



# Report of the Commission to **Modernize State Procurement**

December 1, 2016

Lieutenant Governor Boyd K. Rutherford, Chair

December 1, 2016

Governor Larry Hogan  
State of Maryland  
100 State Circle  
Annapolis, MD 21401

Dear Governor Hogan:

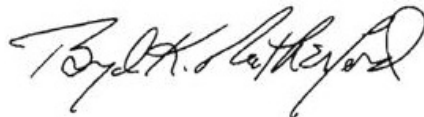
Thank you for appointing me to chair the Commission to Modernize State Procurement. This final report is the culmination of the work of the Commission, which includes 57 recommendations that span multiple issue areas consistent with the duties outlined in the executive order, such as creating a uniform RFP template for all goods and services, streamlining A&E procurements, expanding small business and MBE procurement opportunities, promoting efficiencies through automation and technology upgrades, and removing redundant and unnecessary procurement processes.

Today, the State will be unveiling *procurement.maryland.gov*, a singular procurement communications portal providing online access to Maryland procurement information. In addition, we are recommending a couple of areas for further study, including centralizing non-transportation procurement and reconsidering which State agencies are exempt from the State procurement regulations.

As you know, I have been interested in working to modernize the State's procurement system since you asked me to be part of your team. Once implemented, our recommendations will pay benefits to the State for years to come by increasing competition for State contracts, lowering the State's and businesses' transaction costs, and improving the professional development of our State procurement workforce.

With this report, we are continuing your mandate to manage the State's resources in a fiscally responsible manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Boyd K. Rutherford". The signature is fluid and cursive, with the first name "Boyd" being the most prominent.

Boyd K. Rutherford  
Lieutenant Governor, State of Maryland  
Chair, Commission to Modernize State Procurement



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## Commission Members

### **Lt. Governor Boyd K. Rutherford, Chair**



Lt. Governor Rutherford served as an Associate Administrator for the U.S. General Services Administration where he was responsible for increasing utilization of small businesses in government procurement, as well as continually improving the efficiency of the agency.

In addition, Lt. Governor Rutherford served as Assistant Secretary for Administration for the U.S. Department of Agriculture. He was nominated for the position by President George W. Bush, and confirmed unanimously by the United States Senate. As Assistant Secretary, Lt. Governor Rutherford led efforts that saved millions of taxpayer dollars. Before serving in the USDA, Lt. Governor Rutherford served as the Secretary of the Maryland Department of General Services under Governor Bob Ehrlich. In that capacity, Lt. Governor Rutherford was responsible for more than \$900 million in annual contract administration and 10 million square feet of State-owned and leased facilities.

### **Comptroller Peter V. R. Franchot**



Peter Franchot is Maryland's 33rd Comptroller. Before election to Statewide office, Franchot served 20 years in the House of Delegates, representing the residents of Montgomery County. He served on the House Appropriations Committee and chaired its transportation and environment subcommittees. Comptroller Franchot chairs the Board of Revenue Estimates, and serves on the Capital Debt Affordability Committee and the Commission on State Debt. He also serves with Governor Hogan and State Treasurer Kopp on the three-member Board of Public Works, which approves millions of dollars in State contracts each year.

### **State Treasurer Nancy K. Kopp**



Nancy K. Kopp is the 23rd Maryland State Treasurer. In addition to her responsibilities for managing the Office of State Treasurer, she chairs both the Capital Debt Affordability Committee and the Commission on State Debt, and is a member of the Board of Revenue Estimates. She is the chief representative of the State dealing with financial rating agencies and investment banking firms. Before her election as Treasurer, Kopp represented the Bethesda area in the House of Delegates for 27 years. She chaired the Joint Committee on Spending Affordability, as well as the Appropriations Subcommittee on Education and Economic Development.

Treasurer Kopp serves with Governor Larry Hogan and Comptroller Franchot on the Board of Public Works.



## Commission Members

*(continued)*

### **David Brinkley, Secretary of Budget and Management**

Before his appointment by Governor Larry Hogan, David Brinkley served 20 years as a legislator in both the House of Delegates and the Maryland State Senate including several years as a member of the influential Senate Budget and Taxation Committee.

### **Ellington Churchill, Secretary of General Services**

Before his appointment by Governor Larry Hogan, Ellington Churchill served as Deputy Secretary at the Department of Housing and Community Development. He joined the Hogan administration from the private sector, where he was Director of Business Development for Lewis Contractors, a Mid-Atlantic construction management company.

### **David Garcia, Secretary of Information Technology**

David Garcia is the State Chief of Information Technology. His department is the principal State agency for IT operations. Garcia is the founder and CEO of NMR Consulting. He oversaw the strategic plan of the company from its inception, nurturing its growth and expansion, counting nearly 20 years of success and maintaining relevancy in the IT industry.

### **Jimmy Rhee, Special Secretary of Minority Affairs**

Jimmy Rhee was appointed Governor Larry Hogan to connect small businesses, including those owned by minorities and women, with resources that help them compete in the public, private and global markets. As a member of the Cabinet, he is a key advisor to the Hogan Administration on issues affecting Maryland's 560,000 small businesses. He has direct oversight of the Small Business Reserve and Minority Business Enterprise procurement programs, and monitors implementation across 70 agencies.

### **Senator Steve Waugh, District 29 [Calvert, & St. Mary's Counties]**

Steve Waugh graduated from the United States Naval Academy in 1986 and served 20 years in the United States Marine Corps. Senator Waugh is a member of the Education, Health and Environment Committee, the Administrative Executive Legislative Review and the Federal Relations committees, and he chairs the Republican Senatorial Committee. Waugh is senior professional at the Johns Hopkins University Applied Physics Laboratory, and serves as a systems engineer with the Aerospace Systems Analysis Group in the Force Projection Department.

### **Senator Jim Rosapepe, District 21 [Prince George's & Anne Arundel Counties]**

Jim Rosapepe was elected to the Maryland Senate in 2006. He serves on the Education, Health, and Environmental Committee, the Joint Technology Committee, the Joint Committee on the Management of Public Funds, and co-chairs the Senate Environment Subcommittee. Senator Rosapepe chairs the Prince George's County delegation. He served as Ambassador to Romania in the Clinton administration and was appointed to the University System of Maryland Board of Regents by Governor Glendening.



## Commission Members

*(continued)*

### **Delegate Chris West, District 42B [Baltimore County]**

Chris West graduated from Williams College and the University of Pennsylvania Law School. He is a principal at the Baltimore law firm, Semmes, Bowen & Semmes, practicing business and commercial law. West was elected to the House of Delegates in 2014 and is a member of the House Health and Government Operations Committee.

### **Delegate Dan Morhaim M.D., District 11 [Baltimore County]**

Dan Morhaim is a practicing physician and on the faculty at Johns Hopkins and the University of Maryland. He was first elected to the Maryland General Assembly in 1994. He serves on the Health and Government Operations Committee, and chairs the sub-committee on Government Operations, where he handles issues of procurement and MBE/DBE issues. Delegate Morhaim has been actively involved with procurement reform issues, including having enacted numerous bills to make the process more open, transparent, competitive, and streamlined.

### **Sheila McDonald**

Sheila McDonald has been the Executive Secretary of the Board of Public Works for 17 years. The Board appointed her to that position after she had served four years as its first General Counsel. Before that, McDonald was a State assistant attorney general focusing on procurement and administrative law. She graduated from The Johns Hopkins University and Catholic University's Columbus School of Law.

### **Mike Zimmerman**

Mike Zimmerman is the Chief Procurement Officer and Director of the Department of Transportation's Office of Procurement. Mike has over 35 years of experience in procurement, supply chain management, strategic sourcing, and quality management. Mike holds certifications from the Institute for Supply Management (Certified Professional in Supply Management [CPSM] and Certified Purchasing Manager [C.P.M.]), and from American Society for Quality (Certified Manager of Quality and Organization Excellence [CMQ/OE] and Certified Quality Auditor [CQA]).

### **Ronald Lipford**

Principal and CEO of Arel Architects. Arel Architects provides traditional architectural and engineering services to commercial, institutional, and faith-based clientele.

### **John Molnar**

Co-founder of Integrity Consulting. Molnar has 25 years of management experience in assisting companies enhance efficiency and savings opportunities.



## **Commission Members** *(continued)*

### **Matthew Solomson**

Chief Legal Officer at Federal Government Solutions. Solomson manages the legal, compliance, and audit and procurements teams in support of a \$9 billion business unit that provides healthcare management and technology services to the federal government.

### **Eileen Straughan**

President and Founder of Straughan Environmental, Inc., a multi-disciplinary environment firm with over 21 years of environmental permitting and compliance experience.

### **Eric Regelin**

President of Granix, LLC. Mr. Regelin has more than 35 years of design and construction experience.

### **Sheryl Brissett-Chapman**

CEO of the National Center for Children and Families. The National Center for Children and Families provides residential and community-based services for abused and neglected adolescents, for victims of domestic violence, and for homeless and impoverished families and their children in the Washington-Baltimore, National Capital region.

The image shows the title of the report, "Report of the Commission to Modernize State Procurement", overlaid on a background image of the Maryland State Capitol building. The building is a large, white, classical-style structure with a prominent dome and a steeple, set against a blue sky with light clouds. The foreground is a bright yellow field. The text is in a large, white, sans-serif font with a slight drop shadow.

# Report of the Commission to Modernize State Procurement

## Executive Summary

On February 10, 2016, Governor Larry Hogan issued Executive Order 01.01.2016.05, which created the Commission to Modernize Procurement. The Commission is composed of 19 members with expertise in Maryland state procurement. Lieutenant Governor Boyd K. Rutherford served as the Chair. The Commission was charged with undertaking a comprehensive review of Maryland's procurement statutes, regulations, policies, and procedures.

This report contains 57 recommendations, which span multiple issue areas consistent with the duties outlined in the executive order. It is divided into five major sections: Enhancing the Procurement Process to Attract More Participation; Streamlining Architectural/Engineering Services Procurements; Expanding Small and Minority Business Opportunities; Developing Quality Procurement Personnel; and Updating Procurement Oversight Structure.

The "Enhancing the Procurement Process to Attract More Participation" section details 12 recommendations. Highlights in this section include creating a standardized RFP template for all service, IT, A&E, and construction contracts; giving procurement officers more discretion to negotiate certain contract clauses, such as limited liability, liquidated damages, IP rights, bonding, and insurance requirements; and upgrading *eMaryland Marketplace*, among other recommendations.

The "Streamlining Architectural/Engineering Services Procurements" section details eight recommendations. Highlights in this section include combining all A/E service procurements under one COMAR subtitle; developing a statewide automated A/E procurement process; and making the Expression of Interest phase optional, among other recommendations.

The "Expanding Small and Minority Business Opportunities" section details 12 recommendations. Highlights in this section include expanding the Small Business Reserve (SBR) program to apply to all State agencies; raising the SBR Statewide goal from 10% to 15% of procuring dollars; and incorporating the 60% Rule into the MBE program to increase the labor participation of MBEs on contracts, among other recommendations.

The "Developing Quality Procurement Personnel" section details eight recommendations. Highlights in this section include reclassifying procurement personnel to achieve consistent titles and uniform compensation across agencies; creating a procurement manual and training curriculum; and providing reimbursement for expenditures toward professional development, among other recommendations.

The “Updating Procurement Oversight Structure” section details 17 recommendations. Highlights in this section include restructuring the Procurement Advisory Council; allowing contractors to appeal to the Maryland State Board of Contract Appeals on all types of contract claims after 180 days; and exploring the consolidation of staffing for all non-transportation procurement into the Department of General Services, among other recommendations.



The Commission to Modernize State Procurement was established by Executive Order 01.01.2016.05 on February 10, 2016. The Commission consists of 19 members, including Lt. Governor Boyd K. Rutherford, Comptroller Peter V.R. Franchot, Treasurer Nancy K. Kopp, Senators Steve Waugh and Jim Rosepepe, Delegates Chris West and Dan Morhaim, and Secretaries David Brinkley, Ellington Churchill, Jimmy Rhee, and David Garcia.

### **Governor's Charge**

The Governor ordered the Commission to undertake a comprehensive review of Maryland's procurement code and regulations and submit a detailed strategy with specific recommendations that may include the following:

- Standardization of best practices and interpretation of the procurement provisions in the Code of Maryland Regulations across all agencies to improve consistency and provide predictability to the business community;
- Reduction of transaction costs for State agencies by utilizing new technologies to increase efficiencies and make the procurement process more accessible to businesses;
- Development of a statewide procurement manual, divided by industry sector, that summarizes the procedures and processes to be used by State agencies for awarding contracts;
- Development of a statewide procurement training curriculum centered around a statewide procurement manual that prepares agency procurement staff to perform the procurement function at all levels of purchasing;
- Addressing impediments to attracting and retaining quality procurement staff;
- Development of a self-directed training module for any interested businesses to quickly learn how to effectively bid on state contracts;
- Simplification of procurement reporting requirements to allow agency procurement staff to more effectively manage their time;
- Expansion of the Small Business Reserve Program to all agencies;
- Expansion of the small procurement limit and the single purchase limit for corporate purchasing cards to allow for the rapid procurement of goods and services;
- Simplification of the current Request For Proposal template to make it easier for businesses to understand and respond;
- Reduction in the number of documents businesses are required to submit with proposals prior to a contract award;
- Review the mandatory terms and conditions of procurement contracts;
- Simplification of the Minority Business Enterprise certification process;
- Determination of how best to address clearly evident mistakes on procurement submissions;
- Establishment of standards allowing the State to obtain the overall best value instead of only the lowest price;



- Development of a mechanism that would deter bidders from submitting frivolous protests; and
- Other relevant procurement issues identified by the Commission.

### **Commission Meetings**

The full Commission met eight times between March and November 2016. These meetings, held in Annapolis at the Wineland Building, 16 Francis Street, were open to the public. In addition, the Commission conducted three Town Hall regional meetings at which public comment and questions were solicited and encouraged. Many citizens – individuals and businesses – participated and contributed valuable insight. The meetings were held at the following locations:

- Kenhill Center, Bowie, Prince George’s County on May 10
- Knights of Columbus Hall, Catonsville, Baltimore County on June 14
- Easton Fire Hall, Easton, Talbot County on June 28

### **Workgroups**

On March 11, 2016, Lt. Governor Rutherford created three workgroups under the Commission: Workforce, chaired by Secretary David Brinkley; Efficiencies, chaired by Secretary David Garcia (who designated DOIT Chief of Staff Al Bullock) and MDOT Chief Procurement Officer Mike Zimmerman; and Initiatives, chaired by Secretaries Ellington Churchill and Jimmy Rhee. Members of the workgroups included other commission members, State agency staff, and numerous vendors and related stakeholders.

The Workforce Workgroup focused on improving consistency and predictability to the business community by producing recommendations to better develop quality procurement staff prepared to perform all levels of State purchasing. The Efficiencies Workgroup focused on producing recommendations that increase efficiencies in the procurement process, reduce transaction costs, and make State procurement more attractive and accessible to businesses. The Initiatives Workgroup focused on producing recommendations that allowed for the efficacious procurement of goods and services through the various small business and affinity procurement preference programs.

These workgroups submitted their initial recommendations to the Commission on September 15, 2016. Afterward, the Executive Workgroup, which comprised solely of Lt. Governor Rutherford and the aforementioned workgroup chairs, worked to integrate and socialize the various recommendations. All combined, workgroup participants met more than 36 times from April through November 2016.

Excluding the Commissioners, 195 stakeholders contributed to the production of this report and the 57 recommendations therein. All of the recommendations are informed by a commitment to creating a modern, streamlined procurement system with standardized best practices, and policies and procedures that are more uniform, transparent, and equitable.

## I. Enhancing the Procurement Process to Attract More Participation




### ***1.1 Create a Standardized Request for Proposal template***

Unlike the federal government, which has a standard Request for Proposal (RFP) template, State RFP templates vary by agency to the consternation of the business community. The State should use a standardized RFP template for all services, information technology, construction, and A&E procurements. To that end, an RFP template is now available with standard language and consistent ordering of sections and attachments. Specific exhibits are tailored for services, information technology, construction, and A/E procurements as necessary.

To illustrate, here is a Table of Contents for the RFP template for services contracts (included as an Appendix):

- Key Information Summary Sheet
  - RFP Title
  - Solicitation Number
  - RFP Issue Date
  - RFP Issuing Office/Department
  - Procurement Officer
  - Contract Monitor

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- Where to send proposals
  - Pre-Proposal Conference date, time and location
  - Proposal due date and time
  - MBE Subcontracting goal
  - VSBE Subcontracting goal
  - Contract Type
  - Contract Duration
  - SBR Designation
  - Federal Funding notification
  - Section 1: Minimum Qualifications
  - Section 2: Contractor Requirements: Scope of Work
  - Section 3: Contractor Requirements: Additional Requirements
  - Section 4: Procurement Instructions
  - Section 5: Proposal Format
  - Section 6: Evaluation Process
  - Attachments (in order of submission timing)
    - Pre-Proposal Conference Response Form
    - Financial Proposal Instructions and Form
    - Bid/Proposal Affidavit
    - MBE Forms
    - VSBE Forms
    - Living Wage Requirements & Affidavit
    - Federal Funds
    - Conflict of Interest Affidavit
    - Non-Disclosure Agreement
    - HIPAA Business Associates Agreement
    - Mercury Affidavit
    - Location of Performance of Services Disclosure
    - Contract
    - Contract Affidavit
    - DHR Hiring Agreement
    - Exhibits, including abbreviations and definitions

***1.2 Ensure procurement officers are aware of their discretion to include or modify certain contract terms and conditions***

When preparing solicitations, procurement officers should consider all contract terms and conditions and make a conscious decision whether a contract clause must be included. Procurement officers should understand which terms and conditions are mandatory and which are more flexible and may be adjusted. Clauses that should be reviewed with respect to each procurement include limitation of liability, liquidated damages, indemnification, intellectual property rights, audit, bonding, and insurance requirements.



### *Limitation of Liability and Indemnification*

Vendors may be hesitant to bid in cases where there is no limit to the vendor's liability under the contract. Unlimited liability may restrict competition only to those companies that have less to lose and to proposals that heavily factor risk into pricing. State procurement law does not require vendors to be contractually liable to the State without limitation. A procurement officer is authorized to decide, that the State should bear some, no, or all risk, even if the decision may result in a higher cost.

Well-trained procurement officers, working with their legal counsel, may determine the appropriate limit, if any, to place on a contractor's liability. The procurement officer should consider the nature of the contract; whether personal identifiable information or protected health information will be exchanged; studies that have been conducted to assess contract risk and the likelihood and extent of damages; and damages sustained by other entities for similar work. There are multiple ways to draft limitation of liability clauses, such as limiting liability to all claims arising during the course of the contract; to only certain types of causes of action; the greater of a certain amount or a multiple of the value of the contract; or another measure other than unlimited liability.

Although vendors readily agree to indemnify the State for injury, death, and property damage its negligence causes and to indemnify the State for patent, copyright, trademark, or trade secret infringement, they hesitate to bid if the procurement requires blanket indemnification. If they do bid, their prices are set to cover the risk of potential indemnification. Procurement officers should evaluate the actual risks involved and consider negotiating indemnification depending upon the specific procurement.


### *Intellectual Property Rights*

Vendors seek a greater control of the intellectual property developed, or used to develop products for the State. While it is in the State's best interest to own content delivered under the contract, the State should expressly recognize the vendor's ownership of preexisting materials. In some contract types (primarily software-as-a-service), the State might advantageously relinquish ownership of material developed under the contract in return for royalty free licenses.

Furthermore, all contract conditions, whether mandatory or discretionary, should periodically be reviewed through outreach with the business community to ensure they remain beneficial to both the State and the business community.

### ***1.3 Standardize determinations such as responsive/responsible, waivers, 72-hour rule, minor/immaterial irregularities***

To ensure consistency between State agencies in determinations made by State procurement staff, templates should be developed for standard determinations such as bid responsiveness and proposal susceptibility of award; bidder/offeror responsibility; MBE waiver requests; MBE



72-hour rule<sup>1</sup> requests; and minor irregularities or deficiencies. Both the vendor community and State procurement staff would benefit from greater consistency in State determinations and responses to vendors. Consistent determinations would help reduce confusion, provide more clarity to vendors and aid compliance.

#### ***1.4 Eliminate statutory preference for competitive sealed bidding for State agencies and community colleges***


The competitive sealed bidding procurement method is the default procurement method under State law. Under this method, the lowest-priced responsive bid from a responsible bidder is selected for contract award (i.e., low price wins). While this method is most appropriate for a wide variety of procurements, including most commodities and supplies, a procurement officer may prefer to use a different procurement method, such as competitive sealed proposals, which allows the State to evaluate technical offerings as well as price. To use a procurement method other than competitive sealed bidding, a procurement officer must issue a written determination, signed by the agency head, explaining why another procurement method is more appropriate than bidding. To alleviate this process and move the State toward best value procurement, the State should adopt best practice guidelines from the National Association of State Procurement Officials to remove any preference for a particular procurement method. The national guidelines allow procurement officers to use their discretion to choose which method works best in each purchasing situation. Likewise, State law should be amended to remove the current preference for competitive sealed bidding with respect to procurements conducted by community colleges, allowing such institutions more flexibility in their procurement decisions. Such discretion is most appropriate for highly-skilled and experienced staff with a clearly-defined process for monitoring the appropriateness of decision making.

#### ***1.5 Improve the debriefing process***

Multiple stakeholders suggested changes to debriefing procedures to provide more information about the successful offer to losing offerors. However, valid reasons exist to limit debriefing discussions to only the unsuccessful offeror's proposal and not include the specifics of competing offerors' proposals. Allowing discussion of competitive proposals would lead to the unsuccessful offeror requesting evidence of the details of the competing proposal. This would lead to a request to inspect the recommended awardee's proposal to verify what was said about the recommended awardee's proposal. While the identities of offerors who submitted proposals may be disclosed after the procurement officer makes a determination recommending contract award, the contents of the proposals are not available until after contract award. Certainly competing offerors want access to this information as soon as possible, but proposal information would have to be reviewed and redacted for any information identified as confidential, proprietary, or trade secrets. Even though offerors are typically requested to identify any such information within their proposal at the time of proposal submission, procurement staff with assistance from legal counsel must still review the proposals to verify

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<sup>1</sup> The 72-hour rule allows a prime contractor to provide written notice within 72 hours of determining that a listed MBE is unavailable or ineligible to perform the work and to make a request to amend the MBE participation schedule within 5 days. See MD. CODE REGS. 21.11.03.12.



that what has been identified is non-disclosable, as well as determine whether any other information that may not have been identified as such. For larger proposals, this review and redaction process can be time consuming and result in delaying contract award.

One way to improve the debriefing process is by providing more consistency between the agencies in their debriefing practices. The Department of Budget and Management provides all offerors with the final overall technical and financial proposal rankings for all proposals received as well as the bottom-line total evaluated price for all proposals deemed reasonably susceptible of being selected for award, after recommendation for award and agency receipt of all required documentation by the recommended awardee. This is done via an email notice to all offerors, and the same information is provided at any debriefing. Recently, the Maryland State Board of Contract Appeals found that another major agency did not provide the total evaluated prices to the offerors, leading to queries by the offerors for such information and more debriefing requests. This information should always be provided after recommendation for award so that offerors know where they stood in the final evaluation process and how large of a final price difference there was between their price and the competition. Agencies should understand that successful debriefings are part of customer service and are conducted to ensure fairness for all procurement participants.

### ***1.6 Create a singular procurement communications portal***

An internet search for “Maryland State Procurement” produces a hodgepodge of results: haphazard links to various State agency websites and to eMaryland Marketplace. This confuses the business community as well as individuals interested in State procurement positions. In its place, on December 1, 2016, there will be a singular procurement communications portal: *procurement.maryland.gov*. This portal will provide online access to Maryland procurement information through dedicated web pages. Included will be links to the Board of Public Works and the control agencies. Control agency procurement homepages will be standardized so that a consistent format is found across agencies. There will be tabs for specific business community audiences (including non-profits and preferred providers). The web portal will provide access to training modules on How to Create a Bid and avoid mistakes in responding to State of Maryland solicitations. Clicking on the procurement staff tab will produce procurement official contact information so that vendors and the public may find the appropriate contacts for industry sectors and particular procurements. A State procurement customer services “concierge” may be used to direct inquiries and suggest appropriate contacts. Also available through the portal will be the Maryland Procurement Manual (once developed) to enable the business community and the procurement staff the ability to download this document. The portal will also provide a platform for online training for both procurement staff and businesses.

### ***1.7 Re-launch Maryland Marketplace***

The State’s eMaryland Marketplace is the principal location for posting notices of State procurement opportunities and contract awards. eMaryland Marketplace uses Periscope’s BuySpeed software as its central electronic bid-board. Deployed as a standalone system, this is an older version of BuySpeed for which the implementation stalled early in development. As a



result, the project did not configure and deploy all modules as intended to support full procure-to-pay functionality. The lack of integration with other State systems results in employees manually and redundantly entering information into budget and purchasing systems. The system also lacks document management capabilities requiring vendors to upload the same documents for every procurement action. Additionally, the system lacks robust search and reporting capabilities which limits visibility and strategic sourcing efforts. These issues highlight the need to modernize the State's e-purchasing system.

The Department of Information Technology is in the process of deploying a statewide Procure to Pay system that will provide a user-friendly portal doing business with the State based on Periscope's current v14 Software as a Service. This re-launch of eMaryland Marketplace will:

- Provide one-stop- procurement-shop from vendor registration through payment;
- Process re-engineering and standardization across procurement units;
- Reduce redundant document management with online storage and administration;
- Allow vendors to manage an online library of documents to attach to their offers;
- Allow procurement staff to build solicitations from approved templates with standardized language;
- Automate manual procurement processes and approvals;
- Improve transparency and accountability;
- Improve reporting, allowing better strategic sourcing for ongoing cost savings;
- Increase controls over spending and ensure contracts are negotiated at lower prices; and
- Provide a shared service for local governments.

DoIT should also engage in vendor outreach to provide system training and how to better compete for business with the State, and create a help desk for employees and vendors.

### ***1.8 Purchase a contract management system***

An often overlooked aspect of State procurement is the actual contract management function that occurs after a procurement is completed and a contract is awarded. While much of the focus in any procurement reform effort is placed on improving the procurement process, efficient and consistent contract management after award is vital to ensuring satisfactory performance under a State contract. Unfortunately, State agencies lack tools to use in conducting contract management. A contract management system should be procured and deployed to all State agencies. This system will allow for the day-to-day monitoring by a designated contract manager, goal-setting, invoice tracking, reporting, as well as other tools vital to successful contract management. Procuring such a system would reduce the number of



administrative errors, late vendor payments, delayed contract extensions, and other contract management issues.

### ***1.9 Perform cost benefit analysis to replace State's legacy Information Technology systems***

The State should perform a Cost Benefit Analysis for use in developing a plan to replace the State's legacy information technology systems. Maryland's procurement processes currently rely on two primary systems: (1) FMIS – the State's financial management information system which consists of RSTARS and ADPICS (the 'procure to pay' module) and (2) eMarylandMarketplace the system used by the State for e-procurement, advertising, and award notification. Agencies use a number of other standalone systems to add missing functionality.

