



State Of North Dakota
Department of Human Services
600 East Boulevard Ave., Dept. 325
Bismarck, ND 58501

Independent Verification and Validation Response to Questions Amendment 1

Solicitation Number and Title: 325-07-10-003 Independent Verification and Validation (IV&V) Services

Deadline for Questions and Objections: [April 17, 2007](#)

Response to Questions and Objections: [April 24, 2007](#)

Proposal Submission Date: [May 1, 2007](#)

This solicitation is amended as follows:

Section 1.6.18 is amended to add the following:

- Any requested changes to Attachment E - Certification of HIPAA Compliance, will be negotiated during contract negotiations and Attachment E must be signed with the contract.

Section 1.6.4 of the solicitation established a deadline of receipt for questions. The questions and answers are as follows:

Question: Attachment E – Certification of HIPAA Compliance: Are bidders to complete and return this form with the proposal?

Answer: No.

Question: Will you, as the procurement officer answer questions, either via e-mail or telephone, related to the RFP prior to April 24 or will all questions be held and answered in the summary to be made available?

Answer: If the question is about timing or minor procurement issues I will answer these before April 24th. If the question is more complex and is related to scope or other project issues such as working with other vendors I will wait and compile all these with a written response to the entire group.

Question: Would North Dakota consider it a conflict of interest if 4TG were to submit a proposal in response to the IV&V procurement, RFP 325-07-20-003 and therefore disqualify 4TG's submitted proposal given our contractual relationship with ACS, the prime contractor of the North Dakota Medicaid System Project?

Answer: Yes

Question: Would North Dakota be precluded from entering into a contract with 4TG based on the following events of the current IV&V procurement schedule, given our contract with ACS does not terminate until July 15, 2007?

<u>Event</u>	<u>Date</u>
Completion of Contract Negotiations	June 13, 2007
Notice of Intent to Award	June 19, 2007 (estimated)
Contractor begins work	July 09, 2007

Answer: Yes

Question: Reference: Attachment B & C: Verification and Validation Activities, the RFP states services to begin on July 9, 2007. What is the date the state is projecting for the IV&V services to be completed?

Answer: This date would be two full federal quarters after Implementation. Currently, Implementation is scheduled for August 2009 with certification to be scheduled May 2010.

Question: Reference: Attachment B & C: Verification and Validation Activities, Could the state please confirm how we are to prepare cost estimates by deliverable when most of the deliverables in Attachment B & C are ongoing, and not one time deliverable.

Answer: The bidder needs to determine their cost for the entire deliverable whether one time or ongoing.

Question: RFP Page 1, Section 1: What vendor has been selected as system implementer for the new Medicaid Systems Project? What was the scope of the award?

Answer: Affiliated Computer Services, Inc. The Scope is Design, Development, and Implementation for the MMIS and POS. The DSS intent to award has been issued. The Scope is Design, Development, and Implementation for the DSS. The state and the DSS vendor are currently in contract negotiations.

Question: RFP Page 8, Section 1.6.18: Does the State intend to treat a proposal that contains objections to the Standard Contract and proposes additional terms as an offer to contract, dependent on the successful, mutual negotiation of the objections and alternatives in the RFP – and will accept our proposal on that basis?

Answer: The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.

Question: RFP Page 15, Section 2.3.5: "...inclusive of any related expenses." Does this mean expenses should be factored into the deliverable cost or can expenses be listed as a separate line item? How does this reconcile to the last sentence on page 23, section 3.7?

Answer: The expenses should be factored into the deliverable costs as each deliverable must include the entire cost of the deliverable listed in the Bidder Cost Proposal column.

Question: RFP Page 15, Section 2.3.5: "...network portals." Does this imply that the State will provide both intranet (State network) and Internet access for the IV&V team office space? Will the State provide the IV&V team an account(s)/mailbox(es) on the State's email system to facilitate communication? What about electronic document storage?

Answer: The state will provide Internet access for the IV&V team but the vendor will not have access to the state network. All document storage and mailboxes are the responsibility of the vendor.

