



DEPARTMENT OF  
**HEALTH AND MENTAL HYGIENE**



201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

Dear Colleague:

You have downloaded one of three newly designed templates used to procure services. These templates, the Request for Proposals, the Invitation for Bids and the Standard Services Contract (used for Sole Source and some Emergency procurement) have been developed by the Office of Procurement and Support Services and are based on a Department of Budget and Management model. They are formatted in MS Word using Office Professional 2003. It is our hope that you will find them easier to use than the previous template first created 15 years ago.

There are some things you need to know when using the templates:

First, this is just a template. Only some, not all, of the language used in the template is required by Maryland's procurement regulations COMAR Title 21. Much of the language may be changed and, in fact, some should be deleted if not appropriate to your purchase or funding source. Check with the OPASS member of your Contract Fulfillment Team to determine if language is required or not. If something is included as a SAMPLE it is just that; adapt it to your needs, use whatever parts work for you, change some or all or discard it.

Second, there is a substantial amount of information and text you will need to add to the document. You will notice throughout the document reddish orange colored text in parenthesis. These are instructions to you. **DO NOT LEAVE THE INSTRUCTIONS OR PARENTHESIS IN THE DOCUMENT!** Insert the requested name, date, address, information, title, number etc. and delete the instruction. Make certain the inserted text does not remain in the color of the instruction. Also, when you download, copy or paste, text and tables may move around on the page. Please clean up text and tables to insure a professional look.

Finally, although efforts have been made to insure accuracy of attachment and section citations throughout the document, as you add and delete text, changes will occur affecting such accuracy. You will notice, however, that widows/orphans exist. No effort was made to address widows or orphans because the addition and deletion of text, sometimes large amounts, will alter their existence in the document. You, the author of the solicitation, are responsible for the ultimate content and appearance of the document. You must insure the accuracy of the content and convey a professional appearance and style.

Remember, this document will become a part of a public record. It is your first contact with the vendor community you wish to solicit from. It represents the Department. See that it is a quality publication.

Any questions regarding these templates may be made to the Department's Procurement Officer in OPASS.



# Request for Proposals

(Enter TITLE of RFP)

SOLICITATION NO. DHMH OPASS- (enter OPASS assigned number)

**Issue Date:** (enter month/day/year)

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

## NOTICE

Prospective Offerors who have received this document from the Department of Health and Mental Hygiene's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that addenda to the RFP or other communications can be sent to them.

**STATE OF MARYLAND  
NOTICE TO OFFERORS/CONTRACTORS**

In order to help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to respond on this Contract, please fax this completed form to: 410-333-5958 to the attention of the Procurement Officer.

**Title:** (enter title of RFP from cover)  
**Solicitation No:** (enter OPASS assigned RFP number)

1. If you have responded with a "no response", 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 Maryland Government is simply too complicated. (Explain in REMARKS section.)
  - We cannot be competitive. (Explain in REMARKS section.)
  - Time allotted for completion of the bid/proposals is insufficient.
  - Start-up time is insufficient.
  - Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
  - Bid/Proposals requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
  - MBE 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 wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

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Offeror Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

**STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
KEY INFORMATION SUMMARY SHEET**

**Request For Proposals:** (Enter Title of RFP)

**Solicitation Number:** DHMH OPASS (enter OPASS assigned RFP number)

**Issue Date:** (enter month, day, year)

**RFP Issuing Office:** Maryland Department of Health and Mental Hygiene  
(enter name of Issuing Office or Facility)

**Procurement Officer:** (enter name of Procurement Officer)  
Office Phone: (410) 767-(xxxx)  
Fax: (410) 333-5958  
e-mail: (enter user name)@[dhmh.state.md.us](mailto:dhmh.state.md.us)

**Contract Monitor:**

**Proposals are to be sent to:** Maryland Department of Health and Mental Hygiene  
201 West Preston Street, Room (room number)  
Baltimore, MD 21201  
Attention: (enter name)

**Pre-Proposal Conference:** (month, day, year and time am or pm) Local Time  
(address including building name), Room (room number)  
Baltimore, Maryland 21201

**Closing Date and Time:** (month, day, year and time am or pm) Local Time

**MBE Subcontracting Goal:** (enter amount of goal) %

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## SECTION 1 - GENERAL INFORMATION

### 1.1 Summary Statement

The Maryland Department of Health and Mental Hygiene (DHMH), (insert Administration Name) is issuing this Request for Proposals to provide (enter a short summary of what the program or facility is seeking).

It is the State's intention to obtain services, as specified in this Request for Proposals, from a Contract between the successful Offeror and the State.

1.1.3 The Department intends to make (enter one of the following statements "a single award" or "multiple awards up to a maximum of [number of awards]") to the Offeror(s) whose proposal(s) is/are deemed to be the most advantageous to the State.

1.1.4 Offerors, either directly or through their sub-contractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation.

### 1.2 Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

- a. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us)
- b. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of Attachment A.
- c. **Contract Monitor (CM)** – The State representative for this project that is primarily responsible for contract administration functions, including issuing written direction, compliance with terms and conditions, monitoring this project to ensure compliance with the terms and conditions of the contract, and in achieving on budget/on time/on target (e.g., within scope) completion of the project.
- d. **Contractor** – The selected Offeror that is awarded a Contract by the State.
- e. **DHMH** – Maryland Department of Health and Mental Hygiene.
- f. **LAN** – Local Area Network.
- g. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland.
- h. **MBE** – A Minority Business Enterprise certified by the Maryland Department of Transportation under COMAR 21.11.03.
- i. **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.
- j. **Notice to Proceed** – Letter from Contract Monitor to contractor stating the date the contractor can begin work subject to the conditions of the contract.
- k. **Offeror** – An entity that submits a proposal in response to this RFP.

- l. Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative that can authorize changes to the Contract. DHMH may change the Procurement Officer at any time by written notice to the Contractor.
- m. Request for Proposals (RFP)** – This Request for Proposals issued by the Maryland Department of Health and Mental Hygiene, (enter name of office, administration or facility), Solicitation Number OPASS-(enter OPASS assigned RFP number) dated (enter month day and year), including any addenda.
- n. State** – “State” means the State of Maryland.
- o. WAN** – Wide Area Network.