The general opinion of the user community is that ADPICS and RSTARS are cumbersome and not intuitive. The system's cover page shows its copyright as 1994. The entire world has changed since then, especially information technology functionality. While FMIS produces the necessary end result, it is doing so with decades old technology that is not as robust, secure or as efficient as modern systems. eMarylandMarketplace is also considered cumbersome and not intuitive. The current version of eMarylandMarketplace is old and, even though the State has been using this system for a number of years, it has never fully used all its capabilities. Along with the underutilized functionality, another shortfall is that eMarylandMarketplace and FMIS were never integrated and do not share relevant data. Periscope's (the current contractor supporting eMarylandMarketplace) next version of eMarylandMarketplace, as demonstrated to the Commission, appears to have enhancements and better functionality than the current version.

Users were queried, new and existing systems were previewed, current technology and best practices were studied that resulted in some basic attributes and functionality being identified as preferred. Ease of use was a consistent theme with regard to what current systems and best practices have identified as one of the most critical attributes. The Commission also determined that current technology allows for simpler configuration of critical, but very involved components such as workflow. Best practices have trended towards cloud based solutions reducing the cost of ownership and shifting risk to the provider. Another benefit of today's technology is integrated modules allowing for better management of the entire contracting process. The newer technologies reporting capabilities are also much simpler and more robust than the third party report writer that the current FMIS system uses or the one available in eMarylandMarketplace. The Commission also identified that the new system/module would allow the procurement officer to manage the contract development process including attributes such as templates, clause libraries, and approval workflow. Many Contract Management systems also allow contract administration to be performed after the contract is awarded.

Spreadsheets showing current system functionality versus available functionality have been developed. Recommendations for action are based on the gap analysis and attributes that were identified as best practices. Old technology that imposes inefficient workflow and deliver



suboptimal performance should be reviewed and a plan should be developed for replacement. Replacement of the legacy systems will require careful planning, tens of millions of dollars, and need to take place over a number of years.

The Department of Information Technology should, with the assistance of a company with the appropriate resources, perform a global cost of replacement versus benefit of a replacement analysis. A global analysis of agency requirements is necessary because many agencies use different software. New, easier to use, cloud-based, integrated software would allow the State to realize significant savings through cycle time reduction, system enhancement, and a more efficient use of resources. In addition, new technology can also allow the State to deploy systems that are much more user friendly and accessible to the impaired and handicapped.

***1.10 Before entering into, renewing, or modifying Intergovernmental Cooperative Purchasing Agreements, require determination that agreement is cost beneficial***

On occasion, procurement agencies may select the intergovernmental cooperative purchasing procurement method to award a contract on the basis of administrative convenience without primary consideration of the full cost to the State. Regulations do not currently require a determination that using an Intergovernmental Cooperative Purchasing Agreement will be cost beneficial. In addition, the participating State agency is not required to determine that the original award was based on a competitive procurement resulting in a contract delivering the best value or the lowest price. Similarly, depending on the size of the governmental entity sponsoring the procurement, the prices could be more expensive than what the State would pay if it had been the procuring entity based on the State's purchasing power. As a result, using an Intergovernmental Cooperative Purchasing Agreement could be more expensive. However, when used correctly, Intergovernmental Cooperative Purchasing Agreements are a useful procurement tool and should continue to be used by trained procurement officers when appropriate. Before sponsoring, entering, renewing, or modifying an Intergovernmental Cooperative Purchasing Agreement, the procurement officer must make a written determination that it is in the best interest of the State to do so and, specifically, that it will provide cost benefits to the State.

***1.11 Issue a Board of Public Works Advisory regarding regional vs. Statewide contracts***

The Board of Public Works should craft and issue an Advisory focusing on the use of Statewide versus regional contracts. A Statewide contract typically requires a bigger vendor to meet the capacity demands of the entire State government, while regional contracting – by county or by geographic region (e.g., Western Maryland, Southern Maryland, Central Maryland, Eastern Shore) – provides opportunities for smaller vendors. The Advisory should inform State procurement officers as to the advantages and disadvantages of each as well as the appropriateness for different procurement scenarios. The Advisory will encourage procurement officers to consider crafting solicitations that simultaneously seek Statewide and regional price proposals to ensure that the State receives the best per unit price as there are circumstances in which a regional vendor can provide a better per unit price when bidding for the Statewide contract.



***1.12 Create central repository of documents needed for procurements***

The State should create a secure online repository for forms and documents that vendors must submit during the procurement process. The vendor would complete a document that would remain in the repository for use in future solicitations. As an example, the Departments of General Services and Transportation are moving toward uniformly requiring Federal Standard Form SF330 in certain procurements. The repository to which vendors will submit the form will eliminate the need for those vendors to prepare a new SF330 for each procurement. By making the database available to procurement officers, a simple check or download of the SF 330 would be all that is necessary. Other forms or affidavits could be stored online as well, eliminating the need for the vendor to prepare them for each procurement.

## II. Streamlining Architectural and Engineering (A/E) Services Procurements




### ***2.1 Streamline regulations to apply uniformly to DGS and MDOT A/E service procurements***

DGS and MDOT have adopted separate regulations for procuring A/E services. These two Code of Maryland Regulation chapters should be consolidated into one. Standardizing the A/E process will provide a uniform and user-friendly ability to comply with consistent requirements throughout the procurement process no matter the procuring agency, thus benefitting the vendor community.

A joint DGS/MDOT committee will be established to continually review the procurement of A/E services for improvements and updates. Standardization should include:

- State's independent cost estimate
- Solicitation/Advertisement
- Expression of Interest
- Request for Proposal
- Proposal ratings
- Rating criteria, targeting technical qualifications
- Selection
- Price negotiations, including cost and price summary

- 
- Contract
  - Invoicing
  - Annual rating process

Other topics for the joint DGS/MDOT committee to consider are:

- Automated repository of payroll burden and overhead rates and Subchapter S waivers
- Standard use of cost justification spreadsheet
- Incorporating by reference and providing hyperlinks to reduce size of each solicitation or contract
- Contract management tools, such as tracking and monitoring expenditures, and forecasting
- Shared qualified principals list
- Allow use of facilities capital cost of money. (Facilities capital cost of money is an allowable cost on government contracts. It is a formula-based allocation similar to overhead.)


### ***2.2 Develop Statewide automated A/E procurement system***

An electronic system for processing A/E services procurements should be developed to streamline the procurement process, reduce duplication, reduce cycle time, increase accuracy and efficiency, and create process transparency. Areas that can be automated include:

- Specifications library
- Forms and templates
- Allowing for the acceptance of electronic proposal submissions
- State estimates
- Price negotiations
- Performing and tracking quality assurance checks
- Capturing all insurance requirements
- Setting criteria so that proposal ratings can be completed electronically in the system
- Creating and printing standard documents and letters
- Capturing monthly invoicing, payments, and minority participation
- Allowing for the ability to perform Annual Consultant Ratings in the system and developing past performance data and reports
- Developing contract management reports
- Developing data for the annual Small Business Reserve program
- Calculating and applying the annual consultant ratings to gauge past performance

### ***2.3 Abolish General Professional Services Selection Board and Transportation Professional Services Selection Board***

The Commission recommends eliminating the requirements for the General Professional Services Selection Board (GPSSB) and the Transportation Professional Services Selection Board (TPSSB) to evaluate proposals, negotiate terms, and review award recommendations. These



boards and their processes, which add two months to the procurement process, were implemented in response to procurement issues that occurred long ago. Other, more efficient control processes have been developed since then. Currently, the GPSSB is a five member board, where three of the five already see all projects well before they appear for approval at the GPSSB and have already addressed any concerns they have. There has never been a project in recent memory not approved by the GPSSB as the majority of votes are already in favor of the project prior the presentation to the board. No other State procurement method has similar requirements. Moreover, public transparency is already assured by the requirement for Board of Public Works approval. The internal departmental controls and the Board of Public Works oversight provide sufficient oversight. Elimination of these boards will reduce cycle time and eliminate procurement processes offering little added value to the procurement.

#### ***2.4 Make the Expressions of Interest phase optional***

The Expressions of Interest phase commonly used in procuring A/E services should be optional. The Expressions of Interest phase can add up to four months to a procurement. Making this phase optional allows procurement officers to determine whether the phase is appropriate. The procurement officer might choose to forego the Expressions of Interest phase and formally solicit the technical proposals if past experience shows an acceptable contract to response ratio for those A/E services. On the other hand, the procurement officer could choose to conduct an Expressions of Interest phase to develop a reduced candidate list. For example, when the number of interested firms is much greater than the anticipated number of contracts to be awarded, a shortlist is preferred. Firms that learn they are not susceptible for award in the early Expressions of Interest phase may save between \$10,000 to \$60,000 in proposal preparation costs.

#### ***2.5 Allow offerors to submit A/E qualifications through Federal Form SF330 (in place of SF254 and SF255)***

Offerors should be able to submit their A/E qualifications by using the federal Standard Form SF330. Standard acceptance of the SF330 will align State agencies with the federal process which many states have accomplished. Use of this form will complement the initiatives to automate forms and store in a centralized database repository so that vendors only need to update the form, instead of creating a new form for each individual procurement.

#### ***2.6 Implement a Quality Assurance/Quality Control process at each A/E services procurement phase and eliminate the Consultant Screening Committee***

The Consultant Screening Committee should be replaced with a quality check at each phase of the A/E services procurement. A record of each check will be placed in the procurement file. A joint DGS/MDOT committee should develop a standard QA/QC checklist to be used in all A/E procurements. The list will include quality checks for each phase of the A/E procurement process: pre-advertisement; expressions of interest when a shortlist is necessary; technical proposal/final selection; price/negotiation; and award/contract.



***2.7 Eliminate requirements that SHA's Consultant Services Division participate in all MDOT A/E procurements***

This recommendation eliminates the administrative burden on MDOT's State Highway Administration, Consultant Services Division to accept submission of documents related to all MDOT A/E services procurement. Instead, each MDOT transportation unit should be responsible for their A/E procurements. The recommendation reduces confusion for the A/E community by requiring their responses to be submitted to the State unit that is conducting the actual procurement.

***2.8 Eliminate requirement to advertise A/E solicitations in newspaper***

Advertising A/E procurements in newspapers costs the State \$60,000 annually. Because all procurements must be advertised on eMaryland Marketplace, which is the State's and the business community's preferred procurement platform, newspaper publication adds no value. Feedback from a MDOT informal survey of the vendor community shows that eMaryland Marketplace and the agency webpage are the community's primary resource for procurement opportunities.

### III. Expanding Small and Minority Business Opportunities



#### ***3.1 Expand the Small Business Reserve program by including 31 additional agencies***

The State's Small Business Reserve program provides small businesses with the opportunity to participate as prime contractors on State contracts by establishing a unique marketplace where small businesses compete only against other small businesses instead of competing head-on with larger, more established businesses. Once a solicitation is designated Small Business Reserve, an agency may award the contract only to a registered small business. Allowing small businesses to compete only against other small businesses for contracts helps level the playing field and results in more awards to Maryland small businesses. Currently, only 23 State agencies are authorized to participate in the SBR program meaning that only those agencies may restrict a procurement to participation by registered small businesses. Each of those agencies has an SBR liaison whose role is to advocate for small businesses. The program should be expanded to add the following 31 agencies, who must structure their procurements to spend a minimum amount of annual contract expenditures with small businesses:

- AGING
- AGRICULTURE
- ARCHIVES
- ASSESSMENTS & TAXATION
- ATTORNEY GENERAL'S OFFICE
- AUTOMOBILE INSURANCE FUND
- BALTIMORE CITY COMMUNITY COLLEGE

- BUDGET & MANAGEMENT
- CANAL PLACE PRESERVATION
- COMPTROLLER
- DEAF, SCHOOL OF
- ELECTIONS
- ENVIRONMENTAL SERVICES
- EXECUTIVE DEPARTMENT
- FOOD CENTER AUTHORITY
- HIGHER EDUCATION COMMISSION
- HUMAN RELATIONS COMMISSION
- MILITARY
- PEOPLES COUNSEL
- PLANNING
- PROSECUTORS OFFICE
- PUBLIC DEFENDERS OFFICE
- PUBLIC SERVICE COMMISSION
- PUBLIC TELEVISION
- PUBLIC WORKS
- SAINT MARY'S COLLEGE
- SUBSEQUENT INJURY FUND
- SUPPLEMENTAL RETIREMENT
- TAX COURT
- VETERAN AFFAIRS
- WORKERS COMPENSATION

### ***3.2 Raise SBR program Statewide goal to 15%***

The SBR program currently aims for 10% of contract expenditures to be spent on registered small businesses. This annual goal should be made into a Statewide goal of 15%, but accommodate specific agencies that can meet a higher goal and agencies that cannot. In fiscal years 2014 and 2015, most SBR-participating agencies met or exceeded the annual 10% goal. By increasing the annual minimum to 15%, more State procurements would be reserved for small businesses, and thus more small businesses would receive State contracts.

### ***3.3 Count payments to registered small businesses toward the SBR program goal only if the procurement was originally designated as SBR***


Currently agencies may count contract payments made to registered small businesses toward the SBR program goal even if the procurement was not originally designated a SBR procurement. This practice appears to have led to a downward trend in overall SBR payments. Less than 15% of SBR payments result from a procurement that was specifically set aside as a SBR procurement. The remainder of the payments result from contracts awarded to small businesses that competed against larger businesses to receive the award. While the Commission wants to encourage small businesses to compete for all contracts, the State should not count payments toward the SBR program goal when the initial procurement was not set aside as a SBR procurement.

### ***3.4 Award master contracts within the SBR program for Statewide contracts***

State procurement units participating in the SBR program should be allowed to make multiple awards of master contracts solely to registered small businesses. Such master Statewide contracts would allow small businesses even greater opportunities to contract with the State, and would provide State procurement units an efficient means of spending State contract dollars with registered small businesses.

### ***3.5 Incorporate the 60% Rule and the Broker Rule into the Minority Business Enterprise program***

Under the Disadvantaged Business Enterprise (DBE) program that applies to all federally-funded transportation contracts, bidders are allowed to count only up to 60% of the value of supplies



and equipment purchased from DBEs toward DBE goal achievement. They are allowed to count 100% of direct labor services toward the DBE subcontract goal. Part of the rationale for disallowing full credit for the purchase of materials is to encourage bidders to focus on DBE utilization that maximizes the growth, technical competency, and financial stability of the DBE firm. It is generally acknowledged that desired outcomes are less likely to be realized when DBE participation comes primarily by way of delivery of materials. This 60% Rule is applied to all contracts with federal funding. The 60% Rule should similarly apply to State-funded contracts under the MBE program to promote consistency in program implementation across agencies and provide MBEs with meaningful participation.


The Broker Rule, likewise required to be applied only on federally-funded transportation projects, should be integrated into the MBE program. When DBEs certified to provide broker services are used to provide those services, bidders may count only the broker fee or commission paid to the DBE broker toward the DBE subcontract goal; they may not count toward goal achievement of the dollar value of the brokered material. State agencies following the MBE program often allow bidders to receive credit for 100% of the value of materials purchased from a MBE broker.

### ***3.6 Allow vendors to correct failure to request waiver of MBE subcontract goal or a miscalculation on MBE forms***

If a bidder or offeror fails to accurately complete and submit the MBE utilization affidavit and the MBE participation schedule, the bid is determined to be not responsive or the proposal determined not susceptible of being selected for award. Procurement officers strictly enforce this requirement even in circumstances where a contractor merely miscalculated its total MBE participation percentage or failed to check the box to request a waiver for a portion of an unmet MBE contract goal.

For example, a contractor may be deemed unresponsive or not susceptible of being selected for award if the MBE contract goal was 20%, but it offered 18% participation without requesting a waiver for the remaining 2%. The bidder will be found unresponsive or not susceptible of being selected for award if he mistakenly thought the percentages he listed totaled the 20%, but actually totaled a lesser amount. Yet another situation has occurred where an MBE-certified contractor submitted a bid/proposal as a prime contractor and attempts to 100% self-perform the MBE portion of the contract. This is fatal flaw, because a MBE-certified prime contractor can only count itself toward no more than 50% of the MBE contract goal. Under these scenarios, the contractor would be found unresponsive or not susceptible of being selected for award without any opportunity to cure. Not only does the prime contractor lose potential business, but the State will receive one less competitive bid/proposal and loses an opportunity to further its policy goal of providing State business to MBEs.

On the other hand, maintaining the integrity of the MBE program is essential, especially after many years of unscrupulous attempts to game the system or take advantage of MBEs. Balancing these competing interests can be achieved by providing a limited time in which an



apparently successful bidder can cure two types of errors on MBE submissions: failure to request a waiver and miscalculation in the MBE utilization affidavit or the MBE participation schedule. Before determining that a bid is unresponsive or proposal is not susceptible of being selected for award based on either of these two mistakes, the procurement officer must promptly contact the bidder/offeror and provide an opportunity to request a waiver of an MBE goal or to correct a miscalculation. Within one business day of notice of the deficiency in its MBE forms, the bidder/offeror may either request a waiver, correct the miscalculation by increasing the participation of one or more of the MBEs listed or by adding one or more MBEs to the forms.

- A bidder/offeror may not remove or substitute an already-listed MBE to correct a failure to request a waiver or a miscalculation
- A bidder/offeror may not amend its overall bid or price proposal

If the bidder/offeror chooses not to cure its MBE forms, it will be found unresponsive or not susceptible of being selected for award. This change, however, will provide a limited opportunity to prime contractors and MBEs who make simple errors to proceed to the next phase of the procurement while preserving the integrity of the MBE program.


The process for receiving technical proposals and price proposals in a competitive sealed proposal procurement will be unchanged since MBE forms are part of the technical proposals evaluated before consideration of price proposals. However, for competitive sealed bid procurements, the procurement officer should require bidders to submit their MBE forms separately from bids. The MBE forms should be evaluated two to three days before bid opening. This window will allow bidders to correct MBE forms before bid opening when they have failed to request a waiver of the MBE subcontract goal or have a miscalculation.

### ***3.7 Streamline the MBE certification process by incorporating federal Small Business Administration documentation (the 8(a) application)***

Minority Business Enterprises (MBEs) certified under the federal Small Business Administration 8(a) Program should be allowed to apply for certification as Maryland MBEs by submitting their 8(a) packages with supplemental materials in place of the current State application. In all but one instance<sup>2</sup>, the 8(a) process either mirrors the State's MBE program or is well within the parameters of the MBE program. Acceptance of the 8(a) package and supplement will shorten the certification process, specifically with regard to compliance with financial, administrative, and ownership criteria that have already been vetted through the 8(a) program. The applicant must have either current 8(a) status or had status within 12 months before applying for State certification. An applicant's submission of the complete 8(a) package should result in a

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<sup>2</sup> The one eligibility criteria that differs in the programs is business control. The 8(a) program requires the applicant to demonstrate either managerial or technical expertise. However, the State MBE program requires the applicant to demonstrate both managerial and technical expertise to verify control. To resolve this discrepancy, the State should adopt for the MBE program the 8(a) standard that requires the owner to demonstrate either managerial or technical expertise to meet the business control requirement.



preliminary approval for MBE certification. However, the State may ask for supplemental information to verify any aspect of the application.

### ***3.8 Streamline the MBE accreditation committee interview panel to 7 staff***

The Department of Transportation's Office of Minority Business Enterprise certifies businesses as MBEs and DBEs. An applicant may be required to appear in a public forum before the Minority Business Enterprise Accreditation Committee, a 12-member committee comprising eight staff and four external appointments, to answer questions relating to ownership and control. To simplify the process, the Committee's public interview process should be streamlined to a process similar to other states that would allow a smaller internal review panel of seven staff to make the certification decision. The committee should include a chair from MDOT and six members from: the Departments of General Services, Budget & Management, and Public Safety & Correctional Services; the University System of Maryland, the Governor's Office of Minority Affairs; and a member of the public. As part of streamlining the certification process, the chair should provide applicants with specific questions and concerns related to business ownership and control at least five business days before the applicant is scheduled to appear.

### ***3.9 Eliminate unnecessary MBE steps, such as all-or-nothing NAICS code approval***

When questions or concerns arise regarding one or more NAICS (North American Industry Classification System) codes for which a firm has applied for certification in, certification of the applicant in NAICS codes that is clearly due may be delayed until a decision is made on all codes. Instead, NAICS codes that are not in question should be approved promptly and not delayed until questionable codes are decided. Applicants should be allowed to provide evidence supporting the inclusion of codes and discuss concerns with the certification office before a decision is made.

### ***3.10 Assess whether to separate the MBE certification process from the Disadvantaged Business Enterprise certification process***

The State's implementation of the federal Disadvantaged Business Enterprise program regarding verifying ownership and control of a business cannot be modified. However, modifying the State MBE certification process could lead to more timely certifications. Although businesses may apply for both certifications at the same time, many small businesses not interested in the federally-funded transportation arena should be able to obtain MBE-only certification for State projects faster than they can when the process is combined.

### ***3.11 Repeal the Small Business Preference***

The Small Business Preference – a program distinct from the Small Business Reserve program – should be repealed. Five agencies are authorized to use the small business preference: the Departments of Transportation, General Services, Public Safety and Correctional Services; the University System of Maryland; and Morgan State University. These agencies may apply a small business preference to individual procurements. This statutory preference allows businesses of any size to submit bids, but authorizes award to a small business even when the small business's bid exceeds the low bid by up to 5%. If the small business is veteran-owned, the preference rises



to 7%, and then to 8% if the small business is a service-disabled veteran owned business. Participating agencies include the preference language in their solicitations yet few reported using the preference in contract FY 2014 awards. The Small Business Preference should be repealed so that the State may focus intensive small business procurement efforts on the more efficacious SBR program.

***3.12 Create Do's and Don'ts MBE program guidance and survey new and renewing MBE applicants concerning customer service***

Technology should be used to better train and inform applicants on the entire MBE certification process. Specifically, information should be provided on what applicants do or fail to do throughout the process that typically causes significant delays. Much of the information about the process could be formatted into a 10-minute do's and don'ts training/information module to be shared with businesses. The Governor's Office of Minority Affairs, in conjunction with MDOT's Office of Minority Business Enterprise, should survey new and renewal applicants to help the State gauge the transparency, efficiency, and integrity of the certification process from a customer service viewpoint. Beyond average turnaround time, the State has to ensure that minimum customer service standards are met. The continuous feedback from applicants by way of the survey will make it easier to identify areas needing improvement, thus making the best use of both business and State resources.

## IV. Developing Qualified Procurement Personnel



A significant challenge facing State procurement is the State's ability to maintain a trained and capable procurement workforce. A lack of State training in procurement and contract management results in a workforce, by and large, learning on the job with divergent practices, procedures and skill levels among agencies. While certification programs such as those provided by the National Institute of Governmental Purchasing provide procurement expertise, these national programs do not teach State of Maryland-specific procurement rules and processes.

Workforce issues include turnover of State procurement staff. Agency program staff and management often perceive procurement as an obstacle to accomplishing agency goals. At the same time, significant responsibilities and demands are placed on procurement staff whose activities are often at the heart of the services that State agencies provide. Those demands include multiple levels of oversight. Staffing levels are insufficient in many agencies to cope with the procurement workload.

Moreover, turnover of procurement staff occurs not only because of experienced staff retirements, but also through attrition due to insufficient compensation and inadequate career tracks within the State system. Compensation provided to most State procurement staff is not competitive with the federal government, private sector, or local governments. There is a general inability to hire top-tier talent, a lack of retention incentives, and procurement career



paths are often viewed as a dead-end in most agencies. The result is that formal and on-the-job training have, ironically, provided State procurement employees a stepping stone to a higher-paying job with an employer other than the State.

#### ***4.1 Change the personnel classification series for procurement staffers***

The State's personnel classification series should be designed to achieve consistent titles and uniform compensation for procurement positions across all State agencies. This will encourage professionalism and pride among the State's procurement corps and will help ensure fairness among all State procurement staff. In addition, advancement tracks will be defined and standardized across all agencies. The Secretary of Budget and Management should implement the salary classification schedule for all new hires, transfers, and promotions no later than July 1, 2017. Current employees will remain in their classifications until they receive a promotion or transfer, at which point the employee may be promoted or transferred to the applicable classification.


#### ***4.2 Create, distribute, and maintain a Maryland Procurement Manual***

The Maryland Procurement Manual will be an electronically accessible, continuously updated guide, for use by all State agencies and the business community. The manual will be designed to achieve the consistent application of the Code of Maryland Regulations Title 21 and to promote standardized best practices for planning, conducting, and completing procurements subject thereto.

The project to develop the Manual comprises three phases: Phase 1 is the creation of the Manual by a workgroup of designated State procurement staff anticipated to begin in early 2017 and to be completed by late 2017. Phase 2 will focus on distribution of the Manual to appropriate State websites and portals available to the business community and general public. Phase 3 will establish an ongoing system for updating of the Manual to quickly receive and incorporate any changes to State procurement requirements or practices.

#### ***4.3 Create, distribute, and maintain a Maryland Procurement Training Curriculum***

A Maryland Procurement Training Curriculum will be developed from the Maryland Procurement Manual to train all procurement staff on the standardized best practices and COMAR interpretations for conducting procurements. The training curriculum will be presented in three phases. Phase 1 will establish the training content within four months after development of the Procurement Manual. This training content will be tailored for classroom settings as well as online self-training modules. Phase 2 will focus on the actual distribution and conducting of the training curriculum with the establishment of full-time centralized staff devoted to delivering training to State procurement staff. Online training modules will be established with delivery via



the State's centralized procurement website portal. Periodic hands-on training sessions will be provided on various subject matter areas, and the Senior Procurement Advisory Group<sup>3</sup> will continue to provide quarterly training sessions based upon established curriculum. Finally, Phase 3 will establish a system for updating the training curriculum on an ongoing basis as updates are made to the Procurement Manual.

#### ***4.4 Engage a risk analyst to advise procurement officers on insurance requirements***

State procurements typically require contractors to maintain specified insurance, such as commercial general liability insurance, errors and omissions/professional liability insurance, cyber liability insurance, and automobile/commercial vehicle insurance. The State, its officers, employees and agents must be listed as insured parties on these policies as well as on excess liability or umbrella policies. Some procurement officers may be unclear on how to determine appropriate insurance requirements. This can lead to the State requiring excess insurance coverage that results in contractors offering higher prices or requiring too little insurance that could result in inadequate coverage later. To address this, the State should engage a risk analyst to research and advise procurement officers on appropriate insurance requirements for specific scopes of work and industries.

#### ***4.5 Expand contract litigation unit of the Office of the Attorney General to represent all agencies***

The Office of the Attorney General should establish a central procurement unit within the Office of the Attorney General to represent all State procurement units in matters at the Maryland State Board of Contract Appeals. Currently, the Office of the Attorney General's contract litigation unit represents only the Departments of Transportation and General Services and the University System of Maryland at the Maryland Board of Contract Appeals. The contract litigation unit – a group of highly skilled State procurement lawyers that successfully represent the State's three largest procuring authorities – has saved the State millions in taxpayer dollars. Although other State procurement agencies are well-represented by in-house assistant attorneys general, those attorneys' main responsibilities and expertise are not procurement law. The State would be well served if the attorneys specializing in contract litigation would represent all the State procurement units.