Question: RFP Page 18, Section 3.4: "...term of the contract." What is the State's intention regarding the multi-year potential of this Project?

Answer: This contract will be a multi-year contract and is scheduled to end upon certification.

Question: RFP Page 20, Section 3.5.2: Will alternative/remote work arrangements (at an agreed upon on-site percentage) be acceptable to the State and should this be in our response?

Answer: Yes. There will be times during the project that tasks can be performed off-site.

Question: RFP Page 35-38, Attachment B & C: Many of the activities and deliverables listed are ongoing. For costing of these activities and deliverables can we submit an hourly rate for service?

Answer: Each deliverable must be a fixed cost.

Question: RFP Page 35-38, Attachment B & C: For many of the activities and deliverables it is difficult to determine the scope of effort required in order to provide a deliverable-based cost. For example, Requirements Review, Testable Requirements may be dependent on number of areas/requirements to be processed by the IV&V team. Can the State provide further information regarding potential volumes or expectation of FTE-equivalents?

Answer: This would be based on the vendor's prior experience in testing requirements for large Medicaid projects. Currently we are working on defining our requirements, there are approximately 1950 requirements.

Question: RFP Page 40, Attachment D: In Section VIII, we propose modification as follows, insert the word "material" before the word "terms" in line one of paragraph one; delete the period at the end of this same sentence and insert: ", provided that the State has first provided Vendor with notice of such breach and Vendor has failed to cure the alleged breach within twenty (20) days of receipt of such notice."

Answer: Refer to RFP Section 1.6.18. The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.

Question: RFP Page 40-41, Attachment D: In Section X, we propose modification as follows, (i) insert “for death, bodily injury, or damage to tangible property” after the word “claims” in line two; (ii) insert “negligent or willfully wrongful” before the word “performance” in line two; (iii) insert “reasonable” before the word “attorneys” in line three and in line seven.

Answer: Refer to RFP Section 1.6.18. The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.

Question: RFP Page 42, Attachment D: In Section XII, we propose modification as follows, (i) insert “, upon reasonable advance notice and during normal business hours,” after the word “access” in line two; (ii) insert “the Vendor’s charges and expenses in performing the” before the word “services” in line three.

Answer: Refer to RFP Section 1.6.18. The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.

Question: RFP Page 43, Attachment D: In Section XVIII, we propose modification as follows, delete the period at the end of the first sentence and add” “, or when disclosure is required by law or legal process.”

Answer: Refer to RFP Section 1.6.18. The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.

Question: RFP Page 43, Attachment D: In Section XIX, we propose modification as follows, (i) delete the first sentence and substitute: “All completed deliverables under this agreement belong to the State and must be delivered to the State at State’s request upon expiration or termination of this agreement.”; (ii) In the third line, after the word “prepared,” insert “by Vendor for the State as deliverables required.”

We further propose inclusion of the following 2nd paragraph:

“Notwithstanding the foregoing, Vendor’s administrative communications, records, files and working papers relating to the services performed and the generalized ideas, concepts, know-how, tools, models, methodologies and techniques utilized or developed by Vendor prior to this Agreement are Vendor Property and belong to Vendor. To the extent that any of Vendor’s Property is contained in any deliverables or work product provided to the State hereunder, Vendor hereby grants the State a royalty-free paid-up, non-exclusive license to use Vendor Property in connection with the State’s use of the deliverables or work product.”

Answer: Refer to RFP Section 1.6.18. The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.

Question: RFP Page 43, Attachment D: In addition to Section XIX 2nd paragraph above, we propose the following 3rd paragraph:

"The State acknowledges and agrees that any advice, recommendations, information or work product provided to the State by Vendor under this Agreement is for the sole use of the State, and may not be relied upon by any third party. Except as otherwise required by law (including the Public Records Law as set forth in section XX, below), or as permitted by this Agreement, the State will not disclose or permit access to such advice, recommendations, information or work product to any third party without Vendor's prior written consent. Disclosure of Vendor's work product to the firms that are installing the MMIS and related systems will not constitute disclosure to third parties."

Answer: Refer to RFP Section 1.6.18. The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.

