

RFP Questions and Clarifications Memorandum

To: Vendors Responding to RFP Number 4599
From: David C. Johnson
Date: February 13, 2024
Subject: Responses to Questions Submitted and Clarifications to Specifications
Contact Name: EPL Team
Contact E-mail Address: EPL.Team@its.ms.gov

RFP Number 4599 is hereby amended as follows:

1. Title page, INVITATION is modified as follows:

INVITATION: Proposals, subject to the attached conditions, will be received at this office for the acquisition of the products/services described below for Mississippi Department of Information Technology Services. ITS will accept proposals beginning with the initial opening scheduled February 27, 2024 and continuing through ~~February 28, 2027~~ November 30, 2026.

2. Section I: Submission Cover Sheet & Configuration Summary, the second paragraph is modified as follows:

Subject to acceptance by ITS, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Technical Specifications in Attachment A and the EPL Purchase Agreement in Exhibit A. ~~Vendors who sign below may not later take exception to any point during contract negotiations.~~ The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

3. Section IV: Legal and Contractual Information, Item 1 is modified as follows:

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Technical Specifications* in Attachment A, and the *PSVC EPL Purchase Agreement* in Exhibit A. ~~Vendors who respond to this RFP by signing the Submission Cover Sheet may not later take exception to any item in the RFP during contract negotiations.~~ This acknowledgement also contractually obligates any and all subcontractors that may

be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

4. Attachment A: Technical Specifications, Item 3.3 is added as follows:

3.3 Cellular service contracts.

The following questions were submitted to ITS and are being presented as they were submitted, except to remove any reference to a specific Vendor. This information should assist you in formulating your response.

Question 1: Can the State confirm the frame rate desired or maximum speed desired for the requirement listed in Attachment A, Technical Specifications; Item 2.3?

Response: No, a fixed frame rate or vehicle speed is not desired. The intention is that the product is sufficient to fulfill its purpose and that purpose may be different for each project. EPL Customers will have the ability to request specific frame rates or vehicle speeds at the time of solicitation based on the customer's needs and local minimum requirements.

Question 2: Can the State clarify how the Customers will be instructed to score and award the proposals that they solicit from the various categories?

Response: ITS will publish the EPL 4599 Instructions for Use which contains the rules EPL Customers must follow to use the EPL. Solicitations will be awarded to the proposal that is "lowest and best" as required in Mississippi Code (Section [31-7-13](#)), and ITS will provide EPL Customers guidance on how to perform that evaluation. EPL Customers will be required to include their scoring methodology in the solicitation document they send to Vendors.

Question 3: If a manufacturer who sells direct and also has dealers/resellers that will likely utilize the contract, do the dealers/resellers need to respond directly as a vendor for their own contract? If dealers/resellers do not submit their own response to the RFP, would they be considered a subcontractor under the manufacturer's RFP response? If dealers/resellers are a subcontractor, do all quotes, invoices, reporting, etc. need to come from the purchase agreement holder vs the dealer/reseller?

Response: Any Vendor that EPL Customers will pay directly, through a purchase order, must respond to RFP 4599 and be in the Vendor pool. For a purchase order to be valid using this EPL, the Vendor name on the Purchase Order, Purchase Agreement, and solicitation response must all match. If a dealer/reseller will not be paid directly through a purchase order, but will be involved in the solicitation process in any way, they must be disclosed to ITS as a subcontractor so that they can be added to the published contact list. Any solicitation response sent from someone other than those listed on the published contact list will be considered an invalid response. If a subcontractor has been disclosed to ITS previously, then they may provide the documentation referenced in the question. In each instance, it must be abundantly clear that they are providing the documentation on behalf of the purchase agreement holder. For quotes, the purchase agreement holder must be

named as the primary Vendor on the quote. For sales reporting, ITS should receive only one sales report per period for the purchase agreement holder.

Question 4: Will cellular modems/routers be included in “Category 6” (Other equipment, software and services) as they integrate with other systems (video, etc.) for offload, live-stream, etc.?

Response: No, standalone cellular modems, routers, or other such devices are not within scope.

Question 5: For clarification, is it the State’s desire that any and all cellular services that may be used by equipment under this EPL contract should be excluded from this contract since the State already has a State Master Cellular contract in place for those cellular services?

Response: Correct, cellular service contracts are not within the scope of this EPL. A global exclusion for cellular service contracts has been added to Attachment A: Technical Specifications to make this clear.

Question 6: Section IV: Legal and Contractual Information, Items 8.3.2 & 8.3.3 - Subject to the understanding that Vendor shall not be held liable without limitation for claims relating to bodily injury or death, could it be clarified that such exclusion applies exclusively in instances where the incident is not a direct result of gross misuse of Vendor’s product by the involved parties?

Response: Item 8.3.2 and 8.3.3 shall remain as written in the RFP. Item 8.3 indicates that the Vendor’s liability will not be limited by contract/contract award for any claims, damages, etc. related to bodily injury (Item 8.3.2), death (Item 8.3.3), etc. Please note, however, that the State and its actions, and any liability resulting therefrom, is covered under and subject to the Mississippi Tort Claims Act, codified at Miss. Code Ann. Section 11-46-1 *et seq.* as provided in Article 40 of the Purchase Agreement.

Question 7: Section IV: Legal and Contractual Information, Item 8.9 – With regard to the provision indicating that the State shall not pay any attorney’s fees, prejudgment interest, or the cost of legal action to or for the Vendor, could you please specify whether there are any exceptions or carve-outs for legal costs such as liquidated damages, consequential damages, or any other legal expenses that may arise in the course of the agreement?

Response: There are no exceptions for this Item unless otherwise mandated by Mississippi law and ordered by a final judgement of a Mississippi court of competent jurisdiction.