#### ***4.6 Encourage procurement staffers to take professional courses and obtain professional certifications by reimbursing the expenses***

The State should reimburse procurement officials at or above Grade 16 for fees for training courses and certifications offered by professional procurement organizations. A State employee shall have worked for the State for at least one-year to be eligible for reimbursement of procurement and contract management related courses or a professional certification. An

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<sup>3</sup> The Senior Procurement Advisory Group (SPAG) includes numerous procurement officials from State of Maryland procuring agencies and units. The SPAG meets several times during the year to provide training and best practice tips on procurement-related matters including the Minority Business Enterprise (MBE) program, Veteran-owned Small Business Enterprise (VSBE) program, Board of Public Works advisories, solicitation templates and resources, as well as providing a forum for presentations on other procurement-related topics.



eligible employee may request reimbursement for up to \$5,000 annually. For each \$1,000 reimbursed, the employee must commit to work for the State for a year. If the employee leaves State service before finishing the work obligation, the State may deduct the pro-rated portion of the employee's remaining time obligation from the employee's final State paycheck or otherwise seek repayment from the employee. An employee who does not successfully complete a course or training certification will not be reimbursed for course or certification expenses.

#### ***4.7 Design and implement a procurement apprenticeship program***

A procurement apprenticeship program should be designed and implemented to introduce and familiarize interested participants not currently engaged in State procurement. The Department of Transportation initiated a pilot program in October 2016 in which non-procurement employees shadow procurement employees for six months, observing and learning day-to-day responsibilities and activities of procurement staff. Participants attend training sessions, including law, policies, and regulations; assist in performing and coordinating procurement functions and processes; help develop contract specifications, modifications and renewals; assist with complex, multi-phase procurements of services, supplies, maintenance and equipment; and assist in solicitation preparation, processing, and evaluation. At the end of the six months, participants may apply for open procurement positions.

#### ***4.8 Visit career development offices at institutions of higher education***

State representatives should visit career development offices at public institutions of higher education to increase awareness of procurement careers, meet with professors teaching procurement and contract management, and direct talented candidates to State procurement job openings. Efforts should be coordinated to contact career development offices at these institutions to find talented candidates interested in serving the State through a career in procurement. Specifically, the State representatives should contact community colleges, private and public universities, and professional schools, among others, as needed to inform students about procurement careers, advise them of the State's procurement career track, and instruct them how to look for these positions in an effort to attract the State's most talented graduates to careers in State procurement.

## V. Updating Procurement Oversight Structure



### ***5.1 Restructure the Procurement Advisory Council***

The Procurement Advisory Council consists of eleven members including the State Treasurer, the University System Chancellor, five Cabinet Secretaries, a representative of local government, and two public members, and is chaired by the Board of Public Works Executive Secretary. The Council is charged with improving the procurement system through implementing advanced techniques, improving communications between State units, addressing procurement problems, as well as reviewing and implementing procurement regulations. However, the Council's organizational structure is advisory and does not compel executive departments to make improvements to the procurement system. To address this, the Council should be renamed as the Procurement Improvement Council to reinforce the need for continual efforts to improve the procurement system. The Council's duties will include review of policies, procedures, and forms for all procurement activity and contract management. The Procurement Advisor will be added as a Council member. A Chief Procurement Policy Officer within the Governor's Office of Performance Improvement will replace the Board of Public Works Executive Secretary as chair. This individual will focus solely on procurement policy and process improvement. The Council will develop performance metrics for State procurement activity, oversee the implementation of procurement officer training, oversee the management of eMaryland Marketplace and other internet procurement resources, oversee the implementation of appropriate risk analysis and



insurance requirements, and coordinate government entities and local entities to maximize use of intergovernmental purchasing.

### ***5.2 Consolidate procurement functions of State agencies***


The Governor should explore the potential benefits of consolidating State procurement staffing in two Executive Branch Departments: Transportation and General Services. This recommendation is intended to insure consistency in statutory and regulatory interpretation, training, and the efficient use of resources. Maryland is one of a few states that has a decentralized procurement structure, which can be confusing to vendors interested in doing business with the State. It can also lead to inconsistent policy, and statutory and regulatory interpretations as the Departments have inconsistent training requirements for their procurement personnel.

Due to the volume and the unique federal aspects of the Department of Transportation (MDOT) procurements, MDOT should not be included in a possible consolidation initiative. MDOT should continue to oversee the procurement activities of its business units: State Highway, Maryland Port Authority, Maryland Aviation Administration, Maryland Transit Administration, and Maryland Transportation Authority.

The State may benefit from transferring the procurement functions of the Departments of Information Technology (DoIT) and Budget and Management (DBM) to the Department of General Services. Consolidating non-transportation procurement functions within one department may further uniformity of policies and statutory and regulatory interpretations. In addition, consolidation supports the Governor's initiatives of shared services and agency focus on their core missions.

The core missions of DBM and DoIT are not the procurement of goods and services. DBM's primary function is to develop and implement the State's budget and manage the State's workforce. DoIT's primary function is to set the State's information technology policy and insure the efficient implementation and operation of its information technology assets. The Department of General Services has since its creation, been first and foremost a procurement agency. Its core function is to procure goods and services that allow the State agencies and departments to effectively carry out their missions.

Centralizing procurement also affords State procurement personnel greater opportunities for professional growth as more varied procurement categories will be available within their department. Further, the State may benefit from being able to provide training in a more consistent and effective manner than currently available. Lastly, any savings that can be achieved through consolidation may position the State to be better able to retain and attract quality procurement professionals.



### ***5.3 Collaborate with the University System, State Lottery and Gaming Control, the Stadium Authority, and other exempt agencies to structure procurements similarly***

During the Commission's work, questions and comments concerning State entities that are exempted from the State procurement law arose with regularity. Because the Executive Order focused on agencies subject to the State procurement law, the Commission's mandate did not include a review of the University System or Stadium Authority, for example. This dichotomy illustrates the confusion that the public has when doing business with State entities. The University System is among over 30 State entities that are exempt in whole or in part from the State procurement law. Large entities with full exemptions include State Lottery and Gaming Control, Maryland Stadium Authority and the Maryland Health Benefit Exchange. In most cases, exempt entities are required to establish policies consistent with those of non-exempt entities. The Commission recommends that the staffs of the Board of Public Works and the Governor's Office of Performance Improvement meet with the larger exempt entities to review how consistent their policies and procedures are with the objectives of the State procurement laws and regulations.

### ***5.4 Eliminate, automate, and consolidate 30 procurement-related reports***

The State Procurement Law requires at least 47 documents and reports to be regularly produced by contractors or State agencies. These four reports should be eliminated as no longer necessary:

- USE OF DESIGN-BUILD AND CONSTRUCTION-MANAGEMENT-AT-RISK PROJECT DELIVERY METHODS
- LEASED PROPERTY
- INFORMATION TECHNOLOGY SERVICE CONTRACTS OVER \$100,000
- MERCURY-CONTAINING PRODUCTS

At least 26 documents and reports could be automated to minimize submission errors and improve efficiencies:

- |  |  |
|--|--|
| – EMARYLANDMARKETPLACE REGISTRATION            | – VSBE OUTREACH/WAIVER DOCUMENTATION                           |
| – BID/PROPOSAL AFFIDAVIT                       | – LIVING WAGE AFFIDAVIT  |
| – CONTRACT AFFIDAVIT                           | – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE                |
| – SDAT GOOD STANDING                           | – MERCURY AFFIDAVIT  |
| – ELECTRONIC FUNDS TRANSFER (EFT) REGISTRATION | – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE           |
| – MBE PARTICIPATION SCHEDULE                   | – SMALL BUSINESS RESERVE (SBR) ANNUAL REPORT                   |
| – MBE SUBCONTRACTOR CERTIFICATIONS             | – RECURRING CONTRACTS REPORT                                   |
| – MBE OUTREACH/WAIVER DOCUMENTATION            | – SOLE SOURCE, EMERGENCY, EXPEDITED PROCUREMENTS ANNUAL REPORT |
| – VSBE PARTICIPATION SCHEDULE                  |  |
| – VSBE SUBCONTRACTOR CERTIFICATIONS            |  |

- SERVICES, CONSTRUCTION-RELATED, ARCHITECTURAL, AND ENGINEER EXCEEDING \$100,000 IN VALUE ANNUAL REPORT
- VSBE REPORT ANNUAL REPORT
- PREFERRED PROVIDER REPORTS ANNUAL REPORTS
- PREVAILING WAGE (PUBLIC WORKS) – EMPLOYEE PAYROLL RECORDS TO DLLR WITHIN 14 DAYS
- LIVING WAGE (SERVICES) –EMPLOYEE PAYROLL RECORDS TO DLLR WITHIN 14 DAYS
- DHR HIRING AGREEMENT BIENNIAL REPORTS
- POLITICAL CONTRIBUTION DISCLOSURE
- DESIGN-BUILD AND CONSTRUCTION MANAGEMENT AT RISK PROJECTS ANNUAL REPORT

***5.5 Authorize master contracts and task-order competition more broadly***

Currently, the State Procurement Law expressly authorizes only the Department of Information Technology to enter into the "streamlined procurement process" known as master contracts. However, other control agencies also use master contracts as a procurement strategy, but without specific statutory authorization. Master contracting allows for the qualification of multiple offerors in one or more categories of goods or services. Qualified vendors are then awarded master contracts through which they compete for individual task orders to provide specific goods or services as an agency's need develops. The procurement law should be amended to expressly authorize the Departments of Budget and Management, General Services, and Transportation to use the master-contracting method.

***5.6 Allow claims on all contracts to be filed after 180 days***


By statute, procurement officers must render a decision on a construction contract claim within 180 days after receiving the claim. If the procurement officer fails to do so, the contractor may treat its claim as denied and may appeal the denied contract claim to the Maryland State Board of Contract Appeals (MSBCA). This applies only to construction contract claims. To ensure all contract claimants receive a response within a timely period, any procurement contract claim not responded to in 180 days should be deemed denied to allow an appeal to the MSBCA.

***5.7 Increase time for filing protests to 10 calendar days (currently 7 days)***

A protest against the solicitation or award of a State procurement contract must be filed with the State agency no later than 7 days after the basis for protest is known or should have been known. This 7-day limit appears to be provide insufficient time for stakeholders to assess their rights and actions. The time for filing a protest should be increased to ten days which is the same amount of time that an unsuccessful protestor has to appeal a protest denial to the MSBCA. In addition, the regulations should be amended to specify that the protest and appeals time limits comprise calendar days, not business days.

***5.8 Require Agency Report to be produced within 15 days***

When a vendor appeals the denial of its protest to the MSBCA, the Office of the Attorney General in conjunction with the procurement agency must, "submit a complete report on the actions taken by the agency with regard to the solicitation involved in the appeal, as



expeditiously as possible (generally within 15 working days).” Because the regulation states “generally” within 15 working days, the time limit is viewed as merely descriptive of “as expeditiously as possible.” The MSBCA is not able to address appeals until it receives the Agency Report. A certain deadline of 15 days for submitting the Agency Report would enable more expeditious processing of appeals. However, exceptions could be made when the 15-day deadline is impractical due to the size and scope of a particular solicitation or when the State file a motion that the Board of Contract Appeals lacks jurisdiction.

### ***5.9 Ensure better compliance with political contribution disclosure reporting***

Two separate disclosure laws apply to State procurement contractors: first, a person “doing public business”, i.e. a procurement contract worth at least \$200,000, must file a statement with the State Board of Elections that names political candidates to which the contractor has made a contribution of at least \$500. Secondly, a contractor with a procurement contract worth at least \$100,000 must file a separate statement with the Secretary of State disclosing the business’s owners, officers, and resident agent.

According to the State Board of Elections and the State Ethics Commission, fewer than 700 businesses file the political contribution disclosures, which is a small fraction of those to which the Elections Law likely applies. The Elections Law directs procurement agencies to require contractors to certify filing the statement and to notify the Elections Board when contractors fail to do so. The Commission recommends that procurement staff include notice of the Elections Law political contribution disclosure requirements in solicitation documents and again with award notices. In addition, the disclosure requirement to the Secretary of State should be the same as that for the Board of Elections: \$200,000. The discrepancy between the threshold for businesses doing business with the State to file with the Elections Board and to file with the Secretary of State likely leads to confusion and less than full compliance.

### ***5.10 Maintain policies with respect to frivolous protests, protest bonds***

Protests of merit are important to the State to ensure the procurement function is operating fairly and compliant with State Law. However, frivolous protests result in wasting the taxpayer’s money and are sometimes lodged only so that the incumbent may delay award to a new vendor.

Review of other states’ practices show a general disinclination to dissuade protests because doing so leads to the perception of hardships to small and disadvantaged businesses and an impediment to due process. A NASPO survey of actions taken by other states to mitigate frivolous protests shows:

- Six of 42 states impose some type of protest risk mitigation action.
- Of those six, five use protest bonds; one incorporates a pay to protest action.<sup>4</sup>
- Of the six, none reported tangible results.

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<sup>4</sup> A protest bond requirement makes the protestor post a bond payment, typically a percentage of the proposed contract amount, before being allowed to file the protest.




Review of the statistics that document the MSBCA's docket did not indicate that the number of protests appealed is overwhelming the procurement system:

MSBCA Managing for Results	2011	2012	2013	2014	2015
New appeals filed	35	29	23	24	27
Prior year appeals	21	12	10	6	3
Appeals resolved without written decision	21	11	17	11	9
Appeals requiring written decision	23	20	10	16	11
Appeals carried forward	12	10	6	3	10
% Decisions issued in 3 months or less	100%	100%	100%	100%	100%
Judiciary: appealed/affirmed/reversed	4/4/0	0/0/0	2/0/0	3/3/0	0/0/0

Based on the low number of protests appeals being heard by the MSBCA along with the fact that there is no evidence from other states that imposing bonds or making the protestor pay a fee offers any risk mitigation, the State should maintain its current policies and not incorporate a protest bond requirement.

***5.11 Co-locate Department of Disabilities technical assistance office with the Department of Information Technology***

Requirements that State information technology systems be accessible to individuals with disabilities have not always been met. To ensure that the State meets its obligation to procure accessible information technology systems, Department of Disabilities technical assistance staff, through co-location, should be more integrated with Department of Information Technology staff. Since the Department of Disabilities staffs are aware of the issues affecting this community, co-location will allow for ongoing reviews and corrections for projects under development.



### **5.12 Clarify the BISM Preference to Consider Direct Labor Participation**

Blind Industries and Services of Maryland (BISM) has a statutory preference requiring State agencies to purchase certain supplies or services that it provides. While there is obvious merit in providing genuine and meaningful opportunities to the blind, the practical application of the statutory preference has triggered serious questions about the proper scope of BISM's statutory preference and whether BISM should be required to employ a certain percentage of blind individuals in producing the supplies and services it provides. These questions have been raised by the Maryland Court of Appeals, the Maryland Office of the Attorney General, the Maryland Office of Legislative Audits, and multiple affected stakeholders.

Md. Code Ann., State Fin. & Proc. § 14-103(a) expressly limits BISM's eligibility for the mandated purchasing preference to goods and supplies that BISM "provides." Subsection (c) further requires a prime contractor for a maintenance contract with a component for housekeeping or janitorial services to procure janitorial products from BISM. BISM, however, does not manufacture or assemble most of the janitorial products it markets. Instead, BISM's practice is to purchase janitorial supplies manufactured by third party vendors and distribute them unaltered, or repackage them for re-sale. The Court of Appeals of Maryland noted that BISM is not entitled to the statutory preference when it acts as a broker in that manner:


If Blind Industries' theory that any blind employment justifies giving a preference is taken to its logical conclusion, its weakness becomes even clearer. Blind Industries could employ a single blind individual to take orders from State buyers for construction services, cars, highways, bridges, or gasoline, relay the orders to an appropriate private company, and receive a preference because it "provides," i.e. procures, the goods or services. This interpretation is inconsistent with the purposes of the General Procurement Law set forth in SFP § 11-201, of which Blind Industries' preference is a part, to foster broad-based competition, promote integrity, and get maximum value from the State's dollars. See SFP § 11-201(b) (procurement law "shall be construed liberally and applied to promote the purposes and policies enumerated in subsection (a) of this section").<sup>5</sup>

The Court also pointed out that giving a preference to BISM for simply acting as a broker extends "the benefit of [BISM's] preference" to BISM's chosen third party vendors by effectively allowing them to fulfill State contracts without having to engage in competitive bidding, as the normal procurement process ordinarily would require.

In an August 7, 2014 advice letter, then-Counsel to the General Assembly Dan Friedman (now a Judge of the Court of Special Appeals) opined that BISM's practice of purchasing janitorial supplies from third-party vendors and distributing them unaltered or repackaging them for resale would very likely violate a state regulation limiting the statutory preference to "[o]nly supplies and services that directly benefit ... blind persons ... through meaningful work

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<sup>5</sup> *Blind Indus. & Servs. of Md. v. Md. Dep't of Gen. Servs.*, 371 Md. 221, 236 (2002).



experiences, occupational opportunities, vocational rehabilitation and training, and work therapy." In the February 1, 2016 Performance Audit Report of the Office of Legislative Audits (OLA), concerning "Certain Operational Aspects of [BISM]", the OLA noted a longstanding issue about the proportion of blind labor hours BISM employs in providing supplies and services to State agencies.

Accordingly, the Commission encourages the General Assembly to consider revisions to the current statute to clarify the scope of BISM's statutory preference, consistent with the Court of Appeals' holding in *Blind Indus. & Services of Md.*, as to whether State agencies and prime contractors should be required to purchase from BISM only those products and services that it "provides", as defined by Com. Law §14-2801(e)<sup>6</sup>. Notably, such revisions would be in line with federal procurement law, which provides a purchasing preference through the AbilityOne program for certain products and services produced by "qualified nonprofit agenc[ies] for the blind." Part of the definition of "qualified nonprofit agency for the blind" is an agency "that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services."<sup>7</sup> According to the 2016 OLA Report, the majority of BISM's operations and sales are geared toward sales to federal agencies under the AbilityOne program. In other words, BISM is already complying with this rule for the majority of its business.

### ***5.13 Increase general small procurement ceiling to \$50,000 and increase small construction procurement ceiling to \$100,000***

Currently the State's small procurement ceiling is \$25,000 for all procurements other than construction by the Department of General Services and \$50,000 for the latter. The ceiling should be increased to \$50,000 generally except it should be increased to \$100,000 for small construction procurements. This is in line with other state and local government small procurement limits. Expanding the number of procurements classified as small will allow for more expedited procurement processing, and each State procuring unit will retain its internal review and oversight processes for small procurements. State procurement units will continue to advertise all procurements over \$15,000 on eMarylandMarketplace for not less than five days. Advertising on eMarylandMarketplace for procurements above the small procurement ceiling will remain at the current 20 day minimum.

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<sup>6</sup> "Product made by the blind" means a product if not less than 75% of the total personnel engaged in the direct labor hours in the manufacture and assembly of the product are blind workers.

<sup>7</sup> See 41 U.S.C. § 8501(7)(C)



***5.14 Increase Board of Public Works delegation to control agencies for sole source and single bid to \$100,000***

Currently, the Board of Public Works has delegated to the procurement control agencies<sup>8</sup> the authority to approve the award of contracts based on sole source or single bids only if the contracts are valued at \$50,000 or less, with limited exceptions. To expedite contract reviews and approvals, the Board of Public Works should increase the delegation level to \$100,000 for sole source contracts and for contracts that received a single response. Oversight will be maintained for State procurement units, and any sole source or single bid procurements beyond the small procurement threshold must still receive control agency review and approval.

***5.15 Increase Procurement Agency Activity Reports threshold to \$50,000***

Currently, procurement agencies must report emergency contracts that exceed \$25,000 to the Board of Public Works on an Appendix to the Board's Action Agenda. Moreover, control agencies must also submit Procurement Agency Activity Reports that detail contracts exceeding \$25,000, the small procurement ceiling, but are less than the amount to require Board approval. The Board of Public Works should raise the threshold for reporting emergency contracts to \$50,000. Likewise, the Board should increase the threshold for actions reported on the Procurement Agency Activity Reports to \$50,000. Agencies should report to the Board only procurement contracts that exceed the new recommended small procurement limit.

***5.16 Increase delegation for DHMH Laboratories Administration to procure supplies and equipment up to \$100,000***

The Department of Health and Mental Hygiene's Laboratories Administration procures services up to \$100,000 without approval from the Department of Budget and Management, but may procure supplies and equipment only up to \$25,000 without approval from the Department of General Services. In concordance with DBM, DGS should delegate authority to the Laboratories Administration to procure supplies and equipment up to \$100,000 without further approval. This change is necessary for the Laboratories Administration to respond quickly to emerging public health threats including infectious diseases agents as well as chemical and radiological environmental contaminants. The Laboratories Administration routinely purchases scientific instrumentation and specialized testing reagents and supplies to carry out its clinical and environmental testing missions. The testing is conducted in compliance with methods and platforms mandated by the Centers for Disease Control to assure that results are accurate and are comparable nationwide. All clinical diagnostic tests must be performed using specific FDA- or CMS-compliant testing systems. The threshold of \$25,000 for small procurements is insufficient for the Laboratories Administration to perform its critical responsibilities.

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<sup>8</sup> Procurement control agencies are the Departments of Budget and Management, General Services, Transportation (including the Port Commission), Information Technology, and Public Safety and Correctional Services.



***5.17 Keep single purchase limit for corporate purchasing cards at \$5,000***

The current single-purchase limit for the State Corporate Purchasing Card is \$5,000. Review of other states and local governments' purchasing card limits did not produce support for increasing the single purchase limit.



## Conclusion

Nearly ten months since its inception, the Commission to Modernize State Procurement has concluded its comprehensive review of Maryland procurement. During its eight full Commission meetings, three public town hall sessions, and over 30 Commission workgroup and subgroup meetings, the Commission reviewed the State's procurement code and regulations, workforce, practices and procedures, information technology systems, as well as numerous socioeconomic policies and programs. The results of this work are encapsulated in the 57 recommendations provided in this Report. Through enactment of these recommendations, the State will realize a more modern, streamlined procurement system with standardized best practices, and policies and procedures that are more uniform, transparent, and equitable. These changes will benefit all vendors that do business with the State, as well as the State procurement workforce, while ensuring that the State procures the best value for its taxpayers.



## Acknowledgements

The Commission is tremendously grateful for the support and expertise provided by scores of people to help modernize Maryland's procurement system.

John Adler	Mark Dachille	Sonya Hopson
David Albert	Wanda Dade	Brian Howard
Deborah Anderson	Linda Dangerfield	Jack Howard
Phil Andrews	Teresa Dantzler	Sue Howells
Jane Bailey	Jeff Davis	Holly Huntley
Sabrina Bass	Chris Defeo	Zenita Wickham Hurley
Paul Beatty	Dana Dembrow	Kevin Igoe
Lorenzo Bellamy	Donna DiCerbo	Betsy Jackson
Tyler Bennett	Lisa Dickerson	Sini Jacob
Bruce Bereano	Tracy Diel	Dori Jaffe
Herman Berlin	Christopher DiPietro	Diane Jennings
Monica Best-James	Gilbert Dissen	Will Joevel
Shannon Bettleyon	Richard Durkee	Sandy Johnson
Monica Biddle	Jeff Edwards	Lisa Jones
Blair Blankinship	Dale Eutsler	Lisa Harris Jones
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Karen Bohle	Jonathan Fishman	Chantal Kai-Lewis
Susie Brady	Lyle Flower	Joseph Katz
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Christopher Carroll	Margaret Hajiantoni	Louis Kozlakowski
Bernard Cheezum	Nancy Hapeman	Paul Krivacka
Jerry Chiat	Sheila Harrison	Jordan Kroll
Chris Christine	Marta Harting	Anna Lansaw
Jackie Cinjeck	Mike Henderson	David Lashar
Barb Clapp	Rachel Hershey	Earl Lewis
Kris Colby	Claire Hester	Scott Livingston
Michael Collins	Nancy Hevey	Eric Lomboy
Jeff Conken	Tom Hickey	Cheryl London
Chris Costello	Jim Hoagland	Luis Luna
Monica Crusse	Kristi Honeywell	Sean Malone



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# The State of Maryland

## Executive Department

EXECUTIVE ORDER  
01.01.2016.05

### Commission to Modernize State Procurement

- WHEREAS, The State of Maryland spends \$4 billion annually on goods and services;
- WHEREAS, The State procurement system has become an outdated patchwork of legislative and regulatory fixes;
- WHEREAS, State procurement policies and procedures should be open, transparent, and equitable for all participants;
- WHEREAS; Clear, uniform standards and training for State procurement officials will ensure the quality and integrity of the State's procurement system;
- WHEREAS; Providing more predictability and reducing transaction costs to businesses will allow the State to obtain the best value for goods and services at reasonable prices; and
- WHEREAS; Modern methods of procurement will safeguard equal treatment of bidders and increase competition.

NOW THEREFORE, I, LAWRENCE J. HOGAN JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

- A. The Establishment of the Commission to Modernize State Procurement (Commission).
- B. Membership.
- (1) The Commission shall consist of the following:
- (a) The Lieutenant Governor;

(b) The State Comptroller, or the Comptroller's Designee;

(c) The State Treasurer, or the Treasurer's Designee;

(d) The Secretary of the Department of Budget and Management, or the Secretary's Designee;

(e) The Secretary of the Department of Transportation, or the Secretary's Designee;

(f) The Secretary of the Department of General Services, or the Secretary's Designee;

(g) The Secretary of the Department of Information Technology, or the Secretary's Designee;

(h) The Special Secretary of the Governor's Office of Minority Affairs, or the Special Secretary's Designee;

(i) Two members of the Maryland Senate, one appointed by the President of the Senate and one appointed by the Minority Leader of the Senate;

(j) Two members of the Maryland House of Delegates, one appointed by the Speaker of the House and one appointed by the Minority Leader of the House of Delegates;

(k) The Board of Public Works Executive Secretary, as a nonvoting member;

(l) A representative chosen by Maryland Nonprofits; and

(m) Five public members to be appointed by the Governor with expertise in Maryland procurement law and experience in the information technology, construction, commodities, human services, healthcare, professional services, or engineering or architectural services industries. The public members shall serve at the pleasure of the Governor.

(2) The Board of Public Works shall provide staff support to the Commission.

(3) The Assistant Attorneys General at the Department of Budget and Management, Department of Transportation, and Department of General Services may serve as legal support to the Commission.

(4) Other State agencies and their staffs may be asked to participate at the invitation of the Lieutenant Governor.

C. Duties.

(1) The Commission shall undertake a comprehensive review of Maryland's procurement code and regulations and submit to the Governor a detailed strategy with specific recommendations that may include the following:

(a) Standardization of best practices and interpretation of the procurement provisions in the Code of Maryland Regulations across all agencies to improve consistency and provide predictability to the business community;

(b) Reduction of transaction costs for State agencies by utilizing new technologies to increase efficiencies and make the procurement process more accessible to businesses;

(c) Development of a statewide procurement manual, divided by industry sector, that summarizes the procedures and processes to be used by State agencies for awarding contracts;

(d) Development of a statewide procurement training curriculum centered around a statewide procurement manual that prepares agency procurement staff to perform the procurement function at all levels of purchasing;

(e) Addressing impediments to attracting and retaining quality procurement staff;

(f) Development of a self-directed training module for any interested business to quickly learn how to effectively bid on state contracts;

(g) Simplification of procurement reporting requirements to allow agency procurement staff to more effectively manage their time;

(h) Expansion of the Small Business Reserve Program to all agencies;

(i) Expansion of the small procurement limit and the single purchase limit for corporate purchasing cards to allow for the rapid procurement of goods and services;

(j) Simplification of the current Request For Proposal (RFP) template to make it be easier for businesses to understand and respond;

(k) Reduction in the number of documents businesses are required to submit with proposals prior to a contract award;

(l) Review the mandatory terms and conditions of procurement contracts;

(m) Simplification of the Minority Business Enterprise certification process;

(n) Determination of how best to address clearly evident mistakes on procurement submissions;

(o) Establishment of standards allowing the State to obtain the overall best value instead of only the lowest price;

(p) Development of a mechanism that would deter bidders from submitting frivolous protests; and

(q) Other relevant procurement issues identified by the Commission.