Question: RFP Page 43, Attachment D: In Section XIX, we propose that the State consider adopting our standard ADR provisions - provided in our attached firm standard terms and conditions.

Answer: Refer to RFP Section 1.6.18. The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.

Question: RFP Page 43, Attachment D: We propose creation of "Section XXIII. Limitation of Liability." Request inclusion of the following wording in this new Section: "The Vendor's maximum liability to the State or DHS arising for any reason relating to the Vendor's performance under this Agreement shall be limited to the amount of fees paid to the Vendor for its performance. In no event shall either party have any liability to the other party for any lost profits or special, incidental, indirect, consequential, or punitive damages, even if such party has been advised of the possibility of such damages."

Answer: Refer to RFP Section 1.6.18. The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.

Question: RFP Page 45, Attachment E: In paragraph 2, we propose insertion of "applicable" in front of "federal and state law" in third sentence. Further in the fourth sentence of this paragraph, we recommend replacement of "in conformity with" with "permitted by".

Answer: The bidder and the state will work through any objections or additional terms to Attachment E during contract negotiations.

Question: RFP Page 45, Attachment E: In paragraph 5, we propose the following re-write (final form):

"Access to Information. The Vendor will make Protected Health Information contained in a Designated Record Set available to DHS in accordance with 45 C.F.R. § 164.524, including providing Protected Health Information to DHS so that DHS may provide a right of access to persons who are the subjects of the Protected Health Information."

Answer: The bidder and the state will work through any objections or additional terms to Attachment E during contract negotiations.

Question: RFP Page 45, Attachment E: In paragraph 7, we propose the insertion of "for DHS" in first complete sentence ("The vendor will make...), after "available as required".

Answer: The bidder and the state will work through any objections or additional terms to Attachment E during contract negotiations.

Question: RFP Page 45, Attachment E: In paragraph 8, we propose the following re-write (final form):

"Access to Books and Records. The Vendor will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Vendor on behalf of DHS, available to the Secretary of the United States Department of Health and Human Services or the Secretary's designee for purposes of determining DHS' compliance with HIPAA."

Answer: The bidder and the state will work through any objections or additional terms to Attachment E during contract negotiations.

Question: RFP Page 46, Attachment E: We propose creation of new paragraph 9 prior to termination paragraph (increase number from 9 to 10) with wording as follows:

"Vendor agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains or transmits to or on behalf of DHS. Vendor further agrees to ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect such information. Vendor agrees to promptly report to DHS any Security Incident of which it becomes aware."

Answer: The bidder and the state will work through any objections or additional terms to Attachment E during contract negotiations.

Question: RFP Page 46, Attachment E: In re-numbered paragraph 10 (Termination), we propose the following re-write (final form):

"Termination. At the termination of this contract, and except as permitted by this Section 10, the Vendor will return all Protected Health Information that the Vendor still maintains in any form, including any copies or hybrid or merged databases made by the Vendor; or with prior written approval of DHS, the Protected Health Information may be destroyed by the Vendor after its use. If the Protected Health Information is destroyed pursuant to DHS' prior written approval, the Vendor must provide a written confirmation of such destruction to DHS. If return or destruction of the Protected Health Information is determined not feasible by DHS, the Vendor agrees to protect the Protected Health Information and treat it as strictly confidential. Notwithstanding the foregoing, Vendor shall be permitted to retain copies of PHI in its workpapers without being required to provide further notice or secure additional consent from DHS."

Answer: The bidder and the state will work through any objections or additional terms to Attachment E during contract negotiations.

Question: RFP Page 46, Attachment E: We propose creation of new paragraph 11 with wording as follows:

"Notwithstanding any other provision in this Agreement, this Agreement shall not be deemed to be an agreement by Vendor to disclose information that is privileged, protected or confidential under applicable law to the extent that such privilege, protection or confidentiality (a) has not been waived or (b) is not superseded by applicable law."

Answer: The bidder and the state will work through any objections or additional terms to Attachment E during contract negotiations.

Question: General: What is the term of the resulting contract of this solicitation?

Answer: This contract will be a multi-year contract and is scheduled to end upon certification.