### 1.3 Contract Type

The Contract that results from this RFP shall be a(n) (enter type of contract such as firm fixed price, fixed price with cost adjustment, labor hour or indefinite quantity with fixed unit cost) as defined at COMAR 21.06.03.(add last two numbers of COMAR citation for applicable contract type).

### 1.4 Contract Duration

The Contract resulting from this RFP shall be for a period of (enter number) years beginning on or about (enter month, day, year) and ending (enter month, day, year). The Contractor shall provide services upon receipt of a Notice to Proceed from the Contract Monitor.

### 1.5 Procurement Officer

The sole point of contact in the State for purposes of this RFP prior to the award of any Contract is the Procurement Officer at the address listed below:

(enter procurement officer’s name)  
 Maryland Department of Health and Mental Hygiene  
 Office of Procurement and Support Services  
 201 West Preston Street, Room 416B  
 Baltimore, Maryland 21201  
 Phone Number: 410-767-5816  
 Fax Number: 410-333-5958  
 E-mail: (enter user name)[@dhmh.state.md.us](mailto:(enter user name)@dhmh.state.md.us)

DHMH may change the Procurement Officer at any time by written notice.

### 1.6 Contract Monitor

The Contract Monitor is:

(Name of Contract Monitor)  
 Maryland Department of Health and Mental Hygiene  
 (Name of Administration or Facility)  
 (Address of Administration or Facility location with room number)



Phone Number: (enter phone number)  
Fax Number: (enter facsimile number)  
Email: (enter user name)[@dhmh.state.md.us](mailto:(enter user name)@dhmh.state.md.us)

DHMH may change the Contract Monitor at any time by written notice.

## 1.7 Pre-Proposal Conference

A pre-proposal conference (Conference) will be held on (enter month, day, year) beginning at (enter time am or pm), at (enter full address with building name and room number). Attendance at the pre-proposal conference is not mandatory, but all interested Offerors are encouraged to attend in order to facilitate better preparation of their proposals.

The Pre-Proposal Conference will be summarized. As promptly as is feasible, subsequent to the Pre-Proposal Conference, a summary of the Pre-Proposal 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 will also be posted on eMaryland Marketplace.

In order to assure adequate seating and other accommodations at the Pre-Proposal Conference, please mail, e-mail, or fax the Pre-Proposal Conference Response Form to the attention of the Contract Monitor (see subsection 1.6) no later than (enter month, day, year). The Pre-Proposal Conference Response Form is included as **Attachment E** to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please call no later than (enter month, day, year). DHMH will make a reasonable effort to provide such special accommodation.

## 1.8 eMarylandMarketplace

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

eMM is an electronic commerce portal administered by the Maryland Department of General Services. In addition to using the DHMH web site <http://www.dhmh.md.gov/procumnt/procopps.html> and possibly other means of transmission, the RFP, associated materials, summary of the pre-proposal conference, Offeror questions and Department 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://ebidmarketplace.com/> and click on "Registration" to begin the process then follow the prompts.

## 1.9 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the pre-proposal conference. If possible and appropriate, such questions will be answered at the pre-proposal conference. (No substantive question will be answered prior to the pre-proposal conference.) Questions may be submitted by mail, facsimile, or preferably by e-mail to the Procurement Officer with a copy to the Contract Monitor. Questions, both oral and written, will also be accepted from prospective Offerors attending the Pre-Proposal Conference. If possible and appropriate, these questions will be answered at the Pre-Proposal Conference.

Questions will also be accepted subsequent to the Pre-Proposal Conference and should be submitted to the Procurement Officer in a timely manner prior to 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 who are known to have received a copy of the RFP.

## 1.10 Proposals Due - Date and Time

An unbound original and (enter number) of bound copies of each proposal (technical and financial) must be received by the Procurement Officer, at the address listed in sub-section 1.5, no later than (enter time with am or pm) Local Time on (enter month, day and year) in order to be considered. An electronic version (CD) of the Technical Proposal in MS Word format must be enclosed with the original technical proposal. An electronic version (CD) of the Financial Proposal in MS Word format must be enclosed with the original financial proposal. Ensure that the CDs are labeled with the RFP title, RFP number, and Offeror name and packaged with the original copy of the appropriate proposal (technical or financial). (See Section 4.2 Proposals)

Requests for extension of this date or time 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, proposals received by the Procurement Officer after the due date, (enter month, day, year) at (enter time with am or pm) Local Time will not be considered.

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

## 1.11 Duration of Offer

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date of proposals or of Best and Final Offers (BAFOs), if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

## 1.12 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for proposals, addenda will be provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the DHMH Current Procurements web page and through eMarylandMarketplace. Addenda made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

Acknowledgment of the receipt of all addenda to this RFP issued before the proposal due date must accompany the Offeror's proposal in the Transmittal Letter accompanying the Technical Proposal submittal.

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 its terms, additions, deletions or corrections.

### **1.13 Cancellations; Discussions**

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, to waive or permit cure of minor irregularities, and to 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 prior discussions or negotiations.

### **1.14 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 clarification or change then becomes 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. Typically, oral presentations occur approximately two weeks after the proposal due date.

### **1.15 Incurred Expenses**

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

### **1.16 Economy of Preparation**

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

### **1.17 Protests/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).

### **1.18 Multiple or Alternate Proposals**

Multiple proposals (select either "will" or "will not") and/but alternate proposals (select either "will" or "will not") be accepted.

### **1.19 Access to 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 Access to Public Records Act, Md. Code Ann., State Government Article, Title 10, Subtitle 6. (See Section 4.4.3.2 Claim of

Confidentiality) This confidential and/or proprietary information should be identified by page and section number and placed after Title Page and before the Table of Contents.

## 1.20 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 proposals must be included in the Offeror's proposal. Additional information regarding MBE subcontractors is provided under paragraph 1.24. If an Offeror that seeks to perform or provide the services required by this RFP is a subsidiary of another entity, all information submitted by the Offeror, such as, but not limited to, references and financial reports shall pertain exclusively to the Offeror unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

## 1.21 Standard Contract

By submitting an offer 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 A. Any exceptions to this RFP or the contract must be raised prior to offer submission. Changes to the solicitation or contract made by the Offeror shall result in rejection of the Offeror's proposals.