(2) The Commission shall submit its recommendations for improving and modernizing Maryland's procurement process in a final written report to the Governor, no later than December 1, 2016.

D. Procedures.

(1) The Lieutenant Governor shall chair the Commission. The Chair shall:

(a) Oversee the implementation of this Executive Order and the work of the Commission;

(b) Determine the Commission's agenda; and

(c) Identify additional support as needed.

(2) The Commission shall meet as frequently as necessary to meet the deadlines established herein.

(3) A majority of the Commission members shall constitute a quorum for the transaction of any business.

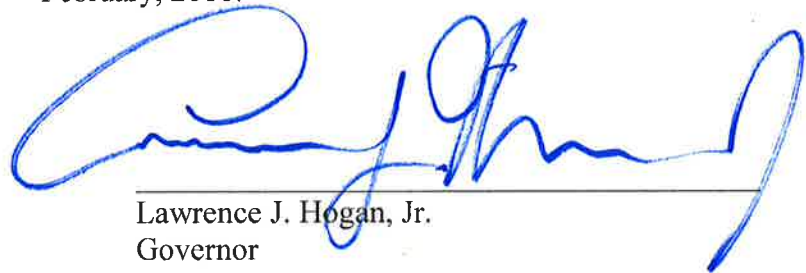
(4) The Commission may adopt other procedures to ensure the orderly transaction of business.

(5) All State agencies, departments, boards and commissions within the Executive Branch are authorized and directed to coordinate with the Commission in implementing the provisions of this Executive Order.

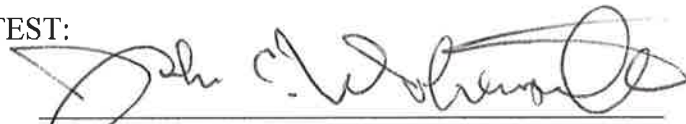
(6) On December 31, 2016, with no further action required by the Governor, this Executive Order shall be abrogated and of no further force and effect.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 10<sup>th</sup> Day of February, 2016.



  
\_\_\_\_\_  
Lawrence J. Hogan, Jr.  
Governor

ATTEST:

  
\_\_\_\_\_  
John C. Wobensmith  
Secretary of State



**(DEPARTMENT)**

## REQUEST FOR PROPOSALS (RFP)

SOLICITATION NO. (solicitation number)

**Issue Date: (date of issuance)**

**(SOLICITATION TITLE)**

(If your procurement is designated as a Small Business Reserve Procurement, include the following notice in black font)

### **NOTICE TO BIDDERS/OFFERORS**

#### **SMALL BUSINESS RESERVE PROCUREMENT**

This is a Small Business Reserve Procurement for which award will be limited to certified small business vendors. Only businesses that meet the statutory requirements set forth in State Finance and Procurement Article, §§14-501 —14-505, Annotated Code of Maryland, and that are certified by the Department of General Services Small Business Reserve Program are eligible for award of a contract.

### **NOTICE**

A Prospective Offeror that has received this document from the (Department's) website, <https://emaryland.buyspeed.com/bsol/>, or a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this RFP should immediately contact the Procurement Officer and provide the Prospective Offeror's name and mailing address so that addenda to the RFP or other communications can be sent to the Prospective Offeror.

**Minority Business Enterprises Are Encouraged to Respond to this Solicitation**

**STATE OF MARYLAND  
NOTICE TO VENDORS**

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, take a few minutes and provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Sheet below for contact information).

**Title: (SOLICITATION TITLE)**  
**Solicitation No: (solicitation number)**

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not something we ordinarily provide.
- We are inexperienced in the work/commodities required.
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- The scope of work is beyond our present capacity.
- Doing business with the State of Maryland is simply too complicated. (Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the Bid/Proposal is insufficient.
- Start-up time is insufficient.
- Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- Bid/Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- MBE or VSBE requirements. (Explain in REMARKS section.)
- Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- Payment schedule too slow.
- Other: \_\_\_\_\_

2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

---

---

Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**STATE OF MARYLAND**  
**(DEPARTMENT)**  
**RFP KEY INFORMATION SUMMARY SHEET**

**Request for Proposals:** (FIRST WORD - TYPE OF CONTRACT: SERVICES, IT, CONSTRUCTION, MAINTENANCE, A&E, etc.; SOLICITATION TITLE)

**Solicitation Number:** (solicitation number)

**RFP Issue Date:** (date of issuance)

**RFP Issuing Office:** (DEPARTMENT)

**Procurement Officer:** (name of Procurement Officer)  
(contact information of Procurement Officer)  
(address)

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_  
**e-mail:** \_\_\_\_\_

**Contract Monitor:** (name of Contract Monitor)  
(administration or facility name)  
(contact information of Contract Monitor)  
(address)

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_  
**e-mail:** \_\_\_\_\_

**Proposals are to be sent to:** (DEPARTMENT)  
(street address and room number), (city, state, zip code)  
**Attention:** (name of Procurement Officer)

**Pre-Proposal Conference:** (date and time of Conference) Local Time  
(street address, room number), (city, state, zip code)

**Proposal Due (Closing) Date and Time:**(Proposal due date and time) Local Time

**MBE Subcontracting Goal:** (MBE goal percentage) %

**VSBE Subcontracting Goal:** (VSBE goal percentage) %

**Contract Type:** (enter type of contract or combination of more than one type, e.g., firm fixed price, fixed price with cost adjustment, labor hour, indefinite quantity with fixed unit price, etc.)

**Contract Duration:** (enter contract duration including start-up period, approx. go live date and any option periods)

**SBR Designation:** (Yes or No)

**Federal Funding:** (Yes or No)

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## **SECTION 1 – MINIMUM QUALIFICATIONS**

### **1.1 Offeror Minimum Qualifications**

(If there are **no** Offeror Minimum Qualifications for this solicitation, enter only the following sentence for this section and delete the rest)

There are no Offeror Minimum Qualifications for this procurement.

(If there **are** Offeror Minimum Qualifications for this solicitation, enter the following language as applicable for this section and insert a numbered list of all Minimum Qualifications. These Minimum Qualifications are requirements that must be met by a vendor in order to submit a Proposal, including any licensures or certifications, years of experience, 501(c)(3) status, CBO, other designations, etc. These are not to be service requirements or deliverables under the Contract (those are detailed in Section 2). Include requirements of proof that must be included with an Offeror's Proposal (ex. copies of licenses, certificates, etc.). It is not mandatory to have Minimum Qualifications, and having them can inhibit competition, but if a bottom line requirement must be met, using Minimum Qualifications is a good way to set the bar.)

The Offeror must provide proof with its Proposal that the following Minimum Qualifications have been met:

- 1.1.1 The Offeror shall have . . . (ex. three (3) years of experience providing . . .). As proof of meeting this requirement, the Offeror shall provide with its Proposal . . . (ex. three (3) references from the past five years able to attest to the Offeror's experience in providing . . .).
- 1.1.2 The Offeror shall be certified . . . (ex. by the Maryland Insurance Administration as a . . .). As proof of meeting this requirement, the Offeror shall provide with its Proposal . . . (ex. a current certificate issued by the Maryland Insurance Administration evidencing the Offeror's certification as a . . .")
- 1.1.3...

### **1.2 References and State of Maryland Contracts**

1.2.1 At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. References used to meet any Offeror Minimum Qualifications (see RFP Section 1.1) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided services within the past five (5) years and include the following information:

- a. Name of client organization;
- b. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- c. Value, type, duration, and description of services provided.

The Department reserves the right to request additional references or utilize references not provided by an Offeror. (See RFP Section 5.4.2.9)

1.2.2 Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
- c. The dollar value of the contract;
- d. The term of the contract;
- e. The State employee contact person (name, title, telephone number, and, if possible, e-mail address);  
and
- f. Whether the contract was terminated before the end of the term specified in the original contract,  
including whether any available renewal option was not exercised.

Information obtained regarding the Offeror's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP. **(See RFP Section 5.4.2.10)**

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

## **SECTION 2 – CONTRACTOR REQUIREMENTS: SCOPE OF WORK**

### **2.1 Summary Statement**

- 2.1.1 The (Department) (acronym for the Department or the Department) is issuing this Request for Proposals (RFP) to provide (enter a brief description of the services to be performed – i.e., a brief summary of Section 2.3 of the Scope of Work).
- 2.1.2 It is the State’s intention to obtain services, as specified in this RFP, from a Contract between the selected Offeror and the State. The anticipated duration of services to be provided under this Contract is (enter number of years, and option years if any).
- 2.1.3 The Department intends to make (enter one of the following – “a single award” or “up to X awards” if there is the possibility for multiple awards, with “X” being the maximum number of awards. If more than one award is possible based on different Service Categories/Functional Areas or Regions/Counties, state so here.) as a result of this RFP. See RFP Section 4.9 for more information.
- 2.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

(NOTE: For procurements with a single contract type of indefinite quantity with firm fixed unit prices or indefinite quantity with fixed unit prices subject to adjustment, cost reimbursement, or a combination of indefinite quantity and cost reimbursement if you choose to allow non-State of Maryland government entities or organizations to utilize this Contract, you may include the following or similar language below as Section 2.1.5. Please consult with your Department’s Assistant Attorney General regarding this Section and the exact wording of the language, especially for contracts with two or more contract type components when “fixed price” is one of the components.)

- 2.1.5 Maryland County, municipal, and other non-State of Maryland governments or government agencies and not-for-profit organizations within the State of Maryland may purchase from the Contractor goods or services covered by this Contract at the same prices chargeable to the State. All such purchases by non-State of Maryland governments, government agencies or not-for-profit organizations:
- (1) Shall constitute Contracts between the Contractor and that government, agency or organization;
  - (2) Shall not constitute purchases by the State or State agencies under this Contract;
  - (3) Shall not be binding or enforceable against the State; and
  - (4) May be subject to other terms and conditions agreed to by the Contractor and the purchaser. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State of Maryland agency.

All Contract prices, terms, and conditions must be provided to any Maryland local government or not-for-profit organization requesting services under this Contract.

### **2.2 Background and Purpose**

(Provide a description of the purpose of this solicitation, and any background information that may be helpful to vendors in preparing the responses. A summary of this section should be included in Section 1.1 of this solicitation).

The State is issuing this solicitation for the purposes of . . .

## **2.3 Scope of Work - Requirements**

The Contractor shall:

(Insert the Contract specifications into the solicitation here. This is the most important section of the solicitation and the “meat” of the procurement. Any product or service deliverables, milestones, or deadlines must be identified here, including reports specific to the Scope of Work requirements. The specifications must clearly articulate what the State’s requirements are and readers should understand exactly what the State intends to procure. The specifications need to be clearly written so that payment can be made appropriately, work (un)performed can be identified, and the contractual rights of the State can be enforced. Use the term “Contractor,” not “Offeror,” throughout this Section as these are Contractual requirements. State your requirements in an outline format that is organized logically with proper headings for each main section (ex. Staffing; Reports; etc.), using proper outline formatting with tabs to differentiate subsections. See formatting example below)

### **2.3.1 General Requirements**

#### 2.3.1.1

2.3.1.1.1

2.3.1.1.2

2.3.1.1.2.1

2.3.1.1.2.2

2.3.1.1.3

#### 2.3.1.2

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2.3.1.2.2

### **2.3.2 Staffing**

#### 2.3.2.1

#### 2.3.2.2

2.3.2.2.1

2.3.2.2.2

#### 2.3.2.3

### **2.3.3 Reports . . .**

## SECTION 3 – CONTRACTOR REQUIREMENTS: ADDITIONAL REQUIREMENTS

### **3.1 Insurance Requirements**

(The insurance requirements and minimums stated below are general examples, and may not reflect the necessary requirements and minimums for your Scope of Work. Some of the insurance requirements and minimums below may place an undue burden on the Contractor and its subcontractors, or may not be necessary for the types of services to be provided. Research sample insurance requirements for the relevant service industry in order to fine-tune these requirements and minimums for your particular Scope of Work requirements.)

- 3.1.1 The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, with a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate. (If determined necessary, higher limits can be accomplished by adding an excess liability or umbrella policy requirement.)
- 3.1.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with a minimum limit of \$5,000,000 per claim and annual aggregate (Professional Liability is typically written on a claims-made form, not on an occurrence form. Consider having cyber liability included in the professional liability if the vendor will have access to Personal Identifiable Information in any medium.)
- 3.1.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.1.4 The Contractor shall maintain Crime Insurance to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a single loss retention not to exceed \$10,000. (Because Commercial General Liability excludes losses due to crime or employee dishonesty, it is recommended to consider including a crime insurance requirement on any contract when the vendor is handling money, securities, or other valuable property, or has access to computer networks or computer data. To provide coverage for the State the crime policy must be endorsed to cover “Third Party Fidelity.” Third party fidelity covers the Contractor’s employees when engaged in work for a client. Additionally, to ensure payment to the State, the State of Maryland and the Department should be added as a “Loss payee.”)
- 3.1.5 Within five (5) Business Days of recommendation for Contract award, and before any work begins, the Contractor shall provide the Procurement Officer with current certificates of insurance, and update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor’s current certificate of insurance shall contain at minimum the following:
- a. Workers’ Compensation – The Contractor shall maintain such insurance as necessary and/or required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act.
  - b. Commercial General Liability as required in Section 3.1.1.
  - c. Errors and Omissions/Professional Liability as required in Section 3.1.2.
  - d. Automobile and/or Commercial Truck Insurance as required in Section 3.1.3.
  - e. Crime Insurance as required in Section 3.4.4.
- 3.1.6 The “State of Maryland, its officers, employees and agents” shall be listed as an additional insured on any Commercial General Liability, Auto Liability, Professional/Cyber Liability, and excess liability or umbrella

policies with the exception of Workers' Compensation Insurance, which is currently handled by the Chesapeake Employer's Insurance Company (formerly Injured Workers' Insurance Fund). All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and provide such policies.

- 3.1.7 The Contractor shall require that any subcontractors providing primary services (as opposed to non-critical, ancillary services) under this Contract obtain and maintain the same levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

## **3.2 Security Requirements**

### **3.2.1 Employee Identification**

3.2.1.1 Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.

3.2.1.2 At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visible location at all times.

### **3.2.2 Criminal Background Check**

**(Use only one of the Criminal Background Check paragraphs below, as applicable; delete the others. If no background check is required, delete this Criminal Background Check section and revise subsection numbering accordingly.)**

**(For Contractor Personnel when the Contractor Is Responsible for Background Checks)**

The Contractor shall obtain from each individual assigned to work on the Contract a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and provide the Contract Monitor with completed checks on all new employees prior to assignment. The Contractor may not assign an employee with a criminal record to work under this Contract unless prior written approval is obtained from the Contract Monitor.

**(For Contractor Personnel when the Administration/Facility Is Responsible for Background Checks)**

The Contractor shall obtain from each individual assigned to work on the Contract a signed statement permitting a criminal background check. The Department will obtain a criminal background check for each individual using a source of its choosing. The Contract Monitor reserves the right to reject any individual based upon the results of the background check.

**(For Temporary Personnel Contracts)**

The Contractor shall obtain criminal background checks on candidates it sends for employment at the Department. At a minimum, these checks must contain convictions and probation before judgment (PBJ) pleadings within the State of Maryland. These checks may be performed by public or private entities. Prior to placement of a temporary employee, the Contract Monitor must review the background check to determine if the candidate is acceptable based on the specific duties that need to be fulfilled and circumstances surrounding the conviction or PBJ pleading. Being convicted is not in itself a bar to placement. Decisions of the Contract Monitor as to acceptability of a candidate are final.

### 3.2.3 Information Technology

(The following Information Technology Security provisions are to be included in Contracts where there is the collection, accessing, usage, storage, processing, disposition, and/or disclosure of State data, including “Sensitive Data” such as PII, PHI, or other private/confidential data. These provisions are designed to coincide with the SOC 2 Type 2 Audit Report provisions in RFP Section 3.5, and should always be included in the solicitation when the SOC 2 Type 2 Audit Report requirement is included. If your solicitation does not have any requirements that relate to these Information Technology provisions, delete this Information Technology section and revise subsection numbering accordingly)

For purposes of this solicitation and the resulting Contract:

- (1) “Sensitive Data” means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of “personal information” under Md. Code Ann., State Govt. § 14-3501(d); or (4) falls within the definition of “personal information” under Md. Code Ann., St. Govt. § 10-1301(c).
- (2) “Relevant subcontractor” includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.
- (3) The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of this solicitation and resulting Contract.
- (4) The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>. The State IT Security Policy may be revised from time to time. The Contractor and all subcontractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online on this website.

#### 3.2.3.1 Information Security Requirements

To ensure appropriate data protection safeguards are in place, the Contractor and any relevant subcontractor(s) shall at a minimum implement and maintain the following information technology controls at all times throughout the life of the Contract. The Contractor and any relevant subcontractor(s) may augment this list with additional information technology controls.

- (1) Establish separate production, test, and training environments for systems supporting the services provided under this Contract and ensure that production data is not replicated in the

- test and/or training environment unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements.
- (2) Apply hardware and software hardening procedures as recommended by the manufacturer to reduce the Contractor/subcontractor's systems' surface of vulnerability. The purpose of system hardening procedures is to eliminate as many security risks as possible. These procedures may include but are not limited to removal of unnecessary software, disabling or removing of unnecessary services, removal of unnecessary usernames or logins, and deactivation of unneeded features in the Contractor/subcontractor's system configuration files.
  - (3) Establish policies and procedures to implement and maintain mechanisms for regular internal vulnerability testing of operating system, application, and network devices supporting the services provided under this Contract. Such testing is intended to identify outdated software versions; missing software patches; and device or software misconfigurations; and validate compliance with or deviations from the Contractor's and/or subcontractor's security policy. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
  - (4) Where website hosting or Internet access is the service provided or part of the service provided, the Contractor and any relevant subcontractor(s) shall conduct regular external vulnerability testing. External vulnerability testing is an assessment designed to examine the Contractor's and subcontractor's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
  - (5) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract, automatically updated, and configured to actively scan and detect threats to the system for remediation.
  - (6) Enforce strong user authentication and password control measures over the Contractor/subcontractor's systems supporting the services provided under this Contract to minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
  - (7) Ensure State data under this service is not processed, transferred, or stored outside of the United States.
  - (8) Ensure that State data is not comingled with the Contractor's and subcontractor's other clients' data through the proper application of data compartmentalization security measures. This includes but is not limited to classifying data elements and controlling access to those elements based on the classification and the user's access or security level.
  - (9) Apply data encryption to protect State data, especially Sensitive Data, from improper disclosure or alteration. Data encryption should be applied to State data in transit over networks and, where possible, State data at rest within the system, as well as to State data when archived for backup purposes. Encryption algorithms which are utilized for this

purpose must comply with current Federal Information Processing Standards (FIPS), “Security Requirements for Cryptographic Modules”, FIPS PUB 140-2.

<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>

- (10) Enable appropriate logging parameters on systems supporting services provided under this Contract to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information security standards including the current State of Maryland Department of Information Security Policy:  
<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
- (11) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor’s performance to confirm the effectiveness of these measures for the services being provided under this Contract.
- (12) Ensure system and network environments are separated by properly configured and updated firewalls to preserve the protection and isolation of Sensitive Data from unauthorized access as well as the separation of production and non-production environments.
- (13) Restrict network connections between trusted and untrusted networks by physically and/or logically isolating systems supporting the services being provided under the Contract from unsolicited and unauthenticated network traffic.
- (14) Review at regular intervals the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
- (15) Ensure that the Contractor’s and any subcontractor’s personnel shall not connect any of their own equipment to a State LAN/WAN without prior written approval by the State. The Contractor/subcontractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor/subcontractor-owned equipment to a State LAN/WAN.

#### 3.2.3.2 Contingency / Disaster Recovery Plans

- (1) The Contractor and any relevant subcontractor(s) shall have robust contingency and disaster recovery plans in place to ensure that the services provided under this Contract will be maintained in the event of disruption to the Contractor/subcontractor’s operations (including, but not limited to, disruption to information technology systems), however caused.
- (2) The contingency and disaster recovery plans must be designed to ensure that services under this Contract are restored after a disruption within **(specify the time duration in hours or days in which services must be restored)** in order to avoid unacceptable consequences due to the unavailability of services.
- (3) The Contractor and any relevant subcontractor(s) shall test the contingency/disaster recovery plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one annual test shall include backup media restoration and failover / fallback operations.
- (4) Such contingency and disaster recovery plans shall be available for the Department to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

### 3.2.3.3 Incident Response Requirement

- (1) The Contractor shall notify the Contract Monitor when any Contractor and/or subcontractor system that may access, process, or store State data or work product is subject to unintended access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.
- (2) The Contractor shall notify the Contract Monitor within two (2) Business Days of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Monitor and Procurement Officer.
- (3) The Contractor shall notify the Contract Monitor within twenty-four (24) Hours if there is a threat to the Contractor's and/or subcontractor's systems as it pertains to the use, disclosure, and security of the Department's Sensitive Data.
- (4) If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Contract Monitor within two (2) Business Days after the Contractor's discovery of such use or disclosure and, thereafter, all information the State requests concerning such unauthorized use or disclosure.
- (5) The Contractor, within two (2) Business Days of discovery, shall report to the Contract Monitor any improper or non-authorized use or disclosure of Sensitive Data. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. The Contractor's report shall identify:
  - a. The nature of the unauthorized use or disclosure;
  - b. The Sensitive Data used or disclosed;
  - c. Who made the unauthorized use or received the unauthorized disclosure;
  - d. What the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
  - e. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- (6) The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and indemnify, hold harmless, and defend the State and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.
- (7) This Section 3.2.3.3 shall survive expiration or termination of the Contract.

## 3.3 Problem Escalation Procedure

- 3.3.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.

The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.

- 3.3.2 The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
- a. The process for establishing the existence of a problem;
  - b. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
  - c. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
  - d. Expedited escalation procedures and any circumstances that would trigger expedited them;
  - e. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
  - f. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
  - g. A process for updating and notifying the Contract Monitor of any changes to the PEP.

Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

## **3.4 Invoicing**

### **3.4.1 General**

3.4.1.1 All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor. All invoices shall include the following information:

- (1) Contractor name and address;
- (2) Remittance address;
- (3) Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- (4) Invoice period (i.e. time period during which services covered by invoice were performed);
- (5) Invoice date;
- (6) Invoice number;
- (7) State assigned Contract number;
- (8) State assigned (Blanket) Purchase Order number(s);
- (9) Goods or services provided; and
- (10) Amount due.

Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

3.4.1.2 The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Also see the "Living Wage" provision of the Contract, if applicable, which allows for withholding of payment under certain

circumstances. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.

### 3.4.2 Invoice Submission Schedule

The Contractor shall submit invoices in accordance with the following schedule:

(Enter the Contractor's invoice submission schedule here; this can be a table with dates for required deliverables, or a more simple statement such as "Invoices are due by the 15<sup>th</sup> of the month following the month in which services were performed." The invoice submission schedule will depend on the type of contract, e.g., fixed price, indefinite quantity, etc. and service delivery. Invoices and resulting payment should generally be based on performance for services/goods provided.)

## 3.5 SOC 2 Type 2 Audit Report

(If you determine that a Contractor SOC 2 Type 2 Report **is not** required for this Contract, enter only the following sentence for this section and delete the rest)

A SOC 2 Type 2 Report is not a Contractor requirement for this Contract.

(Include the following SOC 2 Type 2 Report clause when the Contractor will collect, process, transmit, store, organize, maintain, or dispose of critical or sensitive information on behalf of the Department as part of its Contract responsibilities. Examples of critical or sensitive information processes may include but are not limited to the following)

- (1) Account Receivable or Fee Payment Processing Services;
- (2) Call Center or Help Desk Services;
- (3) Collection Agency Services;
- (4) Information System Hosting or System Services;
- (5) Management or Cloud Computing Services;
- (6) Medical or Insurance Claims Processing Services;
- (7) Payroll Processing Services;
- (8) Printing and Mailing Processing Services; and
- (9) Records Retention Services.

This section applies to the Contractor and any relevant subcontractor who provides services for the Department's identified critical functions, handles Sensitive Data [see RFP Section 3.2.3(1)], and/or hosts any related implemented system for the State under the Contract. For purposes of this section, "relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.

The Contractor shall have an annual audit performed, by an independent audit firm of the Contractor's choosing, of the Contractor's and any relevant subcontractor's handling of Sensitive Data and the Department's critical functions, which are identified as (Department to identify specific "critical functions" of the Contract; see examples above), and shall address all areas relating to Information Technology security and operational processes (see RFP Section 3.2.3.). These services provided by the Contractor and any relevant subcontractor that shall be covered by the audit will collectively be referred to as the "Information Functions and/or Processes." Such audits shall be performed in accordance with audit guidance: *Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2)* as published by the American Institute of Certified Public

Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the security of outsourced client functions or data (collectively, the “Guidance”) as follows:

- 3.5.1 The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the “SOC 2 Audit” or “SOC 2 Report”). The initial SOC 2 Audit shall be scheduled and completed within a timeframe to be specified by the Contract Monitor. All subsequent SOC 2 Audits that are arranged after this initial audit shall be performed on annual basis and submitted to the Contract Monitor by (Department to specify the reoccurring annual date – ex. “March 1”) for the preceding calendar year.
- 3.5.2 The SOC 2 Audit shall report on the Contractor’s and any relevant subcontractor’s system(s) and suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes to meet the requirements of the Contract, including the Security Requirements identified in Section 3.2, relevant to the following trust principles: (Processing Integrity, Security, Availability, Confidentiality, and/or Privacy – Department to choose which of the five trust principles apply) as defined in the aforementioned Guidance. (Consult with your AAG, Chief Information Officer, or a director of internal audits to determine which trust principles are applicable for your Contract. Rarely will a SOC 2 Audit require that all five trust principles be included in the Audit scope. However, if the solicitation requires that a Non-Disclosure Agreement (Attachment I) be submitted by the Contractor, then the trust service principle “Confidentiality” should be strongly considered as one of the trust principles selected for the SOC 2 Audit, as the Contractor’s controls over State data determined to be confidential must be assessed as part of the Audit.)
- 3.5.3 The audit scope of each year’s SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Confidentiality, Processing Integrity, and/or Privacy) to accommodate any changes to the Contractor’s and any relevant subcontractor’s environment since the previous SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and/or Processes through modifications to the Contract, or due to changes in information technology or operational infrastructure implemented by the Contractor and/or subcontractor. The Contractor and any relevant subcontractor shall ensure that the audit scope of each year’s SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- 3.5.4 The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the Contractor for the Information Functions and/or Processes for the services provided to the Department under the Contract. The Contractor shall ensure the audit includes all subcontractors operating in performance of the Contract.
- 3.5.5 All SOC 2 Audits, including those of the Contractor and any relevant subcontractor, shall be performed at no additional expense to the Department.
- 3.5.6 The Contractor and all relevant subcontractors shall promptly provide a complete copy of the final SOC 2 Report(s) to the Contract Monitor upon completion of each SOC 2 Audit engagement.
- 3.5.7 The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a documented corrective action plan which addresses each audit finding or exception contained in a SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor and/or subcontractor(s) along with the date(s) when each remedial action is to be implemented.
- 3.5.8 If the Contractor, including any relevant subcontractor, currently has an annual information security assessment performed that includes the operations, systems, and repositories of the Information Functions and/or Processes being provided to the Department under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Department will determine in consultation with appropriate State government technology and audit authorities whether the Contractor’s and any relevant subcontractor’s current information security assessments are acceptable in lieu of the SOC 2 Report(s).

