



Addendum: Question Set #3 and Answers

TO: All Bidders

FROM: Benjamin Civic, Procurement Contact, Coordinating Commission for Postsecondary Education

DATE: December 7, 2016

RE: Addendum: Question Set #3 and Answer for Request for Proposal Number 87164 Z6

Question #1

RFP Section Reference: II.L. Secretary of State/Tax Commissioner Registration Requirements

RFP Page Number: 11

Other references: Referenced attached emails are provided at the end of this question set

Question: Paragraph L requires all bidders to submit a Certificate of Good Standing issued by the Secretary of State. The University of Nebraska is a state agency and because of that the office of the Nebraska Secretary of State cannot issue a certificate. The General Counsel for the Secretary of State's office provided the attached email explaining our standing. Will this documentation be sufficient to meet the requirement?

Answer for Question #1

RFP 87164 Z6 does require all bidders to submit a valid Certificate of Good Standing (CGS) or Letter of Good Standing (LGS) pursuant to Section II.L. The state purchasing department contact Colleen Byelick mentions is correct insofar as RFPs under the direction of the State Purchasing Bureau (SPB), and ones that use SPB RFP boilerplate language, do not require the CGS or LGS to be submitted until after the Intent to Award is made. However, RFP 87164 Z6 differs slightly from SPB boilerplate as it is not under the direction of SPB. In this case, RFP 87164 Z6 mandates the CGS or LGS be submitted with the proposal.

For this RFP it would be appropriate for a Nebraska state entity to submit a brief letter with their proposal from Nebraska's Secretary of State's Office that communicates your status via state statute as an equivalent to the CGS or LGS. The referenced emails would not suffice as they do not identify the relevant statutes needed to convey such status.

Question #2

RFP Section Reference: III.F. Ownership of Information and Data, III.SS.2 Indemnification

RFP Page Number: 14, 29

Other references:

Question: Section III, Paragraph F and Paragraph SS.2 addresses publishing rights and intellectual property (IP). We would like to confirm that these clauses do not preclude the bidder from retaining its rights to publish any findings related to the programs implemented under RFP 87164 Z6, and that the State or its entities will not publish any findings without first coordinating the publishing with the bidder.

Answer for Question #2

In response to the first part of your question, we do not see anything in those indicated clauses that would preclude a bidder from retaining its rights to publish findings related to the programs implemented under RFP 87164 Z6 as long as they comply with law and the RFP.

The second part of your question focuses on the clause, Ownership of Information and Data, found in section III.F. In this section, the State has the unlimited right to publish, duplicate, use, and disclose all information and data developed or derived by the Contractor pursuant to the contract. As the State's right is unlimited, as noted above, this would not require the State to first coordinate the publishing with the bidder if it so chose to publish such information. The CCPE does not intend to publish, or make available for public sale, any information or data developed or derived by the Contractor pursuant to the contract. The CCPE does intend to use the information derived or developed by the Contractor that is pursuant to the contract to report as required by law to the Nebraska Legislature. The types of information to be reported to the Legislature can be found at the end of Nebraska Revised Statute section 85-1414.01(7).

Referenced e-mails for Question #1

James,

I talked to the supervisor of our state purchasing department. He indicated that you do not need a certificate of good standing to bid on an RFP. If awarded the contract, State purchasing would ask you to provide this information. You would be able to indicate your status via state statute. If that wasn't acceptable, we would try and provide a letter or other documentation for you.

Thank you,

Colleen Byelick
Chief Deputy/General Counsel
Nebraska Secretary of State's Office
1445 K Street, Suite 2300
Lincoln, NE 68509-4608
PH: 402-471-8076

From: Gamerl, James M [<mailto:james.gamerl@unmc.edu>]
Sent: Monday, November 28, 2016 10:14 AM
To: Byelick, Colleen
Subject: RE: certificate of good standing

Hello Colleen,

LB661 appropriated funds for oral health services for the State, with the Coordinating Commission for Postsecondary Education (CCPE) being the State agency to oversee and implement the program. The CCPE issued a request for proposal (RFP) with certain requirements that must be met by each bidder. On page 11, paragraph L., the RFP states:

SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS

All bidders should be authorized to transact business in the State of Nebraska and must be a corporation exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code. All bidders are expected to comply with all Nebraska Secretary of State Registration requirements. It is the responsibility of the bidder to comply with any registration requirements pertaining to corporations exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code. All bidders are required to produce a true and exact copy of its current (within ninety (90) calendar days), valid Certificate of Good Standing or Letter of Good Standing. Further, all bidders shall comply with any and all other applicable Nebraska statutes regarding transacting business in the State of Nebraska. Bidders must submit the above certificate with their bid.

So, that is the explanation for why we are seeking a Certificate of Good Standing – we must submit it with our proposal.

Jim

From: Byelick, Colleen [<mailto:colleen.byelick@nebraska.gov>]
Sent: Wednesday, November 23, 2016 12:05 PM
To: Gamerl, James M <james.gamerl@unmc.edu>
Subject: certificate of good standing

James,

Your email questions regarding a certificate of good standing from the Secretary of State's Office was routed to me for assistance. The certificate that you provided was a letter from Secretary Gale that was done at the request of Turan Odabasi, legal counsel at the time for the University. Mr. Odabasi requested the letter due to an issue with the Massachusetts Department of Education which was requiring NU to provide a certificate of good standing in order to offer distance education courses in their state. This was only done after giving Massachusetts copies of the Nebraska Constitution and relevant state statutes along with a letter from the IRS granting NU 501(c)(3) status. As Mr. Odabasi explained, NU is a "body corporate" under state law, not an actual registered corporation with the Secretary of State's Office.

Can you provide some more explanation as to why you would like a similar letter? Have you attempted to establish the University's standing through other means?

Thank you,

Colleen Byelick
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