## 1.22 Proposal Affidavit

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

## 1.23 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 of this Affidavit is included as **Attachment C** of this RFP. This Affidavit must be provided within five business days of notification of proposed Contract award, however, to speed processing the Offeror is urged to include it with the Technical Proposal.

## 1.24 Minority Business Enterprises

A minimum overall MBE subcontractor participation goal of (enter the percentage) % has been established for the services resulting from this contract. See **Attachment D**.

**(if zero delete the remaining paragraphs)**

1.24.1 A bidder or offeror must include with its bid or offer a completed *Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D1)* whereby:

- (1) The bidder or offeror acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.
- (2) The bidder or offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified

MBEs at the time of submission. The bidder or offeror shall specify the percentage of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule.

***If a bidder or offeror fails to submit Attachment D1 with the bid or offer as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.***

1.24.2 Offerors are responsible for verifying that the MBE(s) selected to meet the subcontracting requirement and subsequently identified in Attachment D-1 is appropriately certified and has the correct NAICS codes allowing it to perform the intended work. The MDOT MBE Directory may be found on the Web at: <http://mbe.mdot.state.md.us/directory/>. See 1.24.4 below.

1.24.3 Within 10 working days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer.

- (1) Outreach Efforts Compliance Statement (Attachment D2)
- (2) Subcontractor Project Participation Statement (Attachment D3)
- (3) If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal or of any sub goal is necessary, it must submit a fully documented waiver request that complies with COMAR 21.11.03.11.
- (4) Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE 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. If the contract has already been awarded, the award is voidable.***

1.24.4 A current directory of certified Minority Business Enterprises is available through the Maryland State Department of Transportation, Office of Minority Business Enterprise, 7201 Corporate Center Drive, P.O. Box 548, Hanover, Maryland 21076. The phone numbers are 410-865-1269, 1-800-544-6056 or TTY 410-865-1342. The directory is also available at <http://www.mdot.state.md.us>. The most current and up-to-date information on Minority Business Enterprises is available via this website.

## **1.25 Arrearages**

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 that it shall not become in arrears during the term of the Contract if selected for Contract award.

## **1.26 Procurement Method**

This Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03.

## **1.27 Verification of Registration and Tax Payment**

Before a corporation can do business in the State it must be registered with the Department of Assessments and Taxation.

Address: State Office Building, Room 803  
301 West Preston Street  
Baltimore, Maryland 21201

Web Address: <http://www.dat.state.md.us/sdatweb/datanote.html>

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 the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

### **1.28 False Statements**

Offerors are advised that the Michie's Annotated Code of Maryland (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:
- Falsify, conceal, or suppress a material fact by any scheme or device;
  - Make a false or fraudulent statement or representation of a material fact; or
  - 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 five years or both.

### **1.29 Payments by Electronic Funds Transfer**

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. Payment by electronic funds transfer is mandatory for contracts exceeding \$100,000. 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 and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 form can be downloaded at:

<http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf>>

### **1.30 Living Wage Requirements**

A solicitation for services under a State contract valued at \$100,000 or more may be subject to the Md. Code Ann., State Finance and Procurement Article, Title 18. Additional information regarding the State's Living Wage requirement is contained in **Attachment G** entitled *Living Wage Requirements for Service Contracts*. If the Offeror fails to complete and submit the required Living Wage documentation, the State may determine an Offeror to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least (see amounts at <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>) per hour. The contract resulting from this solicitation will be deemed 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. 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. 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.

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. If 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) shall assign the tier based upon where the recipients of the services are located. The Offeror must identify in their Offer the location(s) from which services will be provided.

Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/labor/> and clicking on Living Wage.

### **1.31 Prompt Payment Policy**

This procurement and the contracts to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs 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 Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Offeror must comply with the prompt payment requirements as outlined in sub-section 31 of the contract resulting from this solicitation (see Attachment A). Additional information is available on the GOMA website at: [http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs\\_000.pdf](http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs_000.pdf)

### **1.32 Federal Funding Acknowledgement and Certifications**

- 1.32.1 There ( are) ( are not) programmatic conditions that apply to this contract, regardless of the type of funding. If applied, these conditions are contained in **Attachment H** (use next available Attachment letter if you are including programmatic forms, if there are none, delete second sentence).
- 1.32.2 The total amount of Federal funds allocated for the (enter name of administration or facility) is \$(enter dollar amount) in Maryland State fiscal year (enter current fiscal year). This represents (divide Federal funds above / by total unit 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 Invitation for Bid.
- 1.32.3 This solicitation ( does) ( does not) contain federal funds. If contained, the source of these federal funds is: (enter name of Federal program i.e., Medicaid, Ryan White, Title X, etc.). The CFDA number is: (enter the Catalog of Federal Domestic Assistance number). The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment H** (delete attachment H and all but the first sentence of this section if no Federal Funds are used). Any additional conditions that apply to this federally funded contract are contained in Federal Funds **Attachment H** (use next Attachment letter if you are including additional conditions, if there are none, delete this sentence). Acceptance of this agreement indicates your intent to comply with all conditions, which are part of this agreement.

### **1.33 HIPAA - Business Associate Agreement**

(Delete this Section and renumber if non-applicable.)

Based on the determination by DHMH that the functions to be performed in accordance with Section 2 of this RFP constitute Business Associate functions as defined in HIPAA, the bidder shall execute a business associate agreement as required by HIPAA regulations at 45 CFR §164.501 and set forth in **Attachment J**. The fully executed business associate agreement must be submitted within 10 working days after notification of award or award of contract, whichever is earlier. Should the Business Associate Agreement not be submitted upon expiration of the ten-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 next qualified offeror.

### **1.34 Conflict of Interest Affidavit and Disclosure**

**(Delete this section and renumber if non-applicable.)**

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor's personnel and each of the participating subcontractor personnel shall be required to complete agreements such as **Attachment I** 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.

### **1.35 Non-Visual Access**

**(If applicable, include this paragraph. If not, delete entire sub-section, renumber other sub-sections as necessary and update table of contents.)**

By submitting a proposal, the Offeror warrants that the information technology offered under the proposal (1) provides equivalent access for effective use by both visual and non-visual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual 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 non-visual access. The Offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual access will not increase the cost of the information technology by more than five percent. For purposes of this 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 non-visual 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 Non-visual Access Clause noted in COMAR 21.05.08.05 and referenced in this solicitation is the basis for the standards that have been incorporated into the Maryland regulations, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) - keyword nva.