3.5.9 If the Contractor and any relevant subcontractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in RFP Section 3.5.1, the Department shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and/or Processes utilized or provided by the Contractor and any relevant subcontractor under the Contract. The Contractor and any relevant subcontractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The Department will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.

### 3.6 MBE Reports

If this solicitation includes an MBE Goal (see Section 4.26), the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports based upon the commitment to the goal:

- (1) **Attachment D-4A**, the MBE Participation Prime Contractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer;
- (2) **Attachment D-4B** (*if applicable*), the MBE Prime Contractor Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer; and
- (3) **Attachment D-5**, the MBE Participation Subcontractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.

### 3.7 VSBE Reports

If this solicitation includes a VSBE Goal (see Section 4.27), the Contractor and its VSBE subcontractors shall provide the following VSBE Monthly Reports based upon the commitment to the goal:

- (1) **Attachment E-3**, the VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer; and
- (2) **Attachment E-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.

### 3.8 Liquidated Damages

(A Liquidated Damages section is optional and a determination to include Liquidated Damages, how they should be calculated and to what they should apply should be made in consultation with your agency's AAG pursuant to COMAR 21.07.01.14. If your solicitation does not include Liquidated Damages for the Scope of Work, then this subsection should be deleted and any subsequent Section 3 subsections renumbered accordingly.)

### 3.9 End of Contract Transition

(This section is designed for Contracts where services are anticipated to continue via a subsequent contract award, and help ensure a successful transition between the contracts. If you do not anticipate the need for services to continue in

the future, beyond the term of this Contract, or if contract transition is adequately addressed elsewhere, then this End of Contract Transition section may be deleted).

The Contractor shall cooperate in the orderly transition of services from the Contract awarded under this solicitation to any subsequent contract for similar services. The transition period shall begin ninety (90) days (or a different amount of days, at the Department's discretion) before the Contract end date, or the end date of any final exercised option or contract extension. The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of Contract.

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## **SECTION 4 – PROCUREMENT INSTRUCTIONS**

### **4.1 Pre-Proposal Conference**

A Pre-Proposal Conference (the Conference) will be held at the date, time, and location indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

The Conference will be summarized. As promptly as is feasible after the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace. See RFP Section 4.2.

In order to assure adequate seating and other accommodations at the Conference, please e-mail or fax the Pre-Proposal Conference Response Form (**Attachment A**) to the attention of the Procurement Officer at least five (5) Business Days prior to the Pre-Proposal Conference date. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Pre-Proposal Conference date. The Department will make a reasonable effort to provide such special accommodation.

(NOTE: Depending on your procurement’s requirements, a site visit may be beneficial to prospective Offerors. If so, the language below may be inserted when appropriate, and this section title changed to “Pre-Proposal Conference and Site Visit(s).” If there are limitations as to how many vendor representatives may attend, the Department should state so below. If visits to multiple sites are recommended, it is suggested that separate, advance registrations be made available for each, and the schedule for the site visits be distributed prior to the Pre-Proposal Conference if possible. The Department should also address whether prospective Offerors can request a follow-up site visit, or if no additional, follow-up visits will be allowed. Finally, if any site visit is offered, the Pre-Proposal Conference Response Form should include a section where vendors can indicate whether they intend to attend the site visit, and should include spaces for the vendor to name its representative(s) that will attend the site visit.)

A site visit is suggested for prospective Offerors to assist in responding to this RFP. A site visit has been pre-scheduled for (date of site visit), beginning at (start time of site visit) Local Time, at (full address of site with building name and room number). All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals. Note that questions asked by prospective Offerors during site visits should pertain to specifics of the site being toured; questions concerning the solicitation will not be answered during a site visit, and should be submitted in writing to the Procurement Officer. See RFP Section 4.2 below.

### **4.2 eMaryland Marketplace**

Each Offeror is requested to indicate its eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted at the time of its Proposal submission to this RFP.

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the (Department acronym) website ([Department Procurement website link](#)) and possibly other means for transmitting the RFP and associated materials, solicitation and summary of the Pre-Proposal Conference, Offeror questions, and Procurement Officer’s responses, addenda, and other solicitation-related information will be provided via eMM.

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsa/login.jsp>, click on “Register” to begin the process, and then follow the prompts.

### 4.3 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the Procurement Officer's e-mail address indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer via email in a timely manner prior to the Proposal due date. Questions are requested to be submitted at least five (5) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the RFP in sufficient time for the answer to be taken into consideration in the Proposal.

### 4.4 Procurement Method

This Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.

### 4.5 Proposals Due (Closing) Date and Time

Proposals, in the number and form set forth in RFP Section 5.2 "Proposals" must be received by the Procurement Officer at the Procurement Officer's address no later than the Proposal Due date and time indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) in order to be considered.

Requests for extension of this time or date will not be granted. Offerors mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the RFP Key Information Summary Sheet will not be considered.

Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the RFP Key Information Summary Sheet for receipt of Proposals.

**Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.**

Vendors not responding to this solicitation are requested to submit the "Notice to Vendors" form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements, etc.). This form is located in the RFP immediately following the Title Page (page ii).

### 4.6 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted. (If you wish to consider accepting Multiple or Alternate Proposals, discuss with your procurement supervisor and DBM analyst).

## 4.7 Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror's Proposal to meet the requirements of this RFP.

## 4.8 Public Information Act Notice

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. (Also, see RFP Section 5.4.2.2 "Claim of Confidentiality"). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

## 4.9 Award Basis

The Contract shall be awarded to the responsible Offeror ("**Offeror(s)**" if **multiple awards are authorized**) submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP Section 6 for further award information.

(If more than one award is authorized based on different Service Categories/Functional Areas or Regions/Counties, add additional language to the paragraph above stating how such awards will be made. Ex. "One Contract award will be made per Functional Area.")

(If multiple awards for the same type of services are possible, add a paragraph here that describes how subsequent awards will be made. Ex: "Up to 'X' additional awards will be made to the next highest overall-ranked Offeror(s)." In addition, change the title of this subsection to "Award Basis and Assignment of Work," and state how multiple Contractors will provide the required services. Ex. "For multiple contract awards, the Contractor with the highest overall ranking will be given the right of first refusal to provide the requested services. If that Contractor is unwilling or unable to perform the requested services, the Contractor with the next highest overall ranking will be asked to provide the requested services, and so forth. Each Contractor will have 48 hours to respond to a service request before a request is made to the next subsequent Contractor." **The previous language is provided just as an example; the Department should consider its requirements and state the language that best suits the Scope of Work.**)

## 4.10 Oral Presentation

Offerors may be required to make oral presentations to State representatives. Offerors must confirm in writing any substantive oral clarification of or change in their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations.

#### **4.11 Duration of Proposal**

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

#### **4.12 Revisions to the RFP**

If it becomes necessary to revise this RFP before the due date for Proposals, the Department shall endeavor to provide addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the Department's procurement web page and through eMM. It remains the responsibility of all prospective Offerors to check all applicable websites for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Offerors that submitted timely Proposals and that remain under award consideration as of the issuance date of the addenda.

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal. Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum.

#### **4.13 Cancellations**

The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

#### **4.14 Incurred Expenses**

The State will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, providing a demonstration, or performing any other activities related to submitting a Proposal in response to this solicitation.

#### **4.15 Protest/Disputes**

Any protest or dispute related, respectively, to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

#### **4.16 Offeror Responsibilities**

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this

solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see Section 4.26 “Minority Business Enterprise Goals” and Section 4.27 “Veteran-Owned Small Business Enterprise Goal”).

If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror shall submit with its Proposal an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.

A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience and/or qualifications of the parent under any evaluation criteria pertaining to the Offeror’s experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualification of the parent are transferred to and shared with the Offeror, the parent is directly involved in the performance of the Contract, and the value of the parent’s participation as determined by the State.

#### **4.17 Mandatory Contractual Terms**

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 5.4.2.4).**

#### **4.18 Proposal Affidavit**

A Proposal submitted by an Offeror must be accompanied by a completed Proposal Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP.

#### **4.19 Contract Affidavit**

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit, a copy which is included as **Attachment N** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. The Contractor must also submit a Contract Affidavit with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section “B” of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered to be a “foreign” business.

#### **4.20 Compliance with Laws/Arrearages**

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

## 4.21 Verification of Registration and Tax Payment

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <http://sdat.dat.maryland.gov/ucc-charter/>.

It is strongly recommended that any potential Offeror complete registration prior to the due date for receipt of Proposals. An Offeror's failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

## 4.22 False Statements

Offerors are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

- (a) In connection with a procurement contract a person may not willfully:
  - (1) falsify, conceal, or suppress a material fact by any scheme or device;
  - (2) make a false or fraudulent statement or representation of a material fact; or
  - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

## 4.23 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

[http://comptroller.marylandtaxes.com/Government\\_Services/State\\_Accounting\\_Information/Static\\_Files/APM/X-1020130407.pdf](http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/X-1020130407.pdf)

## 4.24 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract "Prompt Payment" clause (see **Attachment M**).

Additional information is available on GOMA's website at:

<http://goma.maryland.gov/Documents/Legislation/PromptPaymentFAQs.pdf>

## 4.25 Electronic Procurements Authorized

- 4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract.
- 4.25.3 “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- 4.25.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.23 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section 4.25.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
- 4.25.4.1 The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
- (a) The solicitation (e.g., the RFP);
  - (b) Any amendments;
  - (c) Pre-Proposal conference documents;
  - (d) Questions and responses;
  - (e) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
  - (f) Notices of award selection or non-selection; and
  - (g) The Procurement Officer’s decision on any Bid protest or Contract claim.
- 4.25.4.2 An Offeror or potential Offeror may use e-mail or facsimile to:
- (a) Ask questions regarding the solicitation;
  - (b) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer; and
  - (c) Submit a "No Proposal Response" to the solicitation.
- 4.25.4.3 The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- 4.25.5 The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
- (a) Submission of initial Proposals;
  - (b) Filing of Bid Protests;
  - (c) Filing of Contract Claims;

- (d) Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
- (e) Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

4.25.6 Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, Contract, or direction from the Procurement Officer or Contract Monitor.

**4.26 Minority Business Enterprise Goals**

(If there is **no** MBE goal for this solicitation, enter only the following sentence for this section and delete the remainder of this section)

There is no MBE subcontractor participation goal for this procurement.

(If there **is** an MBE goal for this solicitation, enter and complete the following language for this section)

**4.26.1 Establishment of Goal and Subgoals.** An overall MBE subcontractor participation goal of **(MBE goal percentage)%** of the total contract dollar amount as set forth in the Offeror’s Price Proposal (Attachment B), including all option years, if any, has been established for this procurement.

In addition, the following subgoals have been established for this procurement:

- (a) **(African-American subgoal percentage)%** for African-American MBEs;
- (b) **(Asian-American subgoal percentage)%** for Asian-American MBEs;
- (c) **(Hispanic-American subgoal percentage)%** for Hispanic-American MBEs; and
- (d) **(Woman-Owned subgoal percentage)%** for Woman-Owned MBEs.

Notwithstanding any subgoals established above, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

(After completing the MBE Subgoal Worksheet pursuant to the MBE Subgoal Guidance, (i) insert the subgoal amounts for the applicable subgroups above, and (ii) delete any of the above subgroups that do not apply to this solicitation. If after the completion of the MBE Subgoal Worksheet no subgoals are established, then the following sentence should be included instead, in black font)

There are no MBE subcontractor participation subgoals for this procurement.

**4.26.2 Attachments D-1 to D-5** – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:

<b>Attachment D-1A</b>	MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule <b>(must be submitted with Proposal)</b>
<b>Attachment D-1B</b>	Waiver Guidance
<b>Attachment D-1C</b>	Good Faith Efforts Documentation to Support Waiver Request
<b>Attachment D-2</b>	Outreach Efforts Compliance Statement
<b>Attachment D-3A</b>	MBE Subcontractor Project Participation Certification
<b>Attachment D-3B</b>	MBE Prime Project Participation Certification
<b>Attachment D-4A</b>	Prime Contractor Paid/Unpaid MBE Invoice Report

<b>Attachment D-4B</b>	MBE Prime Contractor Report
<b>Attachment D-5</b>	Subcontractor/Contractor Unpaid MBE Invoice Report

**4.26.3** An Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:

- (a) The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
- (b) The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE Prime (including a Prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
- (c) An Offeror requesting a waiver should review Attachment D-1B (Waiver Guidance) and D-1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

*If an Offeror fails to submit a completed Attachment D-1A with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award.*

**4.26.4** Offerors are responsible for verifying that each MBE (including any MBE Prime and/or MBE Prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

**4.26.5** Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer.

- (a) Outreach Efforts Compliance Statement (**Attachment D-2**);
- (b) MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
- (c) Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

*If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.*

**4.26.6** A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**

**4.26.7** The Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE participation:

- (a) **Attachment D-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report);
- (b) **Attachment D-4B** (MBE Prime Contractor Report, *if applicable*); and
- (c) **Attachment D-5** (MBE Subcontractor Unpaid MBE Invoice Report).

- 4.26.8** An Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.
- 4.26.9** All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Bid/Proposal for order of precedence purposes (see Contract – **Attachment M**, Section 2.1).
- 4.26.10** The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment M**, “Liquidated Damages” clause).
- 4.26.11** As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a Contract as a Prime Contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

In order to receive credit for self-performance, an MBE Prime must list its firm in Section 4A of the MBE Participation Schedule (**Attachment D-1A**) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the sub-goals, the MBE Prime must also identify certified MBE subcontractors (see Section 4B of the MBE Participation Schedule (**Attachment D-1A**)) used to meet those goals. If dually-certified, the MBE Prime can be designated as only one of the MBE sub-goal classifications but can self-perform up to 100% of the stated sub-goal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE Prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract.

**4.26.12** With respect to Contract administration, the Contractor shall:

- (1) Submit to the Department’s designated representative by the 10th of the month following the reporting period:
  - a. A Prime Contractor Paid/Unpaid MBE Invoice Report (**Attachment D-4A**) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
  - b. (If Applicable) An MBE Prime Contractor Report (**Attachment D-4B**) identifying an MBE Prime’s self-performing work to be counted towards the MBE participation goals.
- (2) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit to the Department’s designated representative by the 10th of the month following the reporting period an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.

- (3) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- (4) Consent to provide such documentation as reasonably requested and right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- (5) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

#### 4.27 Veteran-Owned Small Business Enterprise Goal

(If there is **no** VSBE goal for this solicitation, enter only the following sentence for this section, and delete the rest)

There is no Veteran-Owned Small Business Enterprise (VSBE) participation goal for this procurement.

(If there **is** a VSBE goal for this solicitation, enter and complete the following language for this section)

4.27.1 **Notice to Offerors.** Questions or concerns regarding the Veteran-Owned Small Business Enterprise (VSBE) participation goal of this solicitation must be raised before the due date for submission of Proposals.

4.27.2 **Purpose.** The Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the VSBE participation goal stated in this solicitation. VSBE performance must be in accordance with this section and **Attachment E**, as authorized by COMAR 21.11.13. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and **Attachment E**.

Veteran-Owned Small Business Enterprises must be verified by the Office of Small and Disadvantaged Business Utilization (OSDBU) of the United States Department of Veterans Affairs. The listing of verified VSBEs may be found at <http://www.va.gov/osdbu>.

4.27.3 **VSBE Goal.** A VSBE participation goal of (VSBE goal percentage)% of the total Contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by verified veteran-owned small business enterprises.

4.27.4 **Solicitation and Contract Formation.** An Offeror must include with its Proposal a completed VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment E-1**) whereby the Offeror:

- (1) Acknowledges it: a) intends to meet the VSBE participation goal; or b) requests a full or partial waiver of the VSBE participation goal. If the Bidder/Offeror commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal; and
- (2) Responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBEs at the time of Proposal submission. The Offeror shall specify the percentage of contract value associated with each VSBE prime/subcontractor identified on the VSBE Participation Schedule.

As set forth in COMAR 21.11.13.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the

VSBE Prime Contractor performs with its own work force towards meeting up to one hundred percent (100%) of the VSBE goal.

In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (**Attachment E-1**) and include information regarding the work it will self-perform. For any remaining portion of the VSBE goal that is not to be performed by the VSBE Prime, the VSBE Prime must also identify verified VSBE subcontractors used to meet the remainder of the goal.

Within ten (10) Business Days from notification that it is the apparent awardee, the awardee must provide the following documentation to the Procurement Officer.

- (1) VSBE Project Participation Statement (**Attachment E-2**);
- (2) If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.13.07; and
- (3) Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the VSBE participation goal.

***If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for Contract award.***

**4.27.5 Contract Administration Requirements.** The Contractor, once awarded the Contract shall:

- (1) Submit monthly to the Department a report listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice, and the reason payment has not been made. (**Attachment E-3**).
- (2) Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly to the Department a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. (**Attachment E-4**).
- (3) Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer on request;
- (4) Consent to provide such documentation as reasonably requested and right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the Contract.
- (5) At the option of the procurement agency, upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE subcontractors.

## **4.28 Living Wage Requirements**

4.28.1 Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 18-101 *et al.* The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a Contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. *See* COMAR 21.11.10.05.

- 4.28.2 If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. See the “Living Wage” clause in the Contract (**Attachment M**).
- 4.28.3 Additional information regarding the State’s living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If an Offeror fails to complete and submit the required documentation, the State may determine the Offeror to be not responsible under State law.
- 4.28.4 Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George’s, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.
- 4.28.5 The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
- (1) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
  - (2) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
  - (3) If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier (enter “1” or “2,” depending on where the majority of the service recipients are located) Contract.
- 4.28.6 Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website: <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

**NOTE: Whereas the Living Wage may change annually, the Contract price may not be changed because of a Living Wage change.**

## 4.29 Federal Funding Acknowledgement

(If the Contract to be awarded under this procurement **does not** contain federal funds, enter only the following sentence for this section and delete the rest)

This Contract does not contain federal funds.

(If the Contract to be awarded under this procurement **does** contain federal funds, enter and complete the following language for this section)

4.29.1 There are programmatic conditions that apply to this Contract due to federal funding. (see **Attachment G**).

- 4.29.2 The total amount of federal funds allocated for the (name of administration or facility) is \$(federal funds amount) in Maryland State fiscal year (current fiscal year). This represents (divide federal funds amount by the total of the unit's budget) % of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 4.29.3 This Contract contains federal funds. The source of these federal funds is: (name of federal program for funds source i.e., Medicaid, Ryan White, Title X, etc.). The CFDA number is: (Catalog of Federal Domestic Assistance number). The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment G**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment G** and Offerors are to complete and submit these Attachments with their Proposals as instructed in the Attachments. Acceptance of this agreement indicates the Offeror's intent to comply with all conditions, which are part of this Contract.

### 4.30 Conflict of Interest Affidavit and Disclosure

(If a Conflict of Interest Affidavit is not required for this solicitation, enter only the following language for this section and delete the rest)

A Conflict of Interest Affidavit is not required pursuant to COMAR 21.05.08.08(F) for this procurement. An Offeror is required to disclose to the Procurement Officer any actual or potential conflict of interest as it arises, before or after award, in accordance with COMAR 21.05.08.08.

(If a Conflict of Interest Affidavit is required for this solicitation, enter the following language for this section)

Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with their Proposals. All Offerors are advised that if a Contract is awarded as a result of this solicitation, the Contractor's personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to **Attachment H**, Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

### 4.31 Non-Disclosure Agreement

(If a Non-Disclosure Agreement is not required for this solicitation, enter only the following sentence for this section and delete the rest)

A Non-Disclosure Agreement is not required for this procurement.

(If a Non-Disclosure Agreement is required for this solicitation, enter the following language for this section)

All Offerors are advised that this solicitation and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment I**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Bid/Proposal.

### 4.32 HIPAA - Business Associate Agreement

(If a HIPAA Business Associate Agreement **is not** required for this solicitation, enter only the following sentence for this section and delete the rest)

A HIPAA Business Associate Agreement is not required for this procurement.

(If a HIPAA Business Associate Agreement **is** required for this solicitation, enter the following language for this section, and select the appropriate Contract clause option in the Contract – **Attachment M**)

Based on the determination by the Department that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.500 *et seq.* and set forth in **Attachment J**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Proposal. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Offeror with the next highest overall-ranked Proposal.

### 4.33 Nonvisual Access

(If this solicitation **does not** contain Information Technology (IT) provisions, enter only the following sentence for this section and delete the rest)

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

(If this solicitation **does** contain Information Technology (IT) provisions, enter the following language for this section)

By submitting a Proposal, the Offeror warrants that the information technology (IT) offered under the Proposal: (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The Offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than five percent (5%). For purposes of this solicitation and resulting Contract, the phrase “equivalent access” means the ability to receive, use, and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

The Maryland IT Nonvisual Access standards can be found at: [www.doit.maryland.gov/policies/pages/nva.aspx](http://www.doit.maryland.gov/policies/pages/nva.aspx).

### 4.34 Mercury and Products That Contain Mercury

(If this solicitation **does not** include the procurement of products known to likely include mercury as a component (ex. thermometers, thermostats, fluorescents, LCD screens, laptops and computers, some batteries), enter only the following sentence for this section and delete the rest)

This solicitation does not include the procurement of products known to likely include mercury as a component.

(If this solicitation **does** include the procurement of products known to likely include mercury as a component, choose and enter the following “Option” language for this section, as applicable)

**(Option 1. This clause provides a price preference to only those products that are mercury-free. Enter the percentage preference for “X.”)**

The Department shall give a price preference of X percent (X%) (not to exceed 5%; see COMAR 21.05.08.09) to Proposals for products or equipment that are mercury-free. The Bidder/Offeror must submit a Mercury Affidavit in the form of **Attachment K** with its Bid/Proposal.

**(Option 2. This clause provides a price preference to those products that are mercury-free or which provide the least amount of mercury. Enter the percentage preference for “X.”)**

The Department shall give a price preference of X percent (X%) (not to exceed 5%; see COMAR 21.05.08.09) to Proposals for products or equipment that are mercury-free or, if mercury-free products or equipment are not offered, to the Proposals for products or equipment containing the least amount of mercury necessary to meet performance requirements. The Offeror must submit a Mercury Affidavit in the form of **Attachment K** with its Proposal.

**(Option 3. This clause requires that all products be mercury-free.)**

All products or equipment provided pursuant to this solicitation shall be mercury-free products. The Offeror must submit a Mercury Affidavit in the form of **Attachment K** with its Proposal.

#### **4.35 Location of the Performance of Services Disclosure**

(If this procurement is **not** anticipated to have an estimated value of \$2,000,000.00 or more, enter only the following sentence for this section and delete the rest)

This solicitation does not require a Location of the Performance of Services Disclosure.

(If this procurement is anticipated to have an estimated value of \$2,000,000.00 or more, enter the following language for this section)

The Offeror is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as **Attachment L**. The Disclosure must be provided with the Proposal.

#### **4.36 Department of Human Resources (DHR) Hiring Agreement**

(If this solicitation **does not** require a DHR Hiring Agreement, enter only the following sentence for this section and delete the rest)

This solicitation does not require a DHR Hiring Agreement.

(If this solicitation **does** require a DHR Hiring Agreement, enter the following language for this section)

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a DHR Hiring Agreement. A copy of this Affidavit is included as **Attachment O**. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award.

#### **4.37 Small Business Reserve (SBR) Procurement**

(If this solicitation is not designated as a Small Business Reserve (SBR) Procurement, enter only the following sentence for this section and delete the rest)

This solicitation is not designated as a Small Business Reserve (SBR) Procurement.

(If this solicitation is designated as a Small Business Reserve (SBR) Procurement, enter the following language for this section)

4.37.1 This is a Small Business Reserve Procurement for which award will be limited to certified small business vendors. Only businesses that meet the statutory requirements set forth in State Finance and Procurement Article, §§14-501—14-505, Annotated Code of Maryland, and that are certified by the Department of General Services Small Business Reserve Program are eligible for award of a contract.

4.37.2 For the purposes of a Small Business Reserve Procurement, a small business is a for-profit business, other than a broker, that meets the following criteria:

- (1) It is independently owned and operated;
- (2) It is not a subsidiary of another business;
- (3) It is not dominant in its field of operation; and
- (4) Either:
  - a. With respect to employees:
    - i. Its wholesale operations did not employ more than 50 persons in its most recently completed three (3) fiscal years;
    - ii. Its retail operations did not employ more than 25 persons in its most recently completed three (3) fiscal years ;
    - iii. Its manufacturing operations did not employ more than 100 persons in its most recently completed three (3) fiscal years ;
    - iv. Its service operations did not employ more than 100 persons in its most recently completed three (3) fiscal years ;
    - v. Its construction operations did not employ more than 50 persons in its most recently completed three (3) fiscal years ; and
    - vi. The architectural and engineering services of the business did not employ more than 100 persons in its most recently completed three (3) fiscal years ; or
  - b. With respect to gross sales:
    - i. The gross sales of its wholesale operations did not exceed an average of \$4,000,000 in its most recently completed three (3) fiscal years ;
    - ii. The gross sales of its retail operations did not exceed an average of \$3,000,000 in its most recently completed three (3) fiscal years ;
    - iii. The gross sales of its manufacturing operations did not exceed an average of \$2,000,000 in its most recently completed three (3) fiscal years ;
    - iv. The gross sales of its service operations did not exceed an average of \$10,000,000 in its most recently completed three (3) fiscal years ;
    - v. The gross sales of its construction operations did not exceed an average of \$7,000,000 in its most recently completed three (3) fiscal years ; and
    - vi. The gross sales of its architectural and engineering operations did not exceed an average of \$4,500,000 in its most recently completed three (3) fiscal years .

Note: If a business has not existed for three (3) years, the employment and gross sales average or averages shall be the average for each year or part of a year during which the business has been in existence.

Further information on the certification process is available at eMaryland Marketplace.

- (5) **Ineligible Proposals.** Under a small business reserve procurement, a business that is not a certified small business is ineligible for award of a contract.
- (6) Before awarding a contract under a procurement designated as a small business reserve procurement, the Procurement Officer shall verify that the apparent awardee is certified by the Department of General Services as a small business. A procurement contract award under a small business reserve may not be made to a business that has not been certified.
- (7) **Reporting.** The designated procurement units shall submit a report on the Small Business Reserve Program annually as required under COMAR 21.13.01.03B.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

## **SECTION 5 – PROPOSAL FORMAT**

### **5.1 Two Part Submission**

Offerors shall submit Proposals in separate volumes:

- Volume I – TECHNICAL PROPOSAL
- Volume II – FINANCIAL PROPOSAL

### **5.2 Proposals**

5.2.1 Volume I – Technical Proposal, and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, email address, and telephone number of the Offeror be included on the outside of the packaging for each volume. Each Volume shall contain an unbound original, so identified, and four (4) copies (if you require additional copies for more evaluation committee members, revise this numbering here, and also in Sections 5.4.1 and 5.5). Unless the resulting package will be too unwieldy, the Department’s preference is for the two (2) sealed Volumes to be submitted together in a single package including a label bearing:

- (1) RFP title and number,
- (2) Name and address of the Offeror, and
- (3) Closing date and time for receipt of Proposals

to the Procurement Officer (see RFP Key Information Summary Sheet) prior to the date and time for receipt of Proposals (see RFP Section 4.4 “Proposals Due (Closing) Date and Time”).