Question: General: It is our understanding the Department awarded the MMIS/POS implementation to ACS and that the implementation work is underway. Please confirm or provide clarification.

Answer: Yes, the state and ACS are currently working on requirements definition.

Question: General: It is our understanding the Department awarded the Decision Support/Data Warehouse implementation to MedStat and that the implementation work is underway. Please confirm or provide clarification.

Answer: A contract has not been signed for the Decision Support / Data Warehouse.

Question: General: Is the ND RFP for the Medicaid Systems Replacement Project issued in 2005 a valid source for identification of the implementation deliverables anticipated to be produced and thus reviewed by the IV&V contractor?

Answer: Yes for purposes of this RFP, however, the finalized Requirements Analysis Documents for MMIS, POS, and DSS will be the source for validation and verification.

Question: General: Please provide a current project schedule of the expected deliverables from each implementation vendor and ITD.

Answer: We are continuing work on finalizing the project schedule.

Question: Section 2.3.3, pg. 13 – Related Experience: This section states “provide the following information related to three previous or current contracts...[3rd sub-bullet] Contracts with government agencies...” This sub-bullet seems out of place here since we are providing information specific to the three contracts. Is this sub-bullet out of place and, if not, please explain what the State means by this?

Answer: The bidder should list specific contract experience with government agencies. These government agency contracts can be part of the required three contracts.

Question: Section 2.3.4, pg. 14 – Project Approach and Management: Under Project Schedule requirements, 2nd bullet, 3rd sub-bullet, “Identification of time and cost at the task level.” Since cost information cannot be included in the Bid Proposal, shouldn’t the response to the cost portion of this requirement be provided in the Cost Proposal?

Answer: Yes

Question: Section 2.4, pg. 15 – Proposal Evaluation: Are Experience and Staffing included in the evaluation factors? If so, what percentage? This section implies that only the approach and cost will be considered.

Also, can the State provide more information regarding evaluation factors for these sections?

Answer: Yes, experience and staffing are evaluation factors. The proposed solution accounts for 70% of the total evaluation points. Included at different weighted factors are the Executive Summary, Introduction, Project Understanding, Corporate Experience, Qualifications, and each deliverable listed in Attachments B & C.

Question: Section 3.6.1, pg. 21 – Standards: “DHS requires that the bidder provide one copy of the materials on CD, one electronic copy stored on the State network, and one original and one paper copy for each State team member identified.” We are assuming that this refers to the selected vendor submitting deliverables/materials during the course of the contract and not an electronic copy of the proposal. Is this correct?

Answer: Yes, section 3.6.1 does describe the deliverables of the project.

Question: Attachment B – Verification Activities, Ref #10: Are the DDI vendors or the State providing the test environments or a single test environment, loaded with the applications to be tested or is it the responsibility of the IV&V contractor? If being provided, please describe the environment.

Answer: Yes, the DDI vendors and the state will provide the infrastructure and will assist the IV&V vendor in the management of the test environment(s). The environment is being designed.

Question: Attachment B – Verification Activities, Ref #12: Has a preferred testing tool been approved by DHS? Please identify the preferred testing tools of the DDI vendors and ITD.

Answer: The Medicaid DDI vendor plans to use IBM’s Rational Test Suite. It is the goal to have the DDI vendor and the IV&V vendor to use the same tool.

Question: Attachment B – Verification Activities, Ref #14: The detailed description states “provide all project deliverables to DHS project Management”. Are these reviews of the IV&V contractor deliverables or the DDI vendors’ deliverables? The deliverable for this activity is “Review Comments”. Please clarify what these review comments are, review of DDI vendor deliverables or other?

Answer: All vendor deliverables. The “review comments” is to review all comments made on any of the deliverables either by any vendor or by DHS.

Question: Attachment C – Validation Activities, Ref #4: The detailed description states “Review the completed operations and systems functions...” Are there also uncompleted operations and systems functions? Please clarify what this means.

Answer: The vendor would be reviewing the current system; therefore, there should be no uncompleted functions.