### **1.36 Mercury and Products That Contain Mercury**

**(If applicable, include this paragraph. If not, delete entire sub-section, renumber other sub-sections as necessary and update table of contents.)**

This solicitation and the resulting Contract require that all materials used in the performance of the Contract shall be mercury-free products. The Offeror shall submit with its proposal a Mercury Affidavit in the form of **Attachment M**.

### **1.37 American Recovery and Reinvestment Act**

**(This Section is required only if ARRA funds are used. If not, delete this Section and renumber.)**

All Offerors are advised that if a contract is awarded as a result of this solicitation, the successful contractor shall be bound by the ARRA clauses found in the contract contained herein as **Attachment L**. Instructions for completion of the Monthly Employment Report are contained as **Attachment L-1**.



### **1.38 Electronic Procurements Authorized**

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, the Department of Health & Mental Hygiene (DHMH) may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the bidder/offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the RFP or the Contract.
- C. "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, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMarylandMarketplace.com), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this RFP (e.g. §1.30 related to EFT) and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
1. The Procurement Officer may conduct the procurement using eMarylandMarketplace, 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 including requests for clarification, explanation, or removal of elements of an Offeror's proposal deemed not acceptable;
    - (f) notices of award selection or non-selection; and
    - (g) the Procurement Officer's decision on any protest or Contract claim.
  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;
    - (c) request a debriefing; or,
    - (d) submit a "No Bid Response" to the solicitation.
  3. The Procurement Officer, the State's Contract Monitor and the Contractor may conduct day-to-day Contract administration, except as outlined in section 5 of this subsection utilizing e-mail, facsimile or other electronic means if authorized by the Procurement Officer or Contract Monitor.

- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
1. submission of initial bids or proposals;
  2. filing of protests;
  3. filing of Contract claims;
  4. submission of documents determined by DBM to require original signatures (e.g. Contract execution, Contract modifications, etc); or
  5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor, Bidder or Offeror be provided in writing or hard copy.
- F. Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the RFP, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

### **1.39 Substitution of Personnel**

A. Continuous Performance of Key Personnel

Unless substitution is approved per sections 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 concurrence of the Contract Monitor.

If the Contract is task order based, the following provisions apply to key personnel identified in each task order proposal and agreement.

B. Definitions

As used in this section:

***“Contract Monitor”*** means the Contract Monitor previously identified in this solicitation, and/or a person designated in writing by the Contract Monitor or the Department or agency to act for the Contract Monitor concerning Contractor personnel substitution issues.

***“Day”*** or ***“Days”*** means calendar day or days.

***“Extraordinary Personal Circumstance”*** means any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than 15 days that precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances might include but are not limited to: a sudden leave of absence to care for a family member that 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; military service call-up; etc.

**“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 30 days’ prior notice of a circumstance beyond its control that will require the replacement of any key personnel working under the Contract.

C. Key Staff General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution described in section D of this section.

1. The Contractor shall demonstrate to the Contract Monitor’s satisfaction that the proposed substitute personnel have qualifications at least equal to those of the 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 employee for comparison purposes
  - 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.

D. Replacement Circumstances

1. Voluntary Staff Replacement

To voluntarily replace any key staff, the Contractor shall submit a substitution request as described in section C of this section to the Contract Monitor at least 15 days prior to the intended date of change. Except in a circumstance described in section D.2 of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

2. Staff Replacement Due to Vacancy

The Contractor shall replace key staff whenever a vacancy occurs due to the Sudden termination, resignation or leave of absence due to an Extraordinary Personal Circumstance of such staff, Incapacitating injury, illness or physical condition, or death. (A termination or resignation with 30 days or more advance notice shall be treated as a Voluntary Staff Replacement as per section D.1 of this clause.)

Under any of the above D.2 circumstances, the Contractor shall identify a suitable replacement and provide the same information or items required under Section C of this section within 15 days

of the sooner of the actual vacancy occurrence or from when it was first learned by the Contractor that the vacancy would be occurring.

### 3. Staff Replacement Due to an Indeterminate Absence

If any key staff has been absent from his/her job for a period of 10 days due to injury, illness, or other physical condition, leave of absence under a family medical leave or Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next 20 days to fully resume his/her job duties, before the 25<sup>th</sup> day of continuous absence the Contractor shall identify a suitable replacement and provide the same information or items required under section C 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 of the Contract Monitor the original staff may continue to work under the Contract, or the replacement staff will be authorized to replace the original staff, notwithstanding the original staff's ability to return.

### 4. Directed Staff Replacement

- a. The Contract Monitor may direct the Contractor to replace any staff that is perceived as being unqualified, non-productive, unable to fully perform his/her job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or that has committed a major infraction(s) of law or agency or Contract requirements. Normally a directed replacement would only occur after prior notification of problems with requested remediation, as described in 4.b, below. If after such remediation the Contract Monitor determines that the staff performance has not improved to the level necessary to continue under the Contract, if at all possible at least 15 days' replacement notification will be provided. However, if the Contract Monitor deems it necessary to remove the offending individual with less than 15 days' notice, the Contract Monitor can direct the removal in a timeframe of less than 15 days, to include immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with section C of this section, provide a suitable replacement for approval within 15 days of the notification of the need for removal, or the actual removal, if that 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 10 days of the date of notice and implement the Remediation Plan immediately upon written acceptance by the Contract Monitor, or revise and resubmit the plan to the Contract Monitor within 5 days, as directed in writing by the Contract Monitor.

Should performance issues persist despite the previously agreed to 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 staff 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.

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## **SECTION 2 – OFFEROR MINIMUM QUALIFICATIONS**

(Enter any minimum qualifications such as licensure, certifications, diplomates status, non-profit status, memberships, etc. Include proof requirements to be included with Offeror's Technical Proposal. If there are no minimum qualifications, delete this Section, renumber other Sections and update table of contents.)

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## SECTION 3 – SCOPE OF WORK

### 3.1 Purpose

3.1.1. The State is issuing this solicitation for the purposes outlined in sub-section 1.1 of this RFP.

### 3.2 Scope of Work - Requirements

3.2.1 The Contractor shall provide ...

(Enter here the work to be performed. Focus on outcomes, not processes. Tell vendors what you want done, not how to do it. Any product or service deliverables, including deadlines must be identified here. It is recommended that a final work plan, approved by the Contract Monitor, be the first contract deliverable.)