Question 8: Section IV: Legal and Contractual Information, Item 12 – Regarding the stipulation that all contracts are subject to availability of funds and contingent upon receipt of a purchase order, could you confirm whether this requirement extends to annually recurring contracts, particularly those purchased for a predetermined number of years with payments structured on an annual basis, such as a product support contract?

Response: Yes, it includes any contract made pursuant to this procurement.

Question 9: Section IV: Legal and Contractual Information, Item 22 – Will Vendor still retain all ownership rights and interested over pre-owned and pre-existing intellectual property?

Response: Please see Articles 8 and 9 of the Purchase Agreement for ownership and rights associated with equipment and software that is provided pursuant to this RFP. Please also note that, in accordance with the Purchase Agreement, such articles are subject to any applicable program specific federal or other funding terms and conditions that may apply to the specific purchase (e.g. see Articles 5, 28, and 36 for reference).

Question 10: EPL Purchase Agreement, Article 11.5 – Can this be restructured to say “...shall be free from *material* defects in...” instead, as it reads in 11.7?

Response: No, this Article shall remain as written.

Question 11: EPL Purchase Agreement, Article 11.13 – Can liquidated damages be expressly excluded from “...in addition to any other damages...”?

Response: No, this Article shall remain as written.

Question 12: EPL Purchase Agreement, Article 15 – Regarding the stipulation that all contracts are subject to availability of funds and contingent upon receipt of a purchase order, could you confirm whether this requirement extends to annually recurring contracts, particularly those purchased for a predetermined number of years with payments structured on an annual basis, such as a product support contract?

Response: Yes, it includes any contract made pursuant to this procurement.

Question 13: EPL Purchase Agreement, Article 16.3 – Can thirty days’ notice be changed to sixty days’ notice?

Response: No, this Article shall remain as written.

Question 14: EPL Purchase Agreement, Article 42.1.3 – With respect to the restriction on sending data outside the United States, could clarification be provided on whether exceptions apply in instances where the Vendor may need to communicate or share data with team members located in international locations, including situations where our parent company is based [outside the United States] , solely for the purpose of fulfilling the obligations outline in this Agreement?

Response: No. Vendor personnel in international locations may only access State data remotely and only as required to provide technical support and in accordance with the Mississippi Enterprise Cloud and Offsite Hosting Policy.

Question 15: EPL Purchase Agreement, Article 42.1.9 – Can this list of potential subcontractors be subject to change?

Response: Yes, please refer to Section IV: Legal and Contractual Information, Item 16. If a subcontractor is used regularly for a specific purpose, Vendor must submit that subcontractor to ITS for review. If for a particular project a Vendor wishes to use a subcontractor not described in the previous sentence, they must submit that information in the response to the solicitation. EPL Customers may accept or reject use of any subcontractor.

Question 16: EPL Purchase Agreement, Article 42.1 – Does “data” include intellectual property? If not, how is intellectual property covered under this agreement?

Response: Data, as provided under Article 42.1, could possibly include intellectual property that is related to the State-owned data, but this depends on the applicable State-owned data being utilized in an applicable purchase. The purchase agreement does discuss ownership and title to equipment and software under Articles 8 and 9. However, this is not an exhaustive list and Vendors should consult with their own legal counsel for purposes of reviewing and being advised of sufficient terms and conditions regarding intellectual property. Please also note that, in accordance with the Purchase Agreement, such articles are subject to any applicable program specific federal or other funding terms and conditions that may apply to the specific purchase (e.g. see Articles 5, 28, and 36 for reference).

Question 17: Configuration Summary - If no configuration summary is required for this RFP, will the vendor be permitted to add additional product lines and in the format of their choosing?

Response: At no point in responding to RFP 4599 are Vendors asked to provide specific product information. Vendors will only provide in-scope products and pricing when they are responding to a solicitation sent out from an EPL Customer.

Question 18: Section III: Vendor Information, Item 9 – If the State reserves the right to request information about the Vendor from any previous customer of the Vendor, will the Vendor be permitted to include certain customers, who almost exclusively use their current MS State Contract, in the references to the Vendor’s response?

Response: Yes, this is allowable if the references meet all other requirements.

Question 19: Section III: Vendor Information, Item 11 – Does the right to secure certain products from other existing ITS contracts include secondary contracts of the responding vendor?

Response: Yes, this is allowable if it is in the best interest of the EPL Customer and the State to do so.

Question 20: Section IV: Legal and Contractual Information, Item 4.6 – Will the vendor be permitted to request additional provisions after a contract has been awarded or is this at the sole discretion of the State?

Response: The Vendor may ask the EPL Customer for additional provisions at the time of solicitation. Refer to Section IV: Legal and Contractual Information Items 5 and 6. ITS would advise including those additional request provisions in your response to the customer’s solicitation. Please be advised that if the awarded Vendor and an

EPL Customer cannot come to an agreement on additional provisions, EPL Customers have the right to then negotiate with the next highest scoring Vendor (See Section VII: PSVC EPL Process Specifications Item 4.27).

Question 21: Will customer projects be allowed to cover multiple categories?

Response: Yes.

Question 22: If a vendor cannot provide all the products requested in a solicitation can they still respond?

Response: Yes, you may still respond, and we would encourage Vendors to do so especially in large cross-category projects. EPL Customers have the discretion to decide whether it is in their best interest to award a solicitation in whole or in part(s). Furthermore, multiple Vendors could choose to submit a response together, as long as one Vendor is designated as the prime Vendor and the other Vendor(s) would be treated as a subcontractor for that particular response.

If you have any questions concerning the information above or if we can be of further assistance, please contact EPL Team via email at EPL.Team@its.ms.gov.

cc: ITS Project File Number 47957