Question: Attachment C – Validation Activities, Ref #11: The detailed description states “provide all project deliverables to DHS project Management”. Are these reviews of the IV&V contractor deliverables or the DDI vendors’ deliverables? The deliverable for this activity is “Review Comments”. Please clarify what these review comments are, review of DDI vendor deliverables or other?

Answer: All vendor deliverables. The “review comments” is to review all comments made on any of the deliverables either by any vendor or by DHS.

Question: Attachment C – Validation Activities, Ref #10 and Ref#11: The detailed descriptions of both of these activities appear to be the same. Please clarify the differences in these activities. Also the deliverables for Ref#10 are Reviewed deliverables and Issues and Ref#11 is Review Comments. Please clarify the differences in these deliverables.

Answer: Ref#11 is to review any comments made and Ref#10 is to review the deliverables issued.

Question: Pg 19, RFP section 3.4.2 and Attachment C, Ref# 5: RFP 3.4.2 states validation services include “development of a UAT Validation Strategy” to define and support validation efforts”. Attachment C, Ref# 5, the deliverable is “Approved Validation Strategy”. Are these one in the same? If not where is the UAT Strategy identified as a deliverable.

Answer: Yes they are the same.

Question: The proposed standard terms and conditions do not contain a limitation of liability clause. MAXIMUS requests the insertion of one. MAXIMUS, as the references and exhibits demonstrates, has a long record of successfully providing services such as those contemplated by this agreement to state and local governments. MAXIMUS strategies for providing the products and services are based upon unmatched experience. Thus, limiting MAXIMUS liability in this instance will not expose the taxpayers and the State to unwarranted risk. MAXIMUS requests the following limitation of liability clauses be inserted:

The State agrees that Vendor's total liability to the State for any and all damages whatsoever arising out of or in any way related to this Contract from any cause, including but not limited to contract liability or Vendor negligence, errors, omissions, strict liability, breach of contract or breach of warranty, shall not, in the aggregate, exceed fees paid to Vendor.

In no event shall Vendor be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights, or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought even if Vendor has been advised of

the likelihood of such damages, and notwithstanding any failure of essential purpose of any limited remedy.

Any claim by the State against Vendor relating to this Contract must be made in writing and presented to Vendor within one (1) year after the date on which Vendor completes performance of the Services specified in this Contract.

Answer: Refer to RFP Section 1.6.18. The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.

Question: MAXIMUS takes exception to Clause VIII. NONPERFORMANCE since there is no limitation on liquidated damages. MAXIMUS would prefer to resolve NONPERFORMANCE issues through a dispute resolution clause as suggested below:

In the event of a failure by Vendor to perform the terms of this agreement, the parties will seek a fair and prompt negotiated resolution within ten (10) days of the initial notice of the dispute. If the dispute has not been resolved after such time, the parties will escalate the issue to more senior levels. Nothing herein shall prevent either party from seeking a preliminary or permanent injunction to preserve the status quo or prevent irreparable harm during the negotiation process or diminish the respective rights of the parties to pursue any and all remedies available in law and/or equity by at any time.

Answer: Refer to RFP Section 1.6.18. The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.

Question: MAXIMUS takes exception to Clause X. - Indemnity. MAXIMUS will only indemnify for claims, actions, suits, liabilities, damages, losses, settlements and other related causes of action that are the direct result of the negligence or willful misconduct of MAXIMUS, its employees or agents. On a contract of this size and risk, MAXIMUS believes it is unfair for it to bear the totality of costs that could result should the circumstances contemplated by the indemnification provision occur. MAXIMUS requests that Clause X. be replaced with the following:

Vendor shall defend, indemnify and hold harmless the State and its employees, officers board members, agents, representatives, and officials ("Indemnities") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including reasonable attorney fees) directly arising out of the negligence or willful misconduct of the Vendor, its employees or agents. Vendor shall not be responsible for any damages or liability resulting in whole or in part, from the negligence or willful misconduct of the Indemnities.

Answer: Refer to RFP Section 1.6.18. The bidder must meet the requirements stated in the RFP. The bidder and the state will work through any objections or additional terms to the contract during contract negotiations.