of the State – the intellectual property sections of the agreement govern what is the property of the State. We also request additional time to collect such documents – 3 calendar days would very likely be too short. And the documentation should be subject to the confidentiality section of the agreement, not to different confidentiality terms (Section 23.3).	Exchange will revise Section 23.2 of Attachment A to clarify that intellectual property in which Offeror or a 3rd party previously held rights is not deemed property of the State, unless otherwise provided under the contract. Additionally, in Section 23.1 of Attachment A, Exchange will extend the (3) three day time frame to no more than (5) five days. Need more clarity "And the documentation should be subject to the confidentiality section of the agreement, not to different confidentiality terms (Section 23.3)."
As written, the Exchange has the ability to withhold payment if, in the sole discretion of the Procurement Officer, Contractor has failed to perform its obligations and "and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer."	We propose that the provision be revised to provide: "If the Contractor fails to perform its obligations in a timely manner in accordance with the terms of the Contract, the Procurement Officer may refuse or limit approval of any invoice for payment for such delayed or deficient Services, and may cause payments to the Contractor for such Services to be reduced or withheld until such time as the Contractor meets the requirements of the Contract with respect to such Services."	We propose that the provision be revised to provide: "If the Contractor fails to perform its obligations in a timely manner in accordance with the terms of the Contract, the Procurement Officer may refuse or limit approval of any invoice for payment for such delayed or deficient Services, and may cause payments to the Contractor for such Services to be reduced or withheld until such time as the Contractor meets the requirements of the Contract with respect to such Services."	Section 4.3 of Attachment A will be updated to state, "If, in the opinion of the Procurement Officer, the Contractor fails to perform its obligations in a satisfactory and timely manner in accordance with the terms of the Contract, the Procurement Officer may refuse or limit approval of any invoice for payment for such delayed or deficient services, and may cause payments to the Contractor for such services to be reduced or withheld until such time as the Procurement Officer determines that the Contractor has met the requirements of the Contract with respect to such services."

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Section 5.1 provides that Exchange owns only software deliverables but Section 7 grants the Exchange ownership of all work created in connection with the RFP. Exchange's ownership of IP rights would seem to prohibit Contractor from performing subsequent HIX projects, contrary to its understood intent of the Affordable Care Act.	We request that the Exchange's intellectual property rights be clarified. Based on the Exchange's clarification of its intellectual property rights, we would reserve our right to take exception to such terms.	We request that the Exchange's intellectual property rights be clarified. Based on the Exchange's clarification of its intellectual property rights, we would reserve our right to take exception to such terms.	Section 5.1 and Section 7 of Attachment A will remain same.
Section 6 provides that Exchange "shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract." Exchange's rights would include internal Contractor records, derivative works of existing Contractor IP and also seem to prohibit Contractor from performing subsequent HIX projects, contrary to its understood intent of the Affordable Care Act.	See above.	See above.	Section 6 of Attachment A, will be revised to include "Except as otherwise provided in the contract..." Need more clarity on, "...seem to prohibit Contractor from performing subsequent HIX projects, contrary to its understood intent of the Affordable Care Act."
	We propose that the contract be amended to replace Section 18 with the alternate long form termination for convenience clause found in COMAR § 21.07.01.12A(2). The long form better defines the rights and obligations of the parties in the event a project of this type were terminated for convenience.	We propose that the contract be amended to replace Section 18 with the alternate long form termination for convenience clause found in COMAR § 21.07.01.12A(2). The long form better defines the rights and obligations of the parties in the event a project of this type were terminated for convenience.	As stated in Section 18, termination of the contract, "including the determination of the rights and obligations of the parties, shall be on the same terms as those set forth in COMAR § 21.07.01.12A(2)."
	Since invoices are for deliverables/services already provided and accepted by the Exchange, and the Exchange has other remedies available to it including liquidated damages for missed service metrics, we would expect this paragraph to be removed from the final contract.	Since invoices are for deliverables/services already provided and accepted by the Exchange, and the Exchange has other remedies available to it including liquidated damages for missed service metrics, we would expect this paragraph to be removed from the final contract.	Section 4.3 of Attachment A will be updated to state, "If, in the opinion of the Procurement Officer, the Contractor fails to perform its obligations in a satisfactory and timely manner in accordance with the terms of the Contract, the Procurement Officer may refuse or limit approval of any invoice for payment for such delayed or deficient services, and may cause payments to the Contractor for such services to be reduced or withheld until such time as the Procurement Officer determines that the Contractor has met the requirements of the Contract with respect to such services."