### 3.3 Security Requirements

3.3.1 Physical Security

3.3.1.1 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 State personnel, each such employee or agent shall provide additional photo identification.

3.3.1.2 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 badging, and wearing the badge in a visual location at all times.

3.3.2 Information Technology

3.3.2.1 Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available on-line at: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>

3.3.2.2 The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The contractor shall fill-out any necessary paperwork as directed and coordinated with the CM to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

3.3.3 Criminal Background Check (Use **only one** of the paragraphs below; delete all others. If no CJIS check is required, delete this sub-section.)  
(For Nursing Contracts)

The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check and provide the Department's Contract Monitor with a Maryland State Police and/or FBI background check on all employees to be involved in the project. The Contractor may not assign an employee to the project that has a criminal record unless prior written approval is obtained from the Department.

**OR**

The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check. The Contractor shall obtain (at his own expense) and provide the Contract

Monitor with a Maryland State Police and/or FBI background check on all new employees prior to assignment. The Contractor may not hire an employee who has a criminal record unless prior written approval is obtained from the Center.

**OR (For Temporary Personnel Contracts)**

All contractors must have obtained Criminal Background Checks on candidates they send for employment in DHMH. At a minimum these checks must contain convictions and Probation before Judgment Pleadings (PBJ) 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 the circumstances surrounding the conviction or PBJ pleading. Decisions of DHMH Monitors as to acceptability of a candidate are final. Being convicted is not in itself a bar to placement.

**OR (When a Facility Is Doing the Check)**

The Contractor shall obtain from each individual assigned to work on the contract a statement permitting a criminal background check. The Department will obtain such background checks as may be appropriate for each individual. The Department reserves the right to reject any individual based upon the results of the background check.

### **3.4 MBE Reports**

- 3.4.1 In the event that there is an MBE Goal, the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports:
- a. MBE Report D-4, the Contractor's Invoice Report by the 10<sup>th</sup> of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer
  - b. MBE Report D-5, the MBE Subcontractor's Invoice Report by the 10<sup>th</sup> of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.

### **3.5 Invoicing and Payment Type**

- 3.5.1 All invoices for services shall be submitted to the Contract Monitor, identified in sub-section 1.6, no later than the end of the month following the month in which service was provided. Invoices shall include:
- Contractor name,
  - Remittance address,
  - Federal taxpayer identification (or if owned by an individual his/her social security number),
  - Invoice period,
  - Invoice date,
  - Invoice number,
  - Amount due, and
  - Purchase order number(s) being billed.

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

- 3.5.2 Contractor shall have a process for resolving billing errors.
- 3.5.3 Payments will be made as (enter either "progress" or "partial") payments as set forth herein. In no case will any payment be viewed as a (enter opposite of what was entered in previous sentence) partial payment.

3.5.4 The contractor shall submit invoices in accordance with the following schedule:

(Enter the contractor's payment schedule here. The schedule will depend on the type of contract, i.e., fixed price, indefinite quantity, etc. and service delivery. Payment should be based on performance. OPASS can provide sample payment schedules.)

3.5.5 Funds for any contract(s) resulting from this RFP are dependent upon appropriations from the Maryland General Assembly.

3.5.6 The Department reserves the right to reduce or withhold contract payment (see terms set forth in this Section above) in the event the contractor does not provide the Department with all required deliverables within the time frame specified in the contract or in the event that the contractor otherwise materially breaches the terms and conditions of the contract until such time as the contractor brings itself into full compliance with the contract. 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 - 15-223 and with COMAR 21.10.02.

### **3.6 Insurance Requirement**

3.6.1 The Contractor shall maintain Commercial General Liability Insurance with limits sufficient 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, but no less than a Combined Single Limit for Bodily Injury, Property Damage and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.

3.6.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$3,000,000 per occurrence.

3.6.3 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.

3.6.4 The Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.

3.6.(2-5) Upon execution of a Contract with the State, Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:

- a. Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
- b. Commercial General Liability as required in sub-part 3.6.1.
- c. Errors and Omissions/Professional Liability as required in sub-part 3.6.2.
- d. Automobile and/or Commercial Truck Insurance as required in sub-part 3.6.3.
- e. Employee Theft Insurance as required in sub-part 3.6.4.



- 3.6.(3-6) The State shall be named as an additional named insured on the policies with the exception of Worker's Compensation Insurance. Certificates of insurance evidencing coverage shall be provided prior to the commencement of any activities in the Contract. 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 60 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 30 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 to provide such policies.
- 3.6.(4-7) The Contractor shall require that any subcontractors obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

### **3.7 Problem Escalation Procedure**

- 3.7.1 The Contractor must provide and maintain a Problem Escalation Procedure for both routine and emergency situations. This Procedure 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 other personnel should the Contract Monitor not be available.

- 3.7.2 The Contractor must provide a Problem Escalation Procedure no less than 10 days prior to the beginning of the contract, and within 10 days after the start of each contract year (and within 10 days after any change in circumstance which changes the Procedure). The Problem Escalation Procedure shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Details shall include:

- The process for establishing the existence of a problem,
- The maximum duration that a problem may remain unresolved at each level before automatically escalating to a higher level for resolution,
- Circumstances in which the escalation will occur in less than the normal timeframe,
- The nature of feedback on resolution progress, including the frequency of feedback,
- Identification of and contact information for progressively higher levels that would become involved in resolving a problem,
- Contact information for persons responsible for resolving issues after normal business hours (*i.e.*, evenings, weekends, holidays, etc.) and on an emergency basis, and
- A process for updating and notifying the Contract Monitor of any changes to the Problem Escalation Procedure.

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## SECTION 4 – PROPOSAL FORMAT

### 4.1 Two Part Submission

Offerors shall submit proposals in separate volumes:

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

### 4.2 Proposals

4.2.1 Volume I-Technical Proposal and Volume II-Financial Proposal shall be sealed separately from one another. Each Volume shall contain an unbound original, so identified, and (enter #) copies. The two sealed Volumes shall be submitted together under one label bearing:

- The RFP title and number,
- Name and address of the Offeror,
- The volume number (I or II), and
- Closing date and time for receipt of proposals

To the Contract Monitor (see sub-section 1.6) prior to the date and time for receipt of proposals (see sub-section 1.10).