5.2.2 An electronic version (on Compact Disk/CD, Digital Versatile Disc/DVD, or Universal Serial Bus/USB Flash/Thumb Drive) of Volume 1 - Technical Proposal in Microsoft Word format must be enclosed with the original Volume I - Technical Proposal submission. An electronic version (on CD, DVD, or USB Flash Drive) of Volume II - Financial Proposal in Microsoft Word or Microsoft Excel format must be enclosed with the original Volume II - Financial Proposal submission. Each CD/DVD/USB Flash Drive must be labeled on the outside with the RFP title and number, name of the Offeror, and volume number. Each CD/DVD/USB Flash Drive must be packaged with the original copy of the appropriate Proposal (Technical or Financial).

5.2.3 A second electronic version of Volume I and Volume II in searchable Adobe .pdf format shall be submitted on CD, DVD, or USB Flash Drive for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see RFP Section 4.8 “Public Information Act Notice”).

5.2.4 Beginning with Tab B (see RFP Section 5.4.2.3), all pages of both Proposal volumes shall be consecutively-numbered from beginning (Page 1) to end (Page “x”). The Title Page, Table of Contents, and any Claim of Confidentiality (Tabs A and A-1; see RFP Sections 5.4.2.1 and 5.4.2.2), should be numbered using small Roman numerals (ex. i, ii, iii, iv, v, etc).

5.2.5 Proposals and any modifications to Proposals will be shown only to State employees, members of the Evaluation Committee, and other persons deemed by the Department to have a legitimate interest in them.

### **5.3 Delivery**

Offerors may either mail or hand-deliver Proposals.

- 5.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. It could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit and an Offeror using first class mail will not be able to prove a timely delivery at the mailroom.
- 5.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, an Offeror is advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 5.3.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

## **5.4 Volume I – Technical Proposal**

**Note: No pricing information is to be included in the Technical Proposal (Volume 1). Pricing information is to be included only in the Financial Proposal (Volume II).**

- 5.4.1 **Format of Technical Proposal.** Inside a sealed package described in Section 5.2 “Proposals,” the unbound original, four (4) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 4.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 5.4.2.1 “Title and Table of Contents,” Section 5.4.2.2 “Claim of Confidentiality,” Section 5.4.2.3 “Transmittal Letter,” Section 5.4.2.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 2.2.1 Response . . .; “Section 2.2.2 Response . . .,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 6.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.
- 5.4.2 **The Technical Proposal** shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:
  - 5.4.2.1 **Title Page and Table of Contents (Submit under TAB A).** The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.
  - 5.4.2.2 **Claim of Confidentiality (If applicable, submit under TAB A-1).** Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror’s Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 4.8 “Public Information Act Notice”). The entire Proposal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.
  - 5.4.2.3 **Transmittal Letter (Submit under TAB B).** A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to

commit the Offeror to the services and requirements as stated in this RFP. The Transmittal Letter should include the following:

- (1) Name and address of the Offeror;
- (2) Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- (3) Solicitation Title and Solicitation Number that the Proposal is in response to;
- (4) Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- (5) Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- (6) Offeror's eMM number;
- (7) Offeror's MBE certification number (if applicable);
- (8) Acceptance of all State RFP and Contract terms and conditions (see Section 4.17); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 5.4.2.4); and
- (9) Acknowledgement of all addenda to this RFP.

**5.4.2.4 Executive Summary (Submit under TAB C).** The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary." The Summary shall identify the Service Category(ies) and Region(s) for which the Offeror is proposing to provide services (if applicable). In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary.

The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment M), or any other attachments. Exceptions to terms and conditions may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

If the Offeror has taken no exceptions to the requirements of this RFP, the Contract (Attachment M), or any other attachments, the Executive Summary shall so state.

**5.4.2.5 Minimum Qualifications Documentation (If applicable, Submit under TAB D).** The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP Section 1, "Minimum Qualifications."

**5.4.5.6 Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E).**

5.4.5.6.1 The Offeror shall address each Scope of Work requirement (RFP Section 2) in its Technical Proposal and describe how its proposed services, including the services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work requirement shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

5.4.5.6.2 The Offeror shall give a definitive **section-by-section** description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology and techniques to be used by the Offeror in providing the required services as outlined in RFP Section 2, Scope of Work. The description shall include an

outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.

5.4.5.6.3 The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.

5.4.5.6.4 The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department's Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in RFP Section 3.3.

5.4.5.6.5 (optional language; delete if not applicable): **Non-Compete Clause Prohibition:**

The Department seeks to maximize the retention of personnel working under this Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and maximize the maintenance of institutional knowledge accumulated by such personnel. To help achieve this objective of staff retention, each Offeror shall agree that if awarded the Contract, the Offeror's employees and agents filling the positions set forth in the staffing requirements of Section [enter applicable subsection number(s)] working on the State contract shall be free to work for the contractor awarded the State contract notwithstanding any non-compete clauses to which the employee(s) may be subject. The Offeror agrees not to enforce any non-compete restrictions against the State with regard to these employees and agents if a different vendor succeeds it in the performance of the Contract. To evidence compliance with this non-compete clause prohibition, each Offeror must include an affirmative statement in its technical proposal that the Offeror, if awarded a Contract, agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State contract.

5.4.5.6.6 (add any additional items for Offerors to address or include in their Proposals that are specific to your RFP.)

5.4.2.7 **Experience and Qualifications of Proposed Staff (Submit under TAB F).** The Offeror shall identify the number and types of staff proposed to be utilized under the Contract.

The Offeror shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan. The Offeror shall include individual resumes for the Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.

The Offeror shall provide an Organizational Chart outlining personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

5.4.2.8 **Offeror Qualifications and Capabilities (Submit under TAB G).** The Offeror shall include information on past experience with similar projects and/or services. The Offeror shall describe how

its organization can meet the requirements of this RFP and shall also include the following information:

- (1) The number of years the Offeror has provided the similar services;
- (2) The number of clients/customers and geographic locations that the Offeror currently serves;
- (3) The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- (4) The Offeror's process for resolving billing errors; and
- (5) An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

**5.4.2.9 References (Submit under TAB H).** At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. References used to meet any Minimum Qualifications (see RFP Section 1) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided services within the past five (5) years and shall include the following information:

- (1) Name of client organization;
- (2) Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- (3) Value, type, duration, and description of services provided.

The Department reserves the right to request additional references or utilize references not provided by an Offeror.

**5.4.2.10 List of Current or Prior State Contracts (Submit under TAB I).** Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

- (1) The State contracting entity;
- (2) A brief description of the services/goods provided;
- (3) The dollar value of the contract;
- (4) The term of the contract;
- (5) The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- (6) Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Offeror's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

**5.4.2.11 Financial Capability (Submit under TAB J).** An Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Offeror may supplement its response to this Section by including one or more of the following with its response:

- (1) Dunn and Bradstreet Rating;

- (2) Standard and Poor's Rating;
- (3) Lines of credit;
- (4) Evidence of a successful financial track record; and
- (5) Evidence of adequate working capital.

5.4.2.12 **Certificate of Insurance (Submit under TAB K).** The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.1. See Section 3.1 for the required insurance certificate submission for the recommended Offeror.

5.4.2.13 **Subcontractors (Submit under TAB L).** The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project.

5.4.2.14 **Legal Action Summary (Submit under TAB M).** This summary shall include:

- (1) A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- (2) A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- (3) A description of any judgments against the Offeror within the past five (5) years, including the case name, court case docket number, and what the final ruling or determination was from the court; and
- (4) In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, the name of the judge and location of the court.

5.4.2.15 **Economic Benefit Factors (Submit under TAB N).** The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of this contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with the Offeror's Total Proposal Price from Attachment B, the Financial Proposal Form. See COMAR 21.05.03.03A(3).

(Note: The default wording in the last sentence of the paragraph above may not be appropriate to use in all circumstances, such as when multiple awards are possible and Offerors will not know the amount of services each will be requested to provide until after Contract award. For such situations, the Department should include, in lieu of the default wording provided above, some alternative basis for Offerors to project the economic benefit of their proposals. i.e. such benefit might be based upon each \$1,000, \$10,000, etc. of Contract value; or the benefit may be requested as part of a task order proposal in response to a task order RFP.)

Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.

Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.

As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.

In responding to this section, the following do not generally constitute economic benefits to be derived from this Contract:

- (1) Generic statements that the State will benefit from the Offeror's superior performance under the Contract;
- (2) Descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under this Contract; and
- (3) Tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under this Contract.

Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded this Contract.

Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:

- (1) The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;
- (2) The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels. If no new positions or subcontracts are anticipated as a result of this Contract, so state explicitly;
- (3) Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
- (4) Subcontract dollars committed to Maryland small businesses and MBEs; and
- (5) Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

#### 5.4.3 Additional Required Technical Submissions (Submit under TAB O).

5.4.3.1 The following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 5.4.2.

- a. Completed Bid/Proposal Affidavit (**Attachment C**).
- b. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**).

5.4.3.2 **\*If Required**, the following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 5.4.2. \*See appropriate RFP Section to determine whether the particular document is required for this procurement:

- (1) A Signed Statement from the Offeror's Parent Organization Guaranteeing Performance of the Offeror. **\*see Section 4.16;**
- (2) Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) **\*see Section 4.26;**
- (3) Completed Federal Funds Attachment (**Attachment G**) **\*see Section 4.29;**
- (4) Completed Conflict of Interest Affidavit and Disclosure (**Attachment H**) **\*see Section 4.30;**
- (5) Completed Mercury Affidavit (**Attachment K**) **\*see Section 4.34;**
- (6) Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule. (**Attachment E-1**) **\*see Section 4.27;**
- (7) Completed Location of the Performance of Services Disclosure (**Attachment L**) **\*see Section 4.35.**

## **5.5 Volume II – Financial Proposal**

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 5.2 "Proposals," the Offeror shall submit an original unbound copy, four (4) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

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## **SECTION 6 – EVALUATION COMMITTEE, EVALUATION CRITERIA, AND SELECTION PROCEDURE**

### **6.1 Evaluation Committee**

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The Department reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

### **6.2 Technical Proposal Evaluation Criteria**

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any subcriteria within each criterion have equal weight.

*(The Technical Criteria listed below are generic samples, matched to the Technical Proposal requirements in Section 5 of this template. You are free to revise these and include additional, more specific Evaluation Criteria, but if you choose to do so, make sure you reference particular RFP sections, as in the samples below).*

- 6.2.1 Offeror’s Technical Response to RFP Requirements and Work Plan (See RFP § 5.4.2.6). The State prefers an Offeror’s response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done. Proposals which include limited responses to work requirements such as “concur” or “will comply” will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.
- 6.2.2 Experience and Qualifications of Proposed Staff (See RFP § 5.4.2.7)
- 6.2.3 Offeror Qualifications and Capabilities, including proposed Subcontractors (See RFP § 5.4.2.8 – 5.4.2.14)
- 6.2.4 Economic Benefit to State of Maryland (See RFP § 5.4.2.15)

### **6.3 Financial Proposal Evaluation Criteria**

All Qualified Offerors will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment B** - Financial Proposal Form.

### **6.4 Reciprocal Preference**

Although Maryland law does not generally authorize procuring units to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, COMAR 21.05.01.04 permits procuring units to apply a reciprocal preference in favor of a Maryland resident business under the following conditions:

- (1) The Maryland resident business is a responsible Offeror;

- (2) The most advantageous offer is from a responsible Offeror whose principal office or principal operations through which it would provide the services required under this RFP is in another state;
- (3) The other state gives a preference to its resident businesses through law, policy, or practice; and
- (4) The Maryland resident preference does not conflict with a federal law or grant affecting the procurement Contract.

The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

## **6.5 Selection Procedures**

6.5.1 **General.** The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The Competitive Sealed Proposals method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.

In either case (i.e., with or without discussions), the State may determine an Offeror to be not responsible and/or an Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, that Offeror's Financial Proposal will subsequently be returned if the Financial Proposal is unopened at the time of the determination.

### **6.5.2 Selection Process Sequence**

6.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and properly completed, if there is an MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and Subcontractor Participation Schedule (**Attachment E-1**) is included and is properly completed, if there is a VSBE goal. Finally, a determination is made that all Minimum Qualifications, if any (See RFP Section 3), have been satisfied.

6.5.2.2 Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and Offeror's ability to perform the services, as well as facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.

6.5.2.3 Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.

6.5.2.4 The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.

6.5.2.5 When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.

6.5.3 **Award Determination.** Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive equal weight with financial factors. **(Note: If you wish to give technical and financial factors a different weighting, consult with your procurement supervisor and assigned procurement analyst at DBM).**

## **6.6 Documents Required upon Notice of Recommendation for Contract Award**

Upon receipt of a Notification of Recommendation for Contract Award, the following documents shall be completed, signed if applicable with original signatures, and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each of the following documents:

- (1) Contract (**Attachment M**),
- (2) Contract Affidavit (**Attachment N**),
- (3) MBE **Attachments D-2 and D-3A/B**, within ten (10) Business Days, if applicable; \*see **Section 4.26**,
- (4) MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; \*see **Section 4.26**),
- (5) VSBE **Attachment E-2**, if applicable \*see **Section 4.27**,
- (6) Non-Disclosure Agreement (**Attachment I**), if applicable; \*see **Section 4.31**,
- (7) HIPAA Business Associate Agreement (**Attachment J**), if applicable; \*see **Section 4.32**,
- (8) DHR Hiring Agreement, **Attachment O**, if applicable \*see **Section 4.36**, and
- (9) Copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.1 “Insurance Requirements,” listing the State as an additional insured, if applicable; \*see **Section 3.1**

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## **RFP ATTACHMENTS**

### **ATTACHMENT A – Pre-Proposal Conference Response Form**

It is requested that this form be completed and submitted as described in RFP Section 4.1 by those potential Offerors that plan on attending the Pre-Proposal Conference.

### **ATTACHMENT B – Financial Proposal Instructions and Form**

The Financial Proposal Form must be completed and submitted in the Financial Proposal package.

### **ATTACHMENT C –Proposal Affidavit**

This Attachment must be completed and submitted with the Technical Proposal.

### **ATTACHMENTS D – Minority Business Enterprise Forms**

If required (see RFP Section 4.26), these Attachments include the MBE subcontracting goal statement and instructions, and MBE Attachments D-1 through D-5. Attachment D-1 must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed not reasonably susceptible of being selected for award and rejected. Within ten (10) Business Days of receiving notification of recommendation for Contract award, the Offeror must submit Attachments D-2 and D-3A/B.

### **ATTACHMENTS E – Veteran-Owned Small Business Enterprise Forms**

If required (see RFP Section 4.27), these Attachments include the VSBE Attachments E-1 through E-4. Attachment E-1 must be completed and submitted with the Technical Proposal. Attachment M-2 is required to be submitted within ten (10) Business Days of receiving notification of recommendation for award.

### **ATTACHMENT F – Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement**

Attachment F-1 Living Wage Affidavit of Agreement must be completed and submitted with the Technical Proposal.

### **ATTACHMENT G – Federal Funds Attachment**

If required (see RFP Section 4.29), these Attachments must be completed and submitted with the Technical Proposal as instructed in the Attachments.

### **ATTACHMENT H – Conflict of Interest Affidavit and Disclosure**

If required (see RFP Section 4.30), this Attachment must be completed and submitted with the Technical Proposal.

### **ATTACHMENT I – Non-Disclosure Agreement**

If required (see RFP Section 4.31), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

### **ATTACHMENT J – HIPAA Business Associate Agreement**

If required (see RFP Section 4.32), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

### **ATTACHMENT K – Mercury Affidavit**

If required (see RFP Section 4.34), this Attachment must be completed and submitted with the Technical Proposal.

### **ATTACHMENT L – Location of the Performance of Services Disclosure**

If required (see RFP Section 4.35), this Attachment must be completed and submitted with the Technical Proposal.

**ATTACHMENT M – Contract**

This is the sample contract used by the Department. It is provided with the RFP for informational purposes and is not required to be submitted at Proposal submission time. Upon notification of recommendation for award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer three (3) executed copies of the Contract within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to the Contractor.

**ATTACHMENT N – Contract Affidavit**

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award.

**ATTACHMENT O – Department of Human Resources (DHR) Hiring Agreement**

If required (see RFP Section 4.36), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

**(Insert any additional Attachments that are necessary for your solicitation and referenced in the Section 2.3, Scope of Work, starting with Attachment P.)**

**ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM**

**Solicitation Number (solicitation number)  
(SOLICITATION TITLE)**

A Pre-Proposal Conference will be held at the date, time, and location indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

Please return this form at least five (5) Business Days prior to the Pre-Proposal Conference date, advising whether or not you plan to attend. The completed form should be returned via e-mail or fax to the Procurement Officer. The Procurement Officer’s contact information is provided in the RFP Key Information Summary Sheet.

Please indicate:

\_\_\_\_\_ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

\_\_\_\_\_ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 4.1 “Pre-Proposal Conference”):

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Signature

Title

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Name of Firm (please print)

## **B-1: FINANCIAL PROPOSAL INSTRUCTIONS**

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, Financial Proposal Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their Financial Proposal on the Financial Proposal Form in accordance with the instructions on the Financial Proposal Form and as specified herein. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Financial Proposal Form.

The Financial Proposal Form is used to calculate the Offeror's TOTAL PROPOSAL PRICE. Follow these instructions carefully when completing your Financial Proposal Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03, and may cause the Proposal to be rejected.
- H) If option years are included, Offerors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.
- K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

(Add additional instructions as needed to assist Offerors in the completion of the Financial Proposal Form. Also, validate that the instructions above are appropriate for the type of prices being solicited. If inappropriate, delete any conflicting instructions as necessary.)

## B-2: FINANCIAL PROPOSAL FORM

The Financial Proposal Form shall contain all price information in the format specified on these pages. Complete the Financial Proposal Form only as provided in the Financial Proposal Instructions. Do not amend, alter or leave blank any items on the Financial Proposal Form. If option years are included, Offerors must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

(ALL Financial Proposal Forms should be a separate document in an Excel file to lock form and calculate totals, so that the Offeror is only entering the "unit" prices. A generic sample is provided below. Use the footer below on the Excel document for signatures. Reference that Financial Proposal Form document here.)

**YEAR 1**

employee @ \$ _____ per hour x 100 hours	\$ _____ +
widgets @ \$ _____ per unit x 100 units	\$ _____
<b>Year 1 Total</b>	<b>\$ _____ (a)</b>

**YEAR 2**

employee @ \$ _____ per hour x 100 hours	\$ _____ +
widgets @ \$ _____ per unit x 100 units	\$ _____
<b>Year 2 Total</b>	<b>\$ _____ (b)</b>

**YEAR 3**

employee @ \$ _____ per hour x 100 hours	\$ _____ +
widgets @ \$ _____ per unit x 100 units	\$ _____
<b>Year 3 Total</b>	<b>\$ _____ (c)</b>

**OPTION YEAR 1**

employee @ \$ _____ per hour x 100 hours	\$ _____ +
widgets @ \$ _____ per unit x 100 units	\$ _____
<b>Option Year 1 Total</b>	<b>\$ _____ (d)</b>

**OPTION YEAR 2**

employee @ \$ _____ per hour x 100 hours	\$ _____ +
widgets @ \$ _____ per unit x 100 units	\$ _____
<b>Option Year 2 Total</b>	<b>\$ _____ (e)</b>

**TOTAL PROPOSAL PRICE (a)+(b)+(c)+(d)+(e) = \$ \_\_\_\_\_  
(TOTAL PROPOSAL PRICE)**

Submitted By:  
 Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Printed Name and Title: \_\_\_\_\_  
 Offeror Name : \_\_\_\_\_  
 Offeror Address: \_\_\_\_\_  
 Location(s) from which services will be performed (City/State): \_\_\_\_\_  
 FEIN: \_\_\_\_\_ eMM # \_\_\_\_\_  
 Offeror Contact Information: Telephone: (\_\_\_\_) \_\_\_\_ -- \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_ -- \_\_\_\_\_  
 E-mail: \_\_\_\_\_

## ATTACHMENT C – PROPOSAL AFFIDAVIT

### A. AUTHORITY

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

### B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Offeror hereby certifies and agrees that the following information is correct: In preparing its Proposal on this project, the Offeror has considered all Proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Proposal submitted by the Offeror on this project, and terminate any contract awarded based on the Proposal. As part of its Proposal, the Offeror herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Offeror agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

#### B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES

The undersigned Offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority Proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/Proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Bid/Proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal.

#### B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES

The undersigned Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;

- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
- (a) §7201, Attempt to Evade or Defeat Tax;
  - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
  - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
  - (d) §7206, Fraud and False Statements, or
  - (e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
    - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
    - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure Act; and
- (ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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**E. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business’s contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person’s involvement in any activity that formed the grounds of the debarment or suspension).

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**F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

(1) The business was not established and does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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**G. SUBCONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

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Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Proposal that is being submitted; or

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/Proposal is submitted.

**I. CERTIFICATION OF TAX PAYMENT**

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, State Department of Assessments and Taxation, and Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

**J. CONTINGENT FEES**

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

**K. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

- (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
- (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities: \_\_\_\_\_

**L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)**

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

**M. I FURTHER AFFIRM THAT:**

Any claims of environmental attributes made relating to a product or service included in the Proposal are consistent with the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims as provided in 16 C.F.R. §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

**N. ACKNOWLEDGEMENT**

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Bid/Proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## ATTACHMENTS D – MINORITY BUSINESS ENTERPRISE FORMS

(If this solicitation **does not** include an MBE goal (see RFP Section 4.26), enter only the following sentence for this Attachment and delete the rest of these “D” Attachments.)

This solicitation does not include a Minority Business Enterprise (MBE) subcontractor participation goal.

(If this solicitation **does** include an MBE goal (see RFP Section 4.26), include the following “D” Attachments.)

### MBE ATTACHMENT D-1A MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE - INSTRUCTIONS

#### PLEASE READ BEFORE COMPLETING THIS DOCUMENT

**This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the Bid/Proposal. If the Bidder/Offeror fails to accurately complete and submit this Affidavit and Schedule with the Bid or Proposal as required, the Procurement Officer shall deem the Bid non-responsive or shall determine that the Proposal is not reasonably susceptible of being selected for award.**

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract’s MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation (“MDOT”). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including an MBE Prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule.
4. Please refer to the MDOT MBE Directory at [www.mdot.state.md.us](http://www.mdot.state.md.us) to determine if a firm is certified with the appropriate North American Industry Classification System (“NAICS”) Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit [www.naics.com](http://www.naics.com). Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **WARNING:** If the firm’s NAICS Code is in **graduated status**, such services/products **may not be counted** for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term “Graduated” follows the Code in the MDOT MBE Directory.
5. Guidelines Regarding MBE Prime Self-Performance: Please note that when a certified MBE firm participates as a Prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the MBE participation goal (overall), including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE Prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE Prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE Prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
  - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the Contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to other MBEs for each of any remaining subgoals or request a waiver. As set forth in **Attachment D1-B** Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to GOMA's website ([www.goma.maryland.gov](http://www.goma.maryland.gov)) for the MBE Prime Regulations Q&A for illustrative examples.
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own workforce towards fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
  7. As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
  8. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.
  9. Worksheet: The percentage of MBE participation, calculated using the percentage amounts for all of the MBE firms listed on the Participation Schedule **MUST** at least equal the MBE participation goal **and** subgoals (if applicable) set forth in the solicitation. If a Bidder/Offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the Bidder/Offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) or the Bid will be deemed not responsive, or the Proposal determined to be not susceptible of being selected for award. You may wish to use the Subgoal summary below to assist in calculating the percentages and confirm that you have met the applicable MBE participation goal and subgoals, if any.

**SUBGOALS (IF APPLICABLE)**

**TOTAL AFRICAN AMERICAN MBE PARTICIPATION:** \_\_\_\_\_ %  
**TOTAL ASIAN AMERICAN MBE PARTICIPATION:** \_\_\_\_\_ %  
**TOTAL HISPANIC AMERICAN MBE PARTICIPATION:** \_\_\_\_\_ %  
**TOTAL WOMEN-OWNED MBE PARTICIPATION:** \_\_\_\_\_ %

**OVERALL GOAL**

**TOTAL MBE PARTICIPATION (INCLUDE ALL CATEGORIES):** \_\_\_\_\_ %

**MBE ATTACHMENT D-1A**  
**MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**  
**& MBE PARTICIPATION SCHEDULE**

**This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the Bid/Proposal. If the Bidder/Offeror fails to accurately complete and submit this Affidavit and Schedule with the Bid or Proposal as required, the Procurement Officer shall deem the Bid non-responsive or shall determine that the Proposal is not reasonably susceptible of being selected for award.**

In connection with the Bid/Proposal submitted in response to Solicitation No. (solicitation Number), I affirm the following:

- 1. MBE Participation (PLEASE CHECK ONLY ONE) (Agency should insert the participation goal and subgoal amounts from the PRG and Subgoal Worksheet in the blanks below, delete any of the subgoals that do not apply to this solicitation, and then delete this sentence of instruction.)**

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of \_\_\_\_\_ percent and all of the following subgoals:

- \_\_\_\_\_ percent for African American-owned MBE firms
- \_\_\_\_\_ percent for Hispanic American-owned MBE firms
- \_\_\_\_\_ percent for Asian American-owned MBE firms
- \_\_\_\_\_ percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I must complete the MBE Participation Schedule (Item 4 below) in order to be considered for award.

**OR**

I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I must complete the MBE Participation Schedule (Item 4 below) for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award.

**2. Additional MBE Documentation**

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 Business Days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (a) Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**)
- (b) Outreach Efforts Compliance Statement (**Attachment D-2**);

- (c) MBE Subcontractor/MBE Prime Project Participation Statement (**Attachments D-3A/B**);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain Bidder or Offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the Contract has already been awarded, the award is voidable.

**3. Information Provided to MBE firms**

In the solicitation of subcontract quotations or offers, MBE firms were provided not less than the same information and amount of time to respond as were non-MBE firms.

**4. MBE Participation Schedule**

Set forth below are the (i) certified MBEs I intend to use, (ii) percentage of the total Contract amount allocated to each MBE for this project and (iii) items of work each MBE will provide under the Contract. I have confirmed with the MDOT database that the MBE firms identified below (including any self-performing MBE prime firms) are performing work activities for which they are MDOT-certified.

Prime Contractor	Project Description	PROJECT/CONTRACT NUMBER

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. **MBE PRIMES:** PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

**SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)**

MBE Prime Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____%  Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%  Description of the Work to be performed with MBE prime's own workforce: _____ _____
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**SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)**

MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned	Percentage of Total Contract to be provided by this MBE: _____%  Description of the Work to be Performed: _____ _____ _____
---	--

<input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	<hr/> <hr/> <hr/>
MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of Total Contract to be provided by this MBE: _____% Description of the Work to be Performed: <hr/> <hr/> <hr/> <hr/>
MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of Total Contract to be provided by this MBE: _____% Description of the Work to be Performed: <hr/> <hr/> <hr/> <hr/>
MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of Total Contract to be provided by this MBE: _____% Description of the Work to be Performed: <hr/> <hr/> <hr/> <hr/>
MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of Total Contract to be provided by this MBE: _____% Description of the Work to be Performed: <hr/> <hr/> <hr/> <hr/>

(Continue on separate page if needed)

**I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.**

\_\_\_\_\_  
Bidder/Offeror Name  
*(PLEASE PRINT OR TYPE)*

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## **MBE ATTACHMENT D-1B** **WAIVER GUIDANCE**

### **GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS**

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a contract, the Bidder/Offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

#### **I. Definitions**

**MBE Goal(s)** – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

**Good Faith Efforts** – The “Good Faith Efforts” requirement means that when requesting a waiver, the Bidder/Offeror must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether a Bidder/Offeror that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the Bidder/Offeror has made. The efforts employed by the Bidder/Offeror should be those that one could reasonably expect a Bidder/Offeror to take if the Bidder/Offeror were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the Bidder's/Offeror's good faith efforts is a judgment call; meeting quantitative formulas is not required.