	The license to COTS and/or Pre-Existing Intellectual Property can be provided so long, as, to the extent legally enforceable, that license (i) is limited to the narrowly defined purpose of the Contract; and (ii) does not extend to the competitors of the owner of the item being licensed.	The license to COTS and/or Pre-Existing Intellectual Property can be provided so long, as, to the extent legally enforceable, that license (i) is limited to the narrowly defined purpose of the Contract; and (ii) does not extend to the competitors of the owner of the item being licensed.	Section 7.2 of Attachment A will remain same.
	Consistent with our other software contracts, our warranty for IP infringement applies to third party copyrights, patents or trade secrets that exist on the Effective Date and that arise or are enforceable under the laws of the United States of America. Recognizing that an Offeror can only warrant what it has control over, our warranty does not extend to (i) the combination, operation or use of the Software or Documentation with any items that Offeror did not supply; (ii) State's failure to use any new or corrected versions of the Software or Documentation made available by Offeror; or (iii) Offeror's adherence to State's specifications or instructions.	Consistent with our other software contracts, our warranty for IP infringement applies to third party copyrights, patents or trade secrets that exist on the Effective Date and that arise or are enforceable under the laws of the United States of America. Recognizing that an Offeror can only warrant what it has control over, our warranty does not extend to (i) the combination, operation or use of the Software or Documentation with any items that Offeror did not supply; (ii) State's failure to use any new or corrected versions of the Software or Documentation made available by Offeror; or (iii) Offeror's adherence to State's specifications or instructions.	Section 7.2 of Attachment A will remain same.

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	In order to facilitate an orderly wind down and transition of the project tasks/deliverables in progress, we would expect the final contract to include a 30 day prior written notice of termination for convenience (120 days for hosting Task Orders).	We would like to request payment terms of net thirty (30) from the date of invoice, where invoices would be submitted at the completion of all deliverables within each milestone.	Any discussions with an offeror will be consistent with the Exchanges procurement policies and procedures.
	In providing the State a "turn-key hosting solution" as answered on 11/18, does the State require vendor/model/quantity detail of production hardware/infrastructure devices with the submitted proposal? Or, can the offertory provide this information once the Preliminary Design Review is completed in partnership with the State to allow hardware/infrastructure synergies to be considered?	We propose that the Exchange would own all deliverables developed under the Contract, and Contractor would own any other work product developed as well as have a license to reuse deliverables that have been stripped of all Exchange content.	The selected Offeror will need to work with the State to provision the system.
In light of the milestone payments and retainage, we propose further language regarding payment terms.	We would like to request payment terms of net thirty (30) from the date of invoice, where invoices would be submitted at the completion of all deliverables within each milestone.	We request that the Exchange reconsider its position regarding indemnity, and that indemnity be limited to infringement claims, claims for bodily injury (including death) and damage to real property and tangible personal property caused by Contractor personnel.	Section 4.3 of Attachment A will be updated to state, "If, in the opinion of the Procurement Officer, the Contractor fails to perform its obligations in a satisfactory and timely manner in accordance with the terms of the Contract, the Procurement Officer may refuse or limit approval of any invoice for payment for such delayed or deficient services, and may cause payments to the Contractor for such services to be reduced or withheld until such time as the Procurement Officer determines that the Contractor has met the requirements of the Contract with respect to such services."
Currently, it is in the sole opinion of the Procurement Officer as to whether the Contractor failed to perform in a satisfactory and timely manner.	We propose that this provision be revised to provide: "If the Contractor fails to perform its obligations in a timely manner in accordance with the terms of the Contract, the Procurement Officer may refuse or limit approval of any invoice for payment for such delayed or deficient Services, and may cause payments to the Contractor for such Services to be reduced or withheld until such time as the Contractor meets the requirements of the Contract with respect to such Services."	We propose that the Contract be amended to replace Section 18 with the alternate long form termination for convenience clause found in COMAR § 21.07.01.12A(2).	Section 4.3 of Attachment A will be updated to state, "If, in the opinion of the Procurement Officer, the Contractor fails to perform its obligations in a satisfactory and timely manner in accordance with the terms of the Contract, the Procurement Officer may refuse or limit approval of any invoice for payment for such delayed or deficient services, and may cause payments to the Contractor for such services to be reduced or withheld until such time as the Procurement Officer determines that the Contractor has met the requirements of the Contract with respect to such services."