4.2.2 An electronic version of Volume I- Technical Proposal and Volume II- Financial Proposal, both in searchable pdf format, shall also be submitted as separate files for each "Volume", labeled Volume I- Technical Proposal and Volume II-Financial Proposal with the unbound originals, technical or financial volumes, as appropriate. Electronic media is to be submitted on CD and shall bear a label on the outside containing the RFP number and name, the name of the Offeror and the volume number.

4.2.3 A second electronic version of Volume I and Volume II in searchable pdf format shall be submitted on CD for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see sub-section 1.19).

4.2.4 All pages of both proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").

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

### 4.3 Delivery

Offerors may either mail or hand-deliver proposals.

4.3.1 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 a vendor chooses to use the United States 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. A vendor using first class mail will not be able to prove a timely delivery at the

mailroom and 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.

- 4.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 4.3.3 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.

## **4.4 Volume I – Technical Proposal**

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

### 4.4.1 Format of Technical Proposal

Inside a sealed package described in Section 4.2, above, the unbound original, (enter #) copies and the electronic version shall be provided. The RFP sections are numbered for ease of reference, i.e., Section 1 Title and Table of Contents, Section 2 Transmittal Letter, Section 3 Executive Summary, etc. In addition to the instructions below, the Offeror's Technical Proposal should be organized and numbered in the same manner as this RFP. This proposal organization will allow State officials and the Evaluation Committee to "map" Offeror responses directly to RFP requirements by Section number.

### 4.4.2 Additional Required Technical Submissions

(Delete any items after "a." that are not appropriate to this RFP. Re-letter if necessary.)

The following documents shall be included in the Technical Proposal; each in its own Section.

- a. **Minimum Qualifications Documentation (Section 2)**
- b. Completed Bid/Proposal Affidavit - Attachment B
- c. Completed Minority Business Participation Form - Attachment D-1 (in a separately sealed envelope) (only if an MBE subcontracting goal is required)
- d. Completed Living Wage Affidavit - Attachment G-1
- e. Federal Funding Required Forms – Attachment H
- f. Conflict of Interest Affidavit and Discloser (Attachment I)
- g. Business Associate Agreement (Attachment J)
- h. Breach of Unsecured Protected Health Information (Attachment J-1, if applicable)
- i. Non-Disclosure Form (Attachment K-1)
- j. Completed Mercury Affidavit (Attachment M)

### 4.4.3 The Technical Proposal shall include the following in this order:

#### 4.4.3.1 Title and Table of Contents

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, sub-section and page number.

#### 4.4.3.2 Claim of Confidentiality

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 sub-section 1.19).

#### 4.4.3.3 Transmittal Letter

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.

#### 4.4.3.4 Executive Summary

Offerors shall condense and highlight the contents of the technical proposal in a separate section titled "Executive Summary". Offerors shall clearly demonstrate an understanding of the objectives and goals of the Department as well as an understanding of the Scope of Work. This section should also include an analysis of the effort and resources, which will be needed to realize the Department's objectives.

The summary shall also identify any exceptions Offerors have taken to the requirements of this RFP, the Contract (**Attachment A**), 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 no exceptions to terms and conditions are made, the summary shall so state.

#### 4.4.3.5 Proposed Work Plan

- a. Offerors shall give a definitive description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. It shall include the specific methodology and techniques to be used by offerors in providing the required services as outlined in Section 3 of the RFP under sub-section 3.2 Scope of Work-Requirements. 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. Product deadlines considered contract deliverables must be recognized in the Work Plan.
- b. The Offeror shall identify the location(s) it proposes to provide the services, any current facilities that it operates and any required construction to satisfy the State's requirements as outlined in this RFP.
- c. The Offeror must explain, as per the requirements in Section 3.7, how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner.

#### 4.4.3.6 Corporate Qualifications and Capabilities

Offerors shall include information on past corporate experience with similar projects and/or services. Offerors shall describe how their organization can meet the requirements of this RFP and shall include the following:

- a. An overview of the Offeror's experience and capabilities providing similar services. This description shall include:

- i) The number of years the Offeror has provided these services;
  - ii) The number of clients and geographic locations that the Offeror currently serves.
  - iii) Offeror's recognition of and compliance with licensure or certification requirements as a corporate entity (**see Section 2**). Section of Proposal containing documentation should be identified here. (delete if not appropriate)
- b. The names and titles of key management personnel directly involved with supervising the services rendered under this Contract.
- c. At least three references from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. Each reference shall be from a client for whom the Offeror provided service within the past five years and shall include the following information:
  - i.) Name of client organization
  - ii.) Name, title, telephone number and e-mail address, if available, of point of contact for client organization
  - iii.) Value, type, duration, and services provided

**DHMH reserves the right to request additional references or use references not provided by an Offeror.**

- i.) Dunn and Bradstreet Rating
  - ii.) Standard and Poor's Rating
  - iii.) Recently audited (or best available) financial statements
  - iv.) Lines of credit
  - v.) Evidence of a successful financial track record, and
  - vi.) Evidence of adequate working capital
- e. The Offeror's process for resolving billing errors.
- f. Corporate organizational chart that identifies the complete structure of the company including any parent company, headquarters, regional offices or subsidiaries of the Offeror.
- g. Complete list of any subcontractors other than those used to meet a Minority Business Enterprise subcontracting goal. This list shall include a full description of the duties each subcontractor will perform and why/how they were deemed the most qualified for this project.
- h. Legal Action Summary. This summary shall include:
  - i.) A statement as to whether there are any outstanding legal actions or potential claims against the offeror and a brief description of any action.
  - ii.) A brief description of any settled or closed legal actions or claims against the offeror over the past five (5) years.