**Identified Firms** – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the Bidder/Offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the Bidder/Offeror identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

**Identified Items of Work** – “Identified Items of Work” means the Bid/Proposal items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the Bidder/Offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Bidder/Offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

**MBE Firms** – “MBE Firms” refers to firms certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State’s MBE Program.

## II. Types of Actions Agency will Consider

The Bidder/Offeror is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the Offeror's Good Faith Efforts when the Offeror fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

### A. Identify Proposal Items as Work for MBE Firms

1. Identified Items of Work in Procurements
  - (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Bidder/Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
  - (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.
2. Identified Items of Work by Offerors
  - (a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.
  - (b) Where appropriate, Offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a Prime contractor to perform the work of a contract with its own organization does not relieve the Offeror of the responsibility to make Good Faith Efforts.

### B. Identify MBE Firms to Solicit

1. MBE Firms Identified in Procurements
  - (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
  - (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.
2. MBE Firms Identified by Offerors
  - (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
  - (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

### C. Solicit MBEs

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Bidder/Offeror should:
  - (a) provide the written solicitation at least 10 days prior to Bid/Proposal opening to allow sufficient time for the MBE Firms to respond;
  - (b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the Bidder/Offeror has a valid basis for using different contact information; and
  - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. “All” Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Bidder/Offeror provides written solicitations.
3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Bidder/Offeror must make the information available in a manner that is accessible to the interested MBE.
4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:
  - (a) by telephone using the contact information in the MBE Directory, unless the Bidder/Offeror has a valid basis for using different contact information; or
  - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:
  - (a) attending any pre-bid meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
  - (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors’ groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

#### **D. Negotiate With Interested MBE Firms**

Bidders/Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
  - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
  - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
  - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. An Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a Offeror’s failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm’s quote is excessive or unreasonable include, without limitation, the following:
  - (a) dollar difference between the MBE subcontractor’s quote and the average of the other subcontractors’ quotes received by the Offeror;
  - (b) percentage difference between the MBE subcontractor’s quote and the average of the other subcontractors’ quotes received by the Offeror;
  - (c) percentage that the MBE subcontractor’s quote represents of the overall contract amount;
  - (d) number of MBE firms that the Offeror solicited for that portion of the work;
  - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
  - (f) number of quotes received by the Bidder/Offeror for that portion of the work.

4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
5. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
6. The "average of the other subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.
7. An Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
  - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
  - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

#### **E. Assisting Interested MBE Firms**

When appropriate under the circumstances, the decision-maker will consider whether the Offeror made reasonable efforts to assist interested MBR Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. Necessary equipment, supplies, materials, or related assistance or services.

### **III. Other Considerations**

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether an Offeror decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other Offerors in meeting the contract. For example, when the apparent successful Offeror fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful Offeror could have met the goal. If the apparent successful Offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other Offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Offeror having made Good Faith Efforts.

### **IV. Documenting Good Faith Efforts**

At a minimum, an Offeror seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 business days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

**A. Items of Work (Complete Good Faith Efforts Documentation Attachment D-1C, Part 1)**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

**B. Outreach/Solicitation/Negotiation**

1. The record of the Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement – Attachment D-2).**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
  - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C-Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and
  - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

**C. Rejected MBE Firms (Complete Good Faith Efforts Attachment D-1C, Part 3)**

1. For each MBE Firm that the Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Bidder's/Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

**D. Other Documentation**

1. Submit any other documentation requested by the Procurement Officer to ascertain the Offeror's Good Faith Efforts.
2. Submit any other documentation the Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

**MBE ATTACHMENT D-1B - Exhibit A**  
**MBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
 \_\_\_\_\_ (Name of Minority firm)  
 located at \_\_\_\_\_  
 \_\_\_\_\_ (Number) \_\_\_\_\_ (Street)  
 \_\_\_\_\_  
 \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_  
 in \_\_\_\_\_ County by \_\_\_\_\_  
 \_\_\_\_\_ (Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Minority Firm), is either unavailable for the  
 work/service or unable to prepare a bid for this project for the following reason(s):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

_____	_____	_____
<b>Signature of Minority Firm's MBE Representative</b>	<b>Title</b>	<b>Date</b>

_____	_____
MDOT CERTIFICATION #	TELEPHONE #

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

_____	_____	_____
Signature of Prime Contractor	Title	Date

**MBE ATTACHMENT D-1C**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

PAGE \_\_ OF \_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>SOLICITATION NUMBER</b>

**PARTS 1, 2, AND 3 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS SUPPORTING YOUR WAIVER REQUEST.**

I affirm that I have reviewed **Attachment D-1B**, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this **Attachment D-1C** Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST**

**PART 1 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE  
TO MBE FIRMS**

PAGE \_\_ OF \_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>SOLICITATION NUMBER</b>

Identify those items of work that the Bidder/Offeror made available to MBE Firms. This includes, where appropriate, those items the Bidder/Offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the Offeror’s responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the Offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

<b>Identified Items of Work</b>	<b>Was this work listed in the procurement?</b>	<b>Does Offeror normally self-perform this work?</b>	<b>Was this work made available to MBE Firms? If no, explain why?</b>
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST**

**PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS**

PAGE \_\_ OF \_\_

Prime Contractor	Project Description	SOLICITATION NUMBER

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see **Attachment D-1B – Exhibit A**). If the Offeror used a Non-MBE or is self-performing the identified items of work, Part 3 must be completed.

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
<b>Firm Name:</b> <hr/> <b>MBE Classification</b> (Check only if requesting waiver of MBE subgoal.)  <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date:  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date:  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With:  <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE  <input type="checkbox"/> Self-performing
<b>Firm Name:</b> <hr/> <b>MBE Classification</b> (Check only if requesting waiver of MBE subgoal.)  <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date:  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date:  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With:  <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE  <input type="checkbox"/> Self-performing

Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST**

**PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES**

PAGE \_\_ OF \_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>SOLICITATION NUMBER</b>

This form must be completed if Part 2 indicates that an MBE quote was rejected because the Offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

<b>Describe Identified Items of Work Not Being Performed by MBE (Include spec/section number from Proposal)</b>	<b>Self-performing or Using Non-MBE (Provide name)</b>	<b>Amount of Non-MBE Quote</b>	<b>Name of Other Firms who Provided Quotes &amp; Whether MBE or Non-MBE</b>	<b>Amount Quoted</b>	<b>Indicate Reason Why MBE Quote Rejected &amp; Briefly Explain</b>
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

Please check if Additional Sheets are attached.

**MBE ATTACHMENT D-2**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

Complete and submit this form within 10 Business Days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the Proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

1. Offeror identified subcontracting opportunities in these specific work categories:

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2. Attached to this form are copies of written solicitations (with bidding/proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.

3. Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:

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4. **Please Check One:**

- This project does not involve bonding requirements.
- Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS): \_\_\_\_\_

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5. **Please Check One:**

- Offeror did attend the pre-bid/pre-proposal conference.
- No pre-Proposal meeting/conference was held.
- Offeror did not attend the pre-Proposal conference.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

## MBE ATTACHMENT D-3A

### MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION

**PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) is awarded the State Contract in conjunction with Solicitation No. \_\_\_\_\_, such Prime Contractor intends to enter into a subcontract with \_\_\_\_\_ (Subcontractor's Name) committing to participation by the MBE firm \_\_\_\_\_ (MBE Name) with MDOT Certification Number \_\_\_\_\_ which will receive at least \$ \_\_\_\_\_ which equals to \_\_\_ % of the Total Contract Amount for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

Each of the Contractor and Subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and Subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Proposal;
- (3) fail to use the certified Minority Business Enterprise in the performance of the Contract; or
- (4) pay the certified Minority Business Enterprise solely for the use of its name in the Proposal.

<p><b>PRIME CONTRACTOR</b></p> <p>Signature of Representative: _____</p> <p>Printed Name and Title: _____</p> <p>Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> <p>Date: _____</p>	<p><b>SUBCONTRACTOR</b></p> <p>Signature of Representative: _____</p> <p>Printed Name and Title: _____</p> <p>Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Address: _____</p> <p>Telephone: _____</p> <p>Date: _____</p>
--	---

**MBE ATTACHMENT D-3B**  
**MBE PRIME - PROJECT PARTICIPATION CERTIFICATION**

**PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE FIRM HAS LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) with Certification Number \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such MBE Prime Contractor intends to perform with its own forces at least \$ \_\_\_\_\_ which equals to \_\_\_% of the Total Contract Amount for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE). FOR CONSTRUCTION PROJECTS, GENERAL CONDITIONS MUST BE LISTED SEPARATELY.	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

<p><b>MBE PRIME CONTRACTOR</b></p> <p>Signature of Representative: _____</p> <p>Printed Name and Title: _____</p> <p>Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Address: _____</p> <p>_____</p> <p>Telephone: _____</p> <p>Date: _____</p>
---

**MBE ATTACHMENT D-4A**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Paid/Unpaid Invoice Report**

Report #: _____  Reporting Period (Month/Year): _____  <b>Prime Contractor: Report is due to the MBE Liaison by the 10<sup>th</sup> of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
--	--

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	Fax:	E-mail:																																					
MBE Subcontractor Name:		Contact Person:																																					
Phone:	Fax:																																						
Subcontractor Services Provided:																																							
<b>List all payments made to MBE subcontractor named above during this reporting period:</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%; text-align: center;"><u>Invoice#</u></th> <th style="width: 30%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Paid: \$</b></td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Paid: \$</b>		_____	<b>List dates and amounts of any outstanding invoices:</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%; text-align: center;"><u>Invoice #</u></th> <th style="width: 30%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Unpaid: \$</b></td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Unpaid: \$</b>		_____
	<u>Invoice#</u>	<u>Amount</u>																																					
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<b>Total Dollars Paid: \$</b>		_____																																					
	<u>Invoice #</u>	<u>Amount</u>																																					
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2.																																							
3.																																							
4.																																							
<b>Total Dollars Unpaid: \$</b>		_____																																					

- If more than one MBE subcontractor is used for this contract, you must use separate D-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment D-4B
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____
Contracting Unit and Address: _____
_____

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
 (Required)

**MBE ATTACHMENT D-4B**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Report**

MBE Prime Contractor: Certification Number: Report #: _____ Reporting Period (Month/Year): _____ <b>MBE Prime Contractor: Report is due to the MBE Liaison by the ___ of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals: _____ Project Begin Date: _____ Project End Date: _____
--	--

Contact Person: _____		
Address: _____		
City: _____	State: _____	ZIP: _____
Phone: _____	Fax: _____	E-mail: _____

Invoice Number	Value of the Work	NAICS Code	Description of the Work

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____ Contracting Unit and Address: _____ _____ _____ _____
---

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
 (Required)

**MBE ATTACHMENT D-5**  
**Minority Business Enterprise Participation**  
**MBE Subcontractor Paid/Unpaid Invoice Report**

Report #: _____ Reporting Period (Month/Year): _____ <b>Report is due by the ___ of the month following the month the services were performed.</b>	Contract #: _____ Contracting Unit: _____ MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
--	---

MBE Subcontractor Name:																															
MDOT Certification #:																															
Contact Person:		E-mail:																													
Address:																															
City:	State:	ZIP:																													
Phone:	Fax:																														
<b>Subcontractor Services Provided:</b>																															
<b>List all payments received from Prime Contractor during reporting period indicated above.</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 55%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3"><b>Total Dollars Paid: \$</b> _____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Paid: \$</b> _____			<b>List dates and amounts of any unpaid invoices over 30 days old.</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 55%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3"><b>Total Dollars Unpaid: \$</b> _____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Unpaid: \$</b> _____		
	<u>Invoice Amt</u>	<u>Date</u>																													
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<b>Total Dollars Paid: \$</b> _____																															
	<u>Invoice Amt</u>	<u>Date</u>																													
1.																															
2.																															
3.																															
<b>Total Dollars Unpaid: \$</b> _____																															
Prime Contractor:		Contact Person:																													

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____ Contracting Unit and Address: _____ _____ _____ _____
---

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
 (Required)

## ATTACHMENTS E – VETERAN-OWNED SMALL BUSINESS ENTERPRISE

(If this solicitation **does not** include a VSBE goal (see RFP Section 4.27), enter only the following sentence for this Attachment and delete the rest of these “E” Attachments.)

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

(If this solicitation **does** include a VSBE goal (see RFP Section 4.27), enter the following language for these Attachments.)

### **ATTACHMENT E-1** **VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule**

(submit with Proposal)

This document **MUST BE** included with the Proposal. If the Offeror fails to complete and submit this form with the Proposal, the procurement officer may determine that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Proposal submitted in response to Solicitation No. (solicitation number), I affirm the following:

- I acknowledge and intend to meet the overall verified VSBE participation goal of (VSBE goal percentage)%. Therefore, I will not be seeking a waiver.

#### **OR**

- I conclude that I am unable to achieve the VSBE participation goal. I hereby request a waiver, in whole or in part, of the overall goal. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.13.07. If this request is for a partial waiver, I have identified the portion of the VSBE goal that I intend to meet.
- I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 days of receiving notice of the apparent award or from the date of conditional award (per COMAR 21.11.13.06), whichever is earlier.
  - Subcontractor Project Participation Statement (**Attachment E-2**); and
  - Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Offeror responsibility in connection with the VSBE participation goal.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

- In the solicitation of subcontract quotations or offers, VSBE subcontractors were provided not less than the same information and amount of time to respond as were non-VSBE subcontractors.
- Set forth below are the (i) verified VSBEs I intend to use and (ii) the percentage of the total contract amount allocated to each VSBE for this project. I hereby affirm that the VSBE firms are only providing those products and services for which they are verified.

**ATTACHMENT E-1A**  
**VSBE Prime/Subcontractor Participation Schedule**

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: - _____	

List Information For Each Verified VSBE Prime Contractor or Subcontractor On This Project

Name of Veteran-Owned Firm:	DUNS Number:
	Description of work to be performed:
Percentage of Total Contract:	
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:

Continue on a separate page, if needed.

**SUMMARY**

**TOTAL VSBE Participation:** \_\_\_\_\_ %

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Bidder/Offeror Name  
(PLEASE PRINT OR TYPE)

\_\_\_\_\_  
Signature of Affiant

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**VSBE ATTACHMENT E-1B - Exhibit A**  
**VSBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
 \_\_\_\_\_ (Name of Veteran-owned firm)

located at \_\_\_\_\_  
 \_\_\_\_\_ (Number) \_\_\_\_\_ (Street)  
 \_\_\_\_\_  
 \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_

in \_\_\_\_\_ County by \_\_\_\_\_  
 \_\_\_\_\_ (Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Veteran-owned Firm), is either unavailable for the  
 work/service or unable to prepare a bid for this project for the following reason(s):

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
**Signature of Minority Firm's VSBE Representative**      \_\_\_\_\_ **Title**      \_\_\_\_\_ **Date**

\_\_\_\_\_  
 USDVA #      \_\_\_\_\_ TELEPHONE #

4. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Veteran-Owned Small Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

\_\_\_\_\_  
 Signature of Prime Contractor      \_\_\_\_\_ Title      \_\_\_\_\_ Date

**ATTACHMENT E-2**  
**VSBE Subcontractor Participation Statement**

*Please complete and submit one form for each verified VSBE listed on Attachment E-1 within 10 Business days of notification of apparent award*

\_\_\_\_\_ (prime contractor) has entered into a contract with  
 \_\_\_\_\_ (subcontractor) to provide services in connection with the Solicitation described below.

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: _____	Total Contract Amount: \$
Name of Veteran-Owned Firm:	DUNS Number:
Address:	FEIN:
Work to Be Performed:	
Percentage of Total Contract:	Total Subcontract Amount: \$

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Veteran-Owned Small Business Enterprise Law, State Finance and Procurement Article, Title 14, Subtitle 6, Annotated Code of Maryland.

**PRIME CONTRACTOR SIGNATURE**

By: \_\_\_\_\_  
 Name, Title  
 Date \_\_\_\_\_

**SUBCONTRACTOR SIGNATURE**

By: \_\_\_\_\_  
 Name, Title  
 Date \_\_\_\_\_

This form is to be completed monthly by the prime contractor.

**ATTACHMENT E-3**  
**Veterans Small Business Enterprise (VSBE) Participation**  
**VSBE Prime Contractor Paid/Unpaid Invoice Report**

Report #: _____	Contract #: _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
<b>Report is due to the Contract Monitor by the 10<sup>th</sup> of the month following the month the services were provided.</b>	Contract Amount: _____
	VSBE Subcontract Amt: _____
	Project Begin Date: _____
	Project End Date: _____
	Services Provided: _____
<b>Note: Please number reports in sequence</b>	

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	Fax:	E-mail:	
VSBE Prime Contractor Services Provided (if applicable):			
Subcontractor Name:		Contact Person:	
Phone:	Fax:		
VSBE Subcontractor Services Provided (if applicable):			
<b>List all payments made to VSBE subcontractor named above during this reporting period:</b>		<b>List dates and amounts of any outstanding invoices:</b>	
	<u>Invoice#</u>	<u>Amount</u>	
1.			1. <u>Invoice #</u>
2.			2. <u>Amount</u>
3.			3.
4.			4.
<b>Total Dollars Paid: \$</b> _____		<b>Total Dollars Unpaid: \$</b> _____	

If more than one VSBE subcontractor is used for this contract, you must use separate M-3 forms for each subcontractor. **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____
Contracting Unit and Address: _____
_____
_____
_____

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
 (Required)

This form must be completed monthly  
by all VSBE subcontractors.

**ATTACHMENT E-4**  
**Veterans Small Business Enterprise Participation**  
**VSBE Subcontractor Paid/Unpaid Invoice Report**

Report #: _____  Reporting Period (Month/Year): _____  <b>Report is due by the 10<sup>th</sup> of the month following the month the services were performed.</b>	Contract # _____ Contracting Unit: _____ VSBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
--	---

VSBE Subcontractor Name: _____																																
Department of Veterans Affairs Certification #: _____																																
Contact Person: _____	E-mail: _____																															
Address: _____																																
City: _____	State: _____	ZIP: _____																														
Phone: _____	Fax: _____																															
<b>VSBE Subcontractor Services Provided:</b>																																
<b>List all payments received from Prime Contractor during reporting period indicated above.</b> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width:15%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Paid: \$</b> _____</td> <td></td> </tr> </tbody> </table>			<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Paid: \$</b> _____			<b>List dates and amounts of any unpaid invoices over 30 days old.</b> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width:15%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Unpaid: \$</b> _____</td> <td></td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Unpaid: \$</b> _____		
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1.																																
2.																																
3.																																
<b>Total Dollars Unpaid: \$</b> _____																																
Prime Contractor: _____		Contact Person: _____																														

**Return one copy of this form to the following address (electronic copy with signature & date is preferred):**

Contract Monitor: _____ Contracting Unit and Address: _____ _____ _____ _____
---

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(Required)

**Living Wage Requirements for Service Contracts**

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee’s time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
    - (a) Has a State contract for services valued at less than \$100,000, or
    - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
  - (2) A Subcontractor who:
    - (a) Performs work on a State contract for services valued at less than \$100,000,
    - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
    - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B(3) or C below.
  - (3) Service contracts for the following:
    - (a) Services with a Public Service Company;
    - (b) Services with a nonprofit organization;
    - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement (“Unit”); or
    - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.

- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dllr.state.md.us/labor/prev/livingwage.shmtl>.

**Maryland Living Wage Requirements Affidavit of Agreement**

(submit with Proposal)

Contract No. \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**If the Contract Is Exempt from the Living Wage Law**

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland’s Living Wage Law for the following reasons (check all that apply):

- Offeror is a nonprofit organization
- Offeror is a public service company
- Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

**If the Contract Is a Living Wage Contract**

A. The Undersigned, being an authorized representative of the above-named Contractor, hereby affirms its commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. \_\_\_\_\_ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- The employee(s) proposed to work on the contract will spend less than one-half of the employee’s time during any work week on the contract

- The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Name (Typed or Printed)

\_\_\_\_\_  
Witness Signature Date

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

## ATTACHMENT G- FEDERAL FUNDS ATTACHMENT

(If this solicitation **does not** include federal funding (see RFP Section 4.29), enter only the following sentence for this Attachment and delete the rest of these “H” Attachments.)

This solicitation does not include a Federal Funds Attachment.

(If this solicitation **does** include federal funding (see RFP Section 4.29), enter the language below for these Attachments. Note that the Procurement Officer should check to see if there are any additional requirements or restrictions relative to the applicable federal funding source, and should incorporate such additions into the solicitation as necessary.)

### A Summary of Certain Federal Fund Requirements and Restrictions

1. Form and rule enclosed: 18 U.S.C. 1913 and Section 1352 of P.L. 101-121 require that all *prospective* and present sub-grantees (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the form “Certification Against Lobbying.” It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF- LLL.
2. Form and instructions enclosed: “Form LLL, Disclosure of Lobbying Activities” must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.
3. Form and summary of Act enclosed: Sub-recipients of federal funds on any level must complete a “Certification Regarding Environmental Tobacco Smoke,” required by Public Law 103-227, the Pro-Children Act of 1994. Such law prohibits smoking in any portion of any indoor facility owned or leased or contracted for regular provision of health, day care, early childhood development, education, or library services for children under the age of 18. Such language must be included in the conditions of award (they are included in the certification, which may be part of such conditions.) This does not apply to those solely receiving Medicaid or Medicare, or facilities where WIC coupons are redeemed.
4. In addition, federal law requires that:
  - A) Office of Management and Budget (OMB) MB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations requires that grantees (both recipients and sub-recipients) which expend a total of \$500,000 in federal assistance shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 and OMB Circular A-133. All sub-grantee audit reports, performed in compliance with the aforementioned Circular shall be forwarded within 30 days of report issuance to the Department Contract Monitor.
  - B) All sub-recipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).
  - C) Recipients of \$10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B).

Section 503 of the Rehabilitation Act of 1973, as amended, requires recipients to take affirmative action to employ and advance in employment qualified disabled people. An affirmative action program must be prepared and maintained by all contractors with 50 or more employees and one or more federal contracts of \$50,000 or more.

This clause must appear in subcontracts of \$10,000 or more:

- 1) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 2) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- 3) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 4) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- 5) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- 6) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 791 *et seq.*) prohibits discrimination on the basis of handicap in all federally assisted programs and activities. It requires the analysis and making of any changes needed in three general areas of operation- programs, activities, and facilities and employment. It states, among other things, that:

*Grantees that provide health ... services should undertake tasks such as ensuring emergency treatment for the hearing impaired and making certain that persons with impaired sensory or speaking skills are not denied effective notice with regard to benefits, services, and waivers of rights or consents to treatments.*

- D) All sub-recipients comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.
- E) All sub-recipients of federal funds from SAMHSA (Substance Abuse and Mental Health Services Administration) or NIH (National Institute of Health) are prohibited from paying any direct salary at a rate more than Executive Level 1 per year. (This includes, but is not limited to, sub-recipients of the Substance Abuse Prevention and Treatment and the Community Mental Health Block Grants and NIH research grants.)

- F) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.
- G) For any education program, as required by Title IX of the Education Amendments of 1972, there may be no discrimination on the basis of sex.
- H) For research projects, a form for Protection of Human Subjects (Assurance/ Certification/ Declaration) should be completed by each level funded, assuring that either: (1) there are no human subjects involved, or (2) an Institutional Review Board (IRB) has given its formal approval before human subjects are involved in research. [This is normally done during the application process rather than after the award is made, as with other assurances and certifications.]
- I) In addition, there are conditions, requirements, and restrictions which apply only to specific sources of federal funding. These should be included in your grant/contract documents when applicable.

**CERTIFICATION REGARDING LOBBYING**  
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Award No.	Organizational Entry
Name and Title of Official Signing for Organizational Entry	Telephone No. Of Signing Official
Signature of Above Official	Date Signed



<b>Federal Use Only:</b>	Authorized for Local Reproduction Standard Form LLL (Rev. 7- 97)

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
10. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

## CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994, Part C Environmental Tobacco Smoke, requires that smoking not be permitted in any portion of any indoor facility owned, or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children's services provided in private residences, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole sources of applicable federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this certification, the offeror/contractor (for acquisitions) or applicant/grantee (for grants) certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-recipients shall certify accordingly.

---

Signature of Authorized Certifying Individual

**ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

(If this solicitation **does not** require a Conflict of Interest Affidavit and Disclosure (see RFP Section 4.30), enter only the following sentence for this Attachment and delete the rest.)

This solicitation does not require a Conflict of Interest Affidavit and Disclosure.

(If this solicitation **does** require a Conflict of Interest Affidavit and Disclosure (see RFP Section 4.30), enter the following language for this Attachment.)

**Reference COMAR 21.05.08.08**

A. “Conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. “Person” has the meaning stated in COMAR 21.01.02.01B(64) and includes a Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/Proposal is made.

C. The Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail — attach additional sheets if necessary):

E. The Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Offeror shall immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the Procurement Officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Authorized Representative and Affiant)

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

## ATTACHMENT I – NON-DISCLOSURE AGREEMENT

(If this solicitation **does not** require a Non-Disclosure Agreement (see RFP Section 4.31), enter only the following sentence for this Attachment and delete the rest.)

This solicitation does not require a Non-Disclosure Agreement.

(If this solicitation **does** require a Non-Disclosure Agreement (see RFP Section 4.31), enter the following language for this Attachment.)

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through (Department) (the “Department”), and \_\_\_\_\_ (the “Contractor”).

### RECITALS

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for (solicitation title) Solicitation # (solicitation number); and

**WHEREAS**, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively “Contractor’s Personnel”) with access to certain information the State deems confidential (the “Confidential Information”).

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the solicitation and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, “Confidential Information” means (1) any and all information provided by or made available by the State to the Contractor in connection with the Contract and (2) any and all Personally Identifiable Information (PII) (including but not limited to personal information as defined in Md. Ann. Code, State Govt. §10-1301) and Protected Health Information (PHI) that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. The Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. The Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT I-1. The Contractor shall update ATTACHMENT I-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.

4. The Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, adopt or establish operating procedures and physical security measures, and take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. The Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. The Contractor shall, at its own expense, return to the Department all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract. The Contractor shall complete and submit ATTACHMENT J-2 when returning the Confidential Information to the Department. At such time, the Contractor shall also permanently delete any Confidential Information stored electronically by the Contractor.
7. A breach of this Agreement by the Contractor or the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
  - a. This Agreement shall be governed by the laws of the State of Maryland;
  - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
  - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
  - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
  - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
  - f. The Recitals are not merely prefatory but are an integral part hereof; and
  - g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

**IN WITNESS WHEREOF**, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

Contractor: \_\_\_\_\_

(Department)

By: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**NON-DISCLOSURE AGREEMENT - ATTACHMENT I-1**

**LIST OF CONTRACTOR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE CONFIDENTIAL INFORMATION**

<b>Printed Name and Address of Individual/Agent</b>	<b>Employee (E) or Agent (A)</b>	<b>Signature</b>	<b>Date</b>
_____	_____	_____	_____
_____	_____	_____	_____
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**NON-DISCLOSURE AGREEMENT – ATTACHMENT I-2**

**CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and \_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 20\_\_\_\_ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.**

DATE: \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)

## ATTACHMENT J – HIPAA BUSINESS ASSOCIATE AGREEMENT

(If this solicitation **does not** require a HIPAA Business Associate Agreement (RFP see Section 4.32), enter only the following sentence for this Attachment and delete the rest.)