The Exchanges' current position on IP rights is very restrictive to potential Contractors in the IT industry.	We propose that the Exchange would own all deliverables developed under the Contract, and Contractor would own any other work product developed as well as have a license to reuse deliverables that have been stripped of all Exchange content.	We request that this provision be amended to (i) exclude non-direct damages, as well as (ii) cap the total aggregate liability for all claims arising under the Contract at the total Contract value, as opposed to a per claim cap of three times the total dollar value of the Contract.	Section 5.1 and Section 7 of Attachment A will remain same.
Having one custodian of all copies of live data increases the risk of lost or damaged data.	We would like to clarify that the Contractor will not be provided with the only copy of live data during the project and therefore do not expect to be responsible for lost or damaged data.		Exchange expects selected vendor to perform data cleansing during conversion based on predefined business rules. State willprovide a copy of live data during the Project and will expect vendor to complyto with data security policies published by NIST.
The current indemnity clause is a blanket indemnity that would include claims arising from Contractor's proper performance of its obligations.	We request that the Exchange reconsider its position regarding indemnity, and that indemnity be limited to infringement claims, claims for bodily injury (including death) and damage to real property and tangible personal property caused by Contractor personnel.		Section 10.1 of Attachment A will remain the same.
The long form of COMAR's termination for convenience clause better defines the rights and obligations of the parties in the event a project of this type were terminated for convenience.	We propose that the Contract be amended to replace Section 18 with the alternate long form termination for convenience clause found in COMAR § 21.07.01.12A(2).		As stated in Section 18, termination of the contract, "including the determination of the rights and obligations of the parties, shall be on the same terms as those set forth in COMAR § 21.07.01.12A(2)."
The damages per claim at three times the total dollar value of the Contract may require that we price in risk which is not commensurate with our potential fees.	We request that this provision be amended to (i) exclude non-direct damages, as well as (ii) cap the total aggregate liability for all claims arising under the Contract at the total Contract value, as opposed to a per claim cap of three times the total dollar value of the Contract.		See Addendum Number 1.

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	We wish to comment further on recent questions concerning the orals/demonstration phase. If the State determines that additional substantial illumination may be provided by requiring that demonstrations be performed on software installed on-site, we would respectfully request that the approach be undertaken with these further considerations: i) We believe the State would be well-served by an orals process that evaluates comprehensively how all proposed software components work together as advertised to show live, end-to-end HIX processes. We would encourage the state to request demonstration scenarios that span the entire Health Insurance Exchange spectrum: plan submission-review-approval-availability on the exchange; AHBE eligibility, browse/compare/select, and enrollment; integrated request for assistance and communications; communication of enrollment to insurer; initiation of coverage; change of circumstance triggering; reporting, etc.		Refer to Attachment U - Oral Presentation Guidelines
	ii) It is critical that adequate computing platforms be provided if an on-site install approach is pursued. The solutions proposed are not trivial. Installations may be extensive. Please either give vendors the option of either specifying the target environment (hardware, OS, memory, disk space, etc.) or be permitted to roll in our own environments or use remotely hosted environments in their entirety. In any case vendors should be required to disclose the specifications of the entire environment including all hardware & software (and releases) deployed on the system. We would urge the State to require transparency in the scenarios, i.e., indicate which software components are involved in executing any given scenario.		Refer to Attachment U - Oral Presentation Guidelines
	iii) In order to assess the readiness as well as flexibility of proposed solutions, we would encourage the State to include a scenario that introduces a complex change (e.g., submit a new plan, change eligibility criteria, policy, or subsidy calculation, etc.) followed by reconfiguration, redeployment and re-execution of an end-to-end AHBE or SHOP scenario.		Refer to Attachment U - Oral Presentation Guidelines
	iv) Please consider requesting that vendors use the environment itself to demonstrate the ability to comply with key CMS guidelines for Health Insurance Exchange. Ultimately, if the State elects to not provide computing environments to host the demonstrations, we do believe that virtually all of the above can none-the-less be achieved either through remotely hosted demonstrations or by allowing vendors to provide their own computing environments on site. The former is preferable from a time, expense and logistics standpoint.		Refer to Attachment U - Oral Presentation Guidelines
General	Does the State want us to complete ATTACHMENT V with a "Y/N" or an "X" in the appropriate column?		The Exchange requests that Vendors place an "X" in the appropriate column.
SLAs	Do SLAs apply to Dev/iTest AND Producution - or Dev/Test only or Production only?		All SLAs apply to production, development, and testing environments. Saleem Confirm

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"Please refer to Section 4.4.2, Page 55 for attachment guidelines (these items do not count toward proposal page limit."	Could the State please clarify what is meant by the "proposal page limit"? This does not seem to have been mentioned previously in the RFP or otherwise.		The previous response inadvertently mentioned "page limit." There is no page limit to this solicitation.