- iii.) A description of any judgments against the Offeror within the past five (5) years, including the case name, number court, and what the final ruling or determination was from the court.
- iv.) In instances where litigation is on-going and the offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.
- v.) Describe how the offeror is configured managerially, financially, and individually so as to afford the assurance that it can execute a contract successfully.

i. Past State Experience

As part of its offer, each Offeror is to provide a list of all contracts with any entity of the State of Maryland that it is currently performing or that have been completed within the last 5 years. For each identified contract the Offeror is to provide:

- i.) The State contracting entity
- ii.) A brief description of the services/goods provided
- iii.) The dollar value of the contract
- iv.) The term of the contract
- v.) The State employee contact person (name, title, telephone number and if possible e-mail address)
- vi.) 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 responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

#### 4.4.3.7 Experience and Qualifications of Proposed Staff

Offerors shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities as detailed in the Work Plan. Include individual resumes for the key personnel 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 work called for in this solicitation. Letters of intended commitment to work on the project, including non-Minority Business Enterprise subcontractors should be included in this section.

Offerors are required to provide an Organizational Chart outlining personnel and their related duties. Include job titles and the percentage of time each individual will spend on their assigned tasks. Offerors using job titles other than those commonly used by industry must provide a crosswalk.

#### 4.4.3.8 Economic Benefit Factors

The Offeror shall describe the benefits that will accrue to the State economy as a direct or indirect result of the Offeror's performance of the Contract resulting from this RFP. The Offeror will take into consideration the following elements: (do not include any detail of the Financial Proposals with this technical information)

- a. The estimated percentage of 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. Offerors should be as specific as possible and provide a percentage breakdown of expenditures in this category.

- b. The estimated number and types of jobs for Maryland residents resulting from this Contract. Indicate job classifications, number of employees in each classification, and the aggregate Maryland payroll percentages to which the Contractor has committed at both prime and, if applicable, subcontract levels.
- c. Tax revenues to be generated for Maryland and its political subdivisions as a result of this Contract. Indicate tax category (sales tax, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract.
- d. The estimated percentage of subcontract dollars committed to Maryland small businesses and MBEs.

#### 4.4.3.9 Offeror Technical Response to RFP Requirements

If the State is seeking Offeror agreement to a requirement(s), Offerors shall state agreement or disagreement. Offerors shall address each major section in their technical proposals and describe how their proposed services will meet the requirement(s). Any paragraph in the technical proposal that responds to a work requirement shall include an explanation of how the work will be done. Offerors must bear in mind that any exception to a requirement, term or condition may result in having their proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

#### 4.4.3.10 Certificate of Insurance

The Offeror shall provide a copy of the Offeror's current certificate(s) of insurance with the prescribed limits set forth in Section 3.6.3.

## **4.5 Volume II - Financial Proposal**

Under separate sealed cover from the Technical Proposal and clearly identified in the format requirements identified in Section 4.2, the Contractor shall submit an original unbound copy, (enter #) copies, and an electronic version in MS Word of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment F**. Complete the price sheets only as provided in the Financial Proposal Instructions.

## SECTION 5– EVALUATION CRITERIA AND SELECTION PROCEDURE

### 5.1 Evaluation Criteria

Evaluation of proposals will be based on the criteria set forth below. The Contract(s) resulting from this RFP will be awarded to the Offeror(s) that is most advantageous to the State considering price and the technical factors set forth herein. In making this determination, technical factors will receive (enter either “greater” or “equal”) weight than price factors.

### 5.2 Technical Criteria

The criteria to be applied to each Technical Proposal are listed in descending order of importance. (What follows here is a **sample** of what this Section might look like. This Section of your RFP will differ in the order that you list each criteria depending on the weight you give each item. The criteria you use to evaluate proposals must relate to the Offeror’s technical submission [Section 4]. Do not hesitate to change entries in this Section.)

#### 5.2.1 Experience and Qualifications of the Proposed Staff (Ref. 4.4.3.7)

- a. How well are the named individuals properly matched to this project with respect to their past work experience and credentials?
- b. How much actual experience does each staff person have that is applicable to this project?
- c. Is the proposed staffing pattern adequate to performing the services to be performed?
- d. Etc.

#### 5.2.2. Corporate Qualifications (Ref. 4.4.3.6)

- a. To what extent has the organization demonstrated a commitment to providing quality services?
- b. Based on the description given in their proposal, what are the overall capabilities of the offeror as related to the requirements in the RFP, i.e., size and type of staff, finances, experience, etc?
- c. Are there any conflict of interest, financial or legal issues to be resolved?
- d. Are the facilities appropriately sized, located and equipped to provide the services?
- e. What has the experience of other State agencies been when contracting with hid vendor?
- f. Etc.

#### 5.2.3. Proposed Work Plan (Ref. 4.4.3.5)

- a. To what extent does the proposed work plan succeed in meeting the requirements and time frames of the RFP? Are the proposed time frames realistic? Are deliverable deadlines recognized as deadlines?
- b. How sound is the methodology used to carry out the work plan?
- c. Is there an outline of the management concepts employed by the offeror? How realistic is the outline?
- d. Is there a project management plan that includes project control mechanisms? How sound is the plan?
- e. Is there a process to monitor the delivery of contract deliverables? How sound is this process?
- f. How problems with work under the Contract will be escalated in order to resolve any issues in a timely manner.
- g. Etc.



#### 5.2.4. Executive Summary (Ref. 4.4.3.4)

Has the offeror clearly demonstrated an understanding of the scope of work or is the RFP parroted in the offeror's proposal? How innovative is the offeror's solution to the problem? (Ref. Section 4.4.3.4)

#### 5.2.5 Offeror's Technical Response to RFP Requirements (Ref. Section 4.4.3.9)

Has the Offeror agreed to all requirements specified in the RFP? Does the response illustrate a comprehensive understanding of the requirements and include an explanation of how the services addressing the requirements will be provided? Is the explanation appropriate to the Department's needs?

#### 5.2.6 Economic Benefit to State of Maryland (Ref. Section 4.4.3.6)

- a. Is the percentage of contract dollars to be recycled into Maryland's economy adequate, above average or exceptional?
- b. How many and what types of jobs for Maryland residents will be created? What collateral job creation or retention may result from an award to this Offeror?
- c. Is the estimated percentage of dollars committed to small or minority businesses substantial or inconsequential?
- d. How much tax revenue is anticipated for the State and local subdivisions, etc.

### **5.3 Financial Criteria**

All qualified Offerors will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on their total price proposed within the stated guidelines (as submitted on **Attachment F**—Financial Proposal Form).