This solicitation does not require a HIPAA Business Associate Agreement.

(If this solicitation **does** require a HIPAA Business Associate Agreement (see RFP Section 4.32, enter the following language for this Attachment.)

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and between the \_\_\_\_\_ (Department) and \_\_\_\_\_ (Insert Name of Contractor) (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§ 4-301 *et seq.*) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

#### I. DEFINITIONS.

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy

Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

B. Specific definitions:

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean (**Insert Name of Contractor**).
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean (**Department**).
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
4. Protected Health Information (“PHI”). Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103.

**II. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.**

- A. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement or as required by law.
- B. Business Associate agrees to make uses, disclosures, and requests for PHI consistent with Covered Entity’s policies and procedures regarding minimum necessary use of PHI.
- C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.
- D. Business Associate may, if directed to do so in writing by Covered Entity, create a limited data set, as defined at 45 CFR 164.514(e)(2) , for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 CFR § 164.514(e)(2). Business Associate will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 CFR § 164.514(e)(4), with the limited data set recipient. Business Associate will report any material breach or violation of the data use agreement to Covered Entity immediately after it becomes aware of any such material breach or violation.
- E. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- F. The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the State’s payment of Business Associate for its performance pursuant to the Underlying Agreement.

- G. The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

### III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law.
- B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
- C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.
- D1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure.
2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:
- a. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
  - b. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
  - c. Is in substantially the same form as **ATTACHMENT J-1** attached hereto; and
  - d. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
    - i) A brief description of what happened, including the date of the Breach and discovery of the Breach, if known;
    - ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
    - iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
    - iv) A brief description of what the Covered Entity and Business Associate are doing to investigate the Breach, mitigate losses, and protect against any further Breaches; and
    - v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.

- e. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;
- f. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- g. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
- h. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
- i. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- j. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.
- k. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

#### IV. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for (enter solicitation title), Solicitation # (enter solicitation number), and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph B of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
  - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or

2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered Entity determines or reasonably believes that cure is not possible.

C. Effect of Termination.

1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the Maryland Confidentiality of Medical Records Act (MCMRA), Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

D. Survival. The obligations of Business Associate under this Section shall survive the termination of this agreement.

## V. CONSIDERATION

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

## VI. REMEDIES IN EVENT OF BREACH

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to Covered Entity at law or in equity.

## VII. MODIFICATION; AMENDMENT

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA rules and any other applicable law.

**VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES**

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

**IX. COMPLIANCE WITH STATE LAW**

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

**X. MISCELLANEOUS**

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

(Insert the name and contact information of the HIPAA contact person within the Department or appropriate covered health care entity)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: \_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

E. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.

F. Severability. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

G. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.

H. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

**COVERED ENTITY:**

**BUSINESS ASSOCIATE:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**FORM OF NOTIFICATION TO COVERED ENTITY OF  
BREACH OF UNSECURED PHI**

This notification is made pursuant to Section III.D(3) of the Business Associate Agreement between (Department) and \_\_\_\_\_ (Business Associate).

Business Associate hereby notifies (Department) that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: \_\_\_\_\_

Date of the breach: \_\_\_\_\_ Date of discovery of the breach: \_\_\_\_\_

Does the breach involve 500 or more individuals? Yes/No      If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach: \_\_\_\_\_

Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

Description of what Business Associate is doing to investigate the breach, mitigate losses, and protect against any further breaches:

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**ATTACHMENT K – MERCURY AFFIDAVIT**

(If this solicitation **does not** include the procurement of products known to likely include mercury as a component (see RFP Section 4.34), enter only the following sentence for this Attachment and delete the rest.)

This solicitation does not include the procurement of products known to likely include mercury as a component.

(If this solicitation **does** include the procurement of products known to likely include mercury as a component (see RFP Section 4.34), enter the following language for this Attachment.)

**MERCURY AFFIDAVIT**

**AUTHORIZED REPRESENTATIVE THEREBY AFFIRM THAT:**

I, \_\_\_\_\_ (name of affiant) am the  
\_\_\_\_\_ (title) and the duly authorized representative of  
\_\_\_\_\_ (name of the business). I possess  
the legal authority to make this affidavit on behalf of myself and the business for which I am acting.

**MERCURY CONTENT INFORMATION:**

The product(s) offered do not contain mercury.

OR

The product(s) offered do contain mercury.

In an attachment to this Mercury Affidavit:

- (1) Describe the product or product component that contains mercury.
- (2) Provide the amount of mercury that is contained in the product or product component. Indicate the unit of measure being used.

**I ACKNOWLEDGE THAT** this affidavit is to be furnished to the Procurement Officer and may be distributed to units of (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this affidavit or any contract resulting from the submission of this Proposal shall be construed to supersede, amend, modify, or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this affidavit, (2) the contract, and (3) other affidavits comprising part of the contract.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.**

By: \_\_\_\_\_  
Date \_\_\_\_\_ Signature \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Authorized Representative and Affiant

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

**ATTACHMENT L – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE**

(If this procurement is **not** anticipated to have an estimated value of \$2,000,000.00 or more (see RFP Section 4.35), enter only the following sentence for this Attachment and delete the rest.)

This solicitation does not require a Location of the Performance of Services Disclosure.

(If this procurement is anticipated to have an estimated value of \$2,000,000.00 or more (see RFP Section 4.35), enter the following language for this Attachment.)

**(submit with Proposal)**

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Proposal submitted in response to Solicitation No. \_\_\_\_\_, the following disclosures are hereby made:

1. At the time of Proposal submission, the Offeror and/or its proposed subcontractors:

\_\_\_ have plans

\_\_\_ have **no** plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Offeror or its proposed subcontractors, the Offeror shall answer the following (attach additional pages if necessary):

a. Location(s) services will be performed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Reasons why it is necessary or advantageous to perform services outside the United States:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned, being an authorized representative of the Offeror, hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

Date: \_\_\_\_\_

Offeror Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Please be advised that the Department may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States exceeds by an unreasonable amount the price of services provided outside the United States; or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

## ATTACHMENT M – CONTRACT

### (CONTRACT TITLE)

THIS CONTRACT (the “Contract”) is made this (“X<sup>th</sup>”) day of (month), (year) by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the (DEPARTMENT).

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

#### 1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract” means this agreement between (Contractor’s name) and the State of Maryland, acting through the (DEPARTMENT).
- 1.3 “Contract Monitor” means the following Department employee identified as the Contract Monitor: (Contract Monitor’s name and contact information)
- 1.4 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.5 “Department” means the (Department).
- 1.6 “Financial Proposal” means the Contractor’s Financial Proposal dated (Financial Proposal date).
- 1.7 “Procurement Officer” means the following Department employee identified as the Procurement Officer: (Procurement Officer’s name and contact information)
- 1.8 “RFP” means the Request for Proposals for (solicitation title) Solicitation # (solicitation number), and any addenda thereto issued in writing by the State.
- 1.9 “State” means the State of Maryland.
- 1.10 “Technical Proposal” means the Contractor’s Technical Proposal dated (Technical Proposal date).

#### 2. Scope of Contract

- 2.1 The Contractor shall provide deliverables, programs, goods, and services specific to the Contract for (enter title/description of what the Contract is for) awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – State Contract Affidavit, executed by the Contractor and dated (date of Attachment C)

Exhibit C – The Proposal (Technical and Financial)

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, 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.

### **3. Period of Performance.**

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately (number of years of base term of Contract) years (change to months if necessary) beginning (anticipated Contract start date) and ending on (anticipated end date of base term of Contract).
- 3.2 The State, at its sole option, has the unilateral right to extend the term of the Contract for (number of Option Years) additional successive one-year terms at the prices quoted in the Financial Proposal for Option Years. (Delete this section if there are no Option Years, and change the numbering of the next section to 3.2).
- 3.3 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

### **4. Consideration and Payment**

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. (enter the following sentence for contracts with a Not-to-Exceed/NTE amount) Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract, including the base term and any option exercised by the State, shall not exceed \$ (enter NTE amount).

(The following paragraph may be added to indefinite quantity, labor hour and time and materials contracts with Not-to-Exceed amounts at the discretion of the Contract Monitor; otherwise delete it.)

Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the above specified amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult with the State and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached; and (b) when applicable secure databases, systems, platforms, and/or

applications on which the Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is (Contractor's FEIN or SSN). Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, 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.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.
- 4.5 Contractor's eMaryland Marketplace vendor ID number is (Contractor's eMM number).

## **5. Rights to Records**

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## **6. Exclusive Use**

6.1 The State 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. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Department's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract.

## **7. Patents, Copyrights, and Intellectual Property**

7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **8. Confidential or Proprietary Information and Documentation**

8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and the implementation of regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

8.2 This Section 8 shall survive expiration or termination of this Contract.

**9. Loss of Data**

9.1 In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.

**10. Indemnification**

10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.

10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.

10.3 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.

10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.

10.5 The Contractor shall immediately notify the Procurement Officer of any claim or lawsuit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, lawsuit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

10.6 This Section 10 shall survive termination of this Contract.

**11. Non-Hiring of Employees**

11.1 No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

**12. Disputes**

12.1 This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the

Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier.

Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

### **13. Maryland Law**

13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Contract or any purchase order or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.

13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

### **14. Nondiscrimination in Employment**

14.1 The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

### **15. Contingent Fee Prohibition**

15.1 The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

### **16. Non-Availability of Funding**

16.1 If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**17. Termination for Default**

17.1 If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**18. Termination for Convenience**

18.1 The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

**19. Delays and Extensions of Time**

19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**20. Suspension of Work**

20.1 The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

**21. Pre-Existing Regulations**

21.1 In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

**22. Financial Disclosure**

22.1 The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or

more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

### **23. Political Contribution Disclosure**

23.1 The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31. Additional information is available on the State Board of Elections website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

### **24. Documents Retention and Inspection Clause**

24.1 The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

### **25. Right to Audit**

25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or subcontractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the Contract services being performed for the State.

25.2 Upon three (3) Business Days' notice, the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy, at its own expense, any record related to the services performed and provided under this Contract.

25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the Department has the right to audit such subcontractor(s).

25.4 The Contractor and/or subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.

25.5 This Section shall survive expiration or termination of the Contract.

## **26. Compliance with Laws**

The Contractor hereby represents and warrants that:

26.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

26.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

26.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

26.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **27. Cost and Price Certification**

27.1 By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Proposal.

27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

## **28. Subcontracting; Assignment**

28.1 The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer; provided, however, that a Contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## **29. Liability**

For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, the Contractor shall be liable as follows:

29.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;

- 29.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 29.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form the Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

**30. Commercial Nondiscrimination**

- 30.1 As a condition of entering into this Contract, the Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, the Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination. The Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, the Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

**31. Prompt Pay Requirements**

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- a. Not process further payments to the contractor until payment to the subcontractor is verified;
  - b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
  - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
  - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - e. Take other or further actions as appropriate to resolve the withheld payment.

- 31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation:
- a. Retainage which had been withheld and is, by the terms of the Contract between the Contractor and subcontractor, due to be distributed to the subcontractor; and
  - b. An amount withheld because of issues arising out of a Contract or occurrence unrelated to the Contract under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- a. Affect the rights of the contracting parties under any other provision of law;
  - b. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
  - c. Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.
- Verification shall include a review of the:
- i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
  - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- b. If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
  - c. If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
    - i. Terminate the contract;
    - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
    - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.

- d. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

**32. Living Wage**

- 32.1 If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the agency may withhold payment of any invoice or retainage. The agency may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

**33. Use of Estimated Quantities**

- 33.1 Unless specifically indicated otherwise in the State’s solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

**34. Contract Monitor and Procurement Officer**

- 34.1 The work to be accomplished under this Contract shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

**35. Notices**

- 35.1 All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State: (name of Procurement Officer)  
Procurement Officer  
(address and contact information for Procurement Officer)

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(OPTIONAL CONTRACT CLAUSES: The following optional clauses may be required under certain conditions. Use these clauses only when appropriate. Delete any clauses not used and renumber the remaining Contract clauses as necessary.)**

(If there is an MBE goal for the Contract, enter and complete the following clause pursuant to GOMA’s Guidelines for Liquidated Damages Provisions for Contracts Containing Minority Business Enterprise Participation Goals.)

**36. Liquidated Damages**

- 36.1 The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent MBE

Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor expressly agrees that the State may withhold payment on any invoices as an offset against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of each violation.

- 36.1.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): \$ (dollar amount) per day until the monthly report is submitted as required.
- 36.1.2 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): \$(dollar amount) per MBE subcontractor.
- 36.1.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- 36.1.4 Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- 36.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$(dollar amount) per day until the undisputed amount due to the subcontractor is paid.
- 36.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or otherwise may be available at law or in equity.

(If a Contractor intends to rely on its Parent Company in some manner while performing on the State Contract, the following clause should be included and completed for the Contractor's Parent Company to guarantee performance of the Contractor. The guarantor/Contractor's Parent Company should be named as a party and signatory to the Contract and should be in good standing with SDAT.)

### **37. Parent Company Guarantee**

- 37.1 (Corporate name of Contractor's Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor's Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may

grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, lawsuit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

(The following clause is mandatory for federally-funded contracts involving healthcare entities or individuals, the employment of healthcare entities or individuals, or subcontracting with healthcare entities or individuals that may be named on the DHHS List of Excluded Individuals/Entities.)

### **38. Federal Department of Health and Human Services (DHHS) Exclusion Requirements**

38.1 The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the Department immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

(HIPAA Clauses. One of the following three clauses should be used whenever the contract deals with medical information/records, third party clients or medical billing/payments. Delete any/all clauses if not applicable.)

(Option 1 of 3 – Use this clause when the Department unit **is not** a covered entity. The blank at the beginning would reference any statutory requirement unique to the Department unit/program, or, if there is none, the first two sentences are combined to reference “any applicable law or regulation “ as follows: “The Contractor agrees to keep information obtained in the course of this contract confidential in compliance with any applicable State and federal regulation.”)

### **39. Confidentiality of Health and Financial Information**

39.1 The Contractor agrees to keep information obtained in the course of this contract confidential in compliance with \_\_\_\_\_. The Contractor agrees further to comply with any applicable State and federal confidentiality requirements regarding collection, maintenance, and use of health and financial information. This includes, where appropriate, the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations at 45 C.F.R. Parts 160 and 164, and the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Department for information about its privacy practices in general or with respect to a particular individual, modifying information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health and financial information.

**(OR – Option 2 of 3 – Use this confidentiality clause when the Department unit is a covered entity and the vendor is not a business associate.)**

**39. Compliance with HIPAA and State Confidentiality Law**

- 39.1 The Contractor acknowledges its duty to become familiar and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:
- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
  - (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
  - (c) Otherwise providing good information management practices regarding all health information and medical records.
- 39.2 If in connection with the procurement or at any time during the term of the Contract, the Department determines that functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor acknowledges its obligation to execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form required by the Department.
- 39.3 “Protected Health Information” as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is: individually identifiable; created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and related to the past, present, or future physical or mental health or condition of an individual, provision of healthcare to an individual, or past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

**(OR – Option 3 of 3 – Use this confidentiality clause when the Department unit is a covered entity and the vendor is a business associate.)**

**39. Compliance with Federal HIPAA and State Confidentiality Law**

- 39.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:
- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;

- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
- (c) Otherwise providing good information management practices regarding all health information and medical records.

39.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form as required by the Department.

39.3 “Protected Health Information” as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

(The following clause should be added to contracts for which there is a strong possibility of employment by current and former Family Investment Program (“FIP”) recipients, their children, foster youth, and child support obligors (“Candidates”). The actual DHR Agreement must be included in the solicitation as Attachment O (see Section 1.43) Delete this clause if not applicable, and revise the numbering of the clauses in this Contract accordingly.)

#### **40. Hiring Agreement**

40.1 The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Resources (DHR) Hiring Agreement (Attachment O). The Hiring Agreement is to be executed by the Bidder/Offeror and delivered to the Procurement Officer within ten (10) Business Days following receipt of notice by the Bidder/Offeror that it is being recommended for contract award. The Hiring Agreement will become effective concurrently with the award of the contract.

40.2 The Hiring Agreement provides that the Contractor and DHR will work cooperatively to promote hiring by the Contractor of qualified individuals for job openings resulting from this procurement, in accordance with Md. Code Ann., State Finance and Procurement Article §13-224.

(The following clause should be added to contracts when there is the probability of customers with limited ability in speaking English. Delete this clause if not applicable, and revise the numbering of the clauses in this Contract accordingly.)

#### **41. Limited English Proficiency**

41.1 The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and DHMH Policy 02.06.07.

(Include the following clause after any or all “optional” clauses above have been entered, and revise Contract clause numbering as necessary.)

**42. Miscellaneous**

- 42.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 42.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

**43. Substitution of Personnel**

- 43.1 **Continuous Performance of Key Personnel.** Unless substitution is approved per paragraphs B-D of this section, Key Personnel shall be the same personnel proposed in the Contractor’s Technical Proposal, which will be incorporated into the Contract by reference. Such identified Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under this Contract, as described in the RFP or the Contractor’s Technical Proposal, without the prior written approval of the Contract Monitor.

If the Contract is task order based, the provisions of this section apply to Key Personnel identified in each task order proposal and agreement.

- 43.2 **Definitions.** For the purposes of this section, the following definition apply:

**Extraordinary Personal Circumstance** – means any circumstance in an individual’s personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual’s home that causes a major disruption in the individual’s normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

**Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual’s position in the RFP or the Contractor’s Technical Proposal.

**Sudden** – means when the Contractor has less than thirty (30) days’ prior notice of a circumstance beyond its control that will require the replacement of any Key Personnel working under the Contract.

- 43.3 **Key Personnel General Substitution Provisions.** The following provisions apply to all of the circumstances of staff substitution described in paragraph 43.4 of this section.

- 1. The Contractor shall demonstrate to the Contract Monitor’s satisfaction that the proposed substitute Key Personnel have qualifications at least equal to those of the Key Personnel for whom the replacement is requested.

2. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
  - A detailed explanation of the reason(s) for the substitution request;
  - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
  - The official resume of the current personnel for comparison purposes; and
  - Any evidence of any required credentials.
3. The Contract Monitor may request additional information concerning the proposed substitution. In addition, the Contract Monitor and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a requested Key Personnel replacement.

#### 43.4 Replacement Circumstances

1. **Voluntary Key Personnel Replacement.** To voluntarily replace any Key Personnel, the Contractor shall submit substitution request as described in paragraph 43.3 of this section to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph 43.4(2) of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.
2. **Key Personnel Replacement Due to Vacancy.** The Contractor shall replace Key Personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section 43.4(1) of this section.).

Under any of the circumstances set forth in this paragraph D.2, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph C of this section within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.

3. **Key Personnel Replacement Due to an Indeterminate Absence.** If any Key Personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information or items to the Contract Monitor as required under paragraph 43.3 of this section.

However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor, at the option and sole discretion of the Contract Monitor, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

4. **Directed Personnel Replacement.**
  - a. The Contract Monitor may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed

personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 4b. If after such remediation the Contract Monitor determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Monitor can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with paragraph 43.3 of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

- b. If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.

Should performance issues persist despite the approved Remediation Plan, the Contract Monitor will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Key Personnel at issue.

Replacement or substitution of personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

**IN WITNESS THEREOF**, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND  
(DEPARTMENT)

\_\_\_\_\_  
By:

\_\_\_\_\_  
By: (name and title of Department Head)

\_\_\_\_\_  
Date

Or designee:

\_\_\_\_\_

\_\_\_\_\_  
Date

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(BPW Item #)

**ATTACHMENT N – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation —  domestic or  foreign;
- (2) Limited Liability Company —  domestic or  foreign;
- (3) Partnership —  domestic or  foreign;
- (4) Statutory Trust —  domestic or  foreign;
- (5)  Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID

Number: \_\_\_\_\_ Address: \_\_\_\_\_

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID

Number: \_\_\_\_\_ Address: \_\_\_\_\_

**C. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31.

#### E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

#### I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its Bid/Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

#### F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 201\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_ (printed name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

**ATTACHMENT O – DHR HIRING AGREEMENT**

(If this solicitation **does not** require a DHR Hiring Agreement (see RFP Section 4.36), enter only the following sentence for this Attachment and delete the rest.)

This solicitation does not require a DHR Hiring Agreement.

(If this solicitation **does** require a DHR Hiring Agreement (see Section 1.43), enter the following language for this Attachment.)

Agency Control Number \_\_\_\_\_

**MARYLAND DEPARTMENT OF HUMAN RESOURCES  
HIRING AGREEMENT**

This Hiring Agreement (“Agreement”) is effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and is entered into by and between the Maryland Department of Human Resources (“Department”) and \_\_\_\_\_ (the “Contractor”) pursuant to State Finance Procurement Article, § 13-224, Annotated Code of Maryland, arising out of a Contract for services between Contractor and \_\_\_\_\_ (“Entity”), contract number \_\_\_\_\_ (“Procurement Contract”).

**WITNESSETH:**

WHEREAS, the Department has identified the Procurement Contract as eligible for execution of this Agreement; and,

WHEREAS, the Contractor and the Entity, have discussed and reviewed an inventory of job openings that exists or the Contractor is likely to fill during the term of the Procurement Contract in the State of Maryland; and

WHEREAS, the Contractor, Department and the Entity have discussed and reviewed the job descriptions, locations, and skill requirements for those positions; and

WHEREAS, the Department and the Entity have identified and discussed with the Contractor the workforce related benefits and support services available to the Contractor as a result of the Agreement including:

- Medicaid coverage for the employee and the employee’s dependents for up to one year after placement in the job;
- Maryland Children’s Health Program (MCHP) medical coverage for the employee’s dependents after one year of employment for as long as eligibility is met;
- Food Stamps for the employee and the employee’s dependents for as long as eligibility requirements are met;
- Child Care subsidies for the employee’s dependents for up to one year after employment as long as eligibility requirements are met;
- Transportation subsidies for the employee for a period of time after employment;

- Other Retention services including counseling on an as needed basis; and
- Assistance with claiming tax credits for hiring Candidates.

WHEREAS, the Contractor and Department agree to work cooperatively to develop responses to the workforce development requirements faced by the Contractor and to promote the hiring of the Department’s current and former Family Investment Program (“FIP”) recipients, their children, foster youth, and child support obligors (“Candidates”) by the Contractor.

NOW THEREFORE, upon valuable consideration received, the Contractor and the Department specifically agree as follows:

**A. The CONTRACTOR shall:**

1. Notify the Department of all job openings that exist or result from the Procurement Contract.
2. Declare the Department the “first source” in identifying and hiring Candidates for those openings.
3. Work with the Department to develop training programs that will enable Candidates to qualify for and secure employment with the Contractor.
4. Give first preference and first consideration, to the extent permitted by law and any existing labor agreements, to Candidates the Department refers.
5. Agree to give Candidates referred to the Contractor by the Department priority in the filling of a job opening so long as the Candidate meets the qualifications of the position and the Department refers qualified Candidates within three (3) Business Days.
6. Submit biannual reports (for the duration of the Contract) listing the number of all job openings and the total number of individuals interviewed and hired under the Procurement Contract. The report shall also include feedback regarding the disposition of referrals made, to include an explanation of why any such Candidate was not hired or considered qualified.
7. Designate this individual to be the specific contact person:

\_\_\_\_\_

Name

\_\_\_\_\_

Address

\_\_\_\_\_

Telephone #

\_\_\_\_\_

Fax #

\_\_\_\_\_

e-Mail

who will:

- provide additional information regarding ‘first source’ jobs and clarify their requirements;
- receive Department referrals, and
- provide feedback to a Department account representative upon request regarding the dispositions of those referrals as well as the progress/employment status of those Candidates hired by the Contractor.

**B. The Department will designate an account representative who will:**

1. Process all the Contractor's job notices in accordance with this "Agreement."
2. Refer screened and qualified Candidates to the Contractor's designated contact person.
3. Make referrals in a timely manner, that is, within three (3) Business Days after receiving the Contractor's job opening notices.
4. Assist in the development of any mutually agreed upon training and/or internship programs that will better prepare Candidates for employment with the Contractor.
5. Provide follow-up and post hire transitional/supportive services, (e.g. Medicaid, MCHP, Food Stamps, child care, transportation, retention counseling, and access to tax credits) as necessary and appropriate.
6. Insure that the Contractor is advised of available subsidies and provide any assistance to the Contractor to obtain those subsidies.
7. Report the Contractor to the procurement Entity if the Contractor does not fulfill its responsibilities in accordance with this Agreement.
8. Review and evaluate the effectiveness of this undertaking with the Contractor and make modifications as necessary and appropriate.

**C. DISCLAIMERS**

Nothing in this Agreement shall cause the Contractor, except as explicitly provided in Section A above, to alter existing hiring practices or to hire an individual into a position for which he/she is not qualified.

**D. NON-DISCRIMINATION**

The Contractor agrees that there shall be no discrimination against any employee or Candidate for employment because of race, color, sex, religion, national origin, age, sexual preference, disability or any other factor specified in Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1983 and subsequent amendments and that they will comply with all other pertinent federal and State laws regarding discrimination.

**E. MARYLAND LAW PREVAILS**

The place of performance of this Agreement shall be the State of Maryland. This Agreement shall be construed, interpreted, and enforced according to the laws and regulations of the State of Maryland, including approval of the Board of Public Works where appropriate.

**F. EFFECTIVE DATE**

This Agreement shall take effect on the date of the aforementioned Procurement Contract, which is for the period \_\_\_\_\_ through \_\_\_\_\_, and it shall remain in effect for the duration of the Procurement Contract, including any option periods or extensions.

IN WITNESS, WHEREOF, the Contractor and the Department have affixed their signatures below:

**FOR THE CONTRACTOR:**

**FOR THE DEPARTMENT**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**TITLE**

**Hiring Agreement Coordinator**  
**TITLE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

## APPENDIX 1

### A.1 Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below: (Add to this Abbreviations and Definitions section any acronym or term unique to this solicitation and not in common use or for which there is not a single, consistent interpretation.)

1. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
2. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us).
3. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment A**.
4. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
5. **Contract Monitor (CM)** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities.
6. **Contractor** – The selected Offeror that is awarded a Contract by the State.
7. **Department or (Department acronym) – (Department)**.
8. **eMM** – eMaryland Marketplace (see RFP Section 1.8).
9. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation. See Section 1.4.
10. **Key Personnel** – All personnel identified in the solicitation as such, or personnel identified by the Offeror in its Proposal that are essential to the work being performed under the Contract. See RFP Sections 1.23 and 4.4.2.7.
11. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
12. **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
13. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.
14. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the

Go-Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Department Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.

15. **Offeror** – An entity that submits a Proposal in response to this RFP.
16. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment A), and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
17. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
18. **Request for Proposals (RFP)** – This Request for Proposals issued by the (Department), with the Solicitation Number and date of issuance indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors), including any addenda.
19. **State** – The State of Maryland.
20. **Total Proposal Price** - The Offeror’s total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment F – Price Form, and used in the financial evaluation of Proposals (see RFP Section 5.3).
21. **Veteran-owned Small Business Enterprise (VSBE)** – a business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.