### **5.4 Reciprocal Preference**

Although Maryland law does not authorize procuring agencies 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 requires that procuring units apply a reciprocal preference under the following conditions:

- The most advantageous offer is from a responsible Offeror whose headquarters, principal base of operations, or principal site (that will primarily provide the services required under this RFP) is in another state.
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- The 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.

### **5.5 Selection Procedures**

#### 5.5.1 In General

The Contract will be awarded in accordance with the competitive sealed proposals process found at COMAR 21.05.03. The competitive sealed proposals method allows for discussions and revision of proposals during these discussions; thus, the State may hold discussions with all Offerors judged reasonably susceptible of being selected for award, or potentially so. However, the State also reserves the right to make an award without holding discussions.

In either case, 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 be returned if still unopened.

Proposals are usually evaluated by a committee, which then makes a recommendation for award to the Procurement Officer. However, the Procurement Officer may evaluate proposals without a committee and recommend an Offeror for award. In either case, the Procurement Officer, with the concurrence of the agency head or designee, will make the final determination for award.

### 5.5.2 Selection Process Sequence

5.5.2.1 A determination is made that MBE form D-1 is included and is properly completed.

5.5.2.2 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 the Offeror's ability to perform and to facilitate arrival at a Contract that is most advantageous to the State. For scheduling purposes, Offerors should be prepared to make an oral presentation and participate in discussions within two weeks of the delivery of proposals to the State. Qualified Offerors will be contacted by the State as soon as discussions are scheduled.

5.5.2.3 Offerors must confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions. Any such written clarification or change then becomes part of the Offeror's proposal. Proposals are given a final review and ranked.

5.5.2.4 The financial proposal of each qualified Offeror will be evaluated 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.

5.5.2.5 When in the best interest of the State, the Procurement Officer may permit Offerors who have submitted acceptable proposals to revise their initial proposals and submit, in writing, best and final offers (BAFOs). However, the State may make an award without issuing a BAFO.

### 5.5.3 Award Determination

Upon completion of all discussions and negotiations, reference checks, and site visits (if any), the Procurement Officer will recommend award of the Contract to the responsible Offeror(s) whose proposal(s) is determined to be the most advantageous to the State considering technical evaluation factors and price factors as set forth in this RFP.

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## **SECTION 6 - ATTACHMENTS**

### **ATTACHMENT A – STATE CONTRACT**

This is the contract used by DHMH. It is provided with the RFP for informational purposes and is not required at proposal submission time. Upon notification of recommendation for award, a completed contract will be sent to the selected Offeror for signature.

### **ATTACHMENT B – BID/PROPOSAL AFFIDAVIT**

This form must be completed and submitted with the Offeror's technical proposal.

### **ATTACHMENT C – CONTRACT AFFIDAVIT**

This form is not required at proposals submission time. It must be submitted by the selected Offeror to the Procurement Officer with the Standard Contract (see Attachment A).

### **ATTACHMENT D – MINORITY BUSINESS ENTERPRISE GOAL AND FORMS**

This attachment includes the subcontracting goal statement, instructions and MBE forms D-1 through D-6. Form D-1 must be completed and submitted with the Offeror's technical proposal in a separately sealed envelope. Forms D-2 & D-3 are required within 10 days of receiving notification of recommendation for award.

### **ATTACHMENT E – PRE-PROPOSAL CONFERENCE RESPONSE FORM**

It is requested that this form be completed and submitted as described in RFP section 1.7 by those potential Offerors who plan on attending the conference.

### **ATTACHMENT F – FINANCIAL PROPOSAL INSTRUCTIONS AND FORMS**

Financial Proposal forms must be completed and submitted as the Financial Proposal. (See Section4)

### **ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS**

#### **ATTACHMENT G-1 – MARYLAND LIVING WAGE AFFIDAVIT OF AGREEMENT**

This document must be completed and submitted with the Technical Proposal. (if cost is >\$100,000)

#### **ATTACHMENT H – FEDERAL FUNDING REQUIREMENTS AND CERTIFICATIONS**

Certifications must be completed and submitted with the Technical Proposal. (when applicable)

#### **ATTACHMENT I – CONFLICT OF INTEREST AFFIDAVIT**

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

#### **ATTACHMENT J – BUSINESS ASSOCIATE AGREEMENT FORM (HIPAA)**

This document must be completed and submitted with the Technical Proposal, if applicable.

#### **ATTACHMENT J1 – BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This document must be completed and submitted only in the event of a breach.

#### **ATTACHMENT K-1 – NON-DISCLOSURE FORMS FOR SOLICITATION**

This form is to be submitted with the Technical Proposal.

#### **ATTACHMENT K-2 - NON-DISCLOSURE FORMS FOR AWARD**

This form is to be submitted after receiving notification of award.

#### **ATTACHMENT L – ARRA FUNDING CONTRACT LANGUAGE**

**ATTACHMENT L-1 – ARRA FUNDING MONTHLY EMPLOYMENT REPORT**

Submit according to instructions.

**ATTACHMENT M –MERCURY AFFIDAVIT**

This document must be completed and submitted with the Technical Proposal, if applicable.

## ATTACHMENT A – STANDARD CONTRACT

### TITLE

THIS CONTRACT (the “Contract”) is made this \_\_\_\_ day of \_\_\_\_, \_\_\_\_ by and between \_\_\_\_ (the “Contractor”) and the STATE OF MARYLAND, acting through the DEPARTMENT OF HEALTH AND MENTAL HYGIENE, OFFICE OF PROCUREMENT AND SUPPORT SERVICES (the “Department”).

In consideration of the promises and the covenants herein contained, 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 Monitor” means the individual identified in sub-section 1.6 of the RFP.
- 1.3 “Contractor” means \_\_\_\_ whose principal business address is \_\_\_\_ and whose principal office in Maryland is \_\_\_\_.
- 1.4 “Department” means the Maryland Department of Health and Mental Hygiene and any of its Agencies, Offices, Administrations, Facilities or Commissions.
- 1.5 “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_.
- 1.6 “Procurement Officer” means the individual identified in sub-section 1.5 of the RFP.
- 1.7 “RFP” means the Request for Proposals titled \_\_\_\_, Solicitation # DHMH OPASS \_\_\_\_ -- \_\_\_\_, and any addenda thereto issued in writing by the State.
- 1.8 “State” means the State of Maryland.
- 1.9 “Technical Proposal” means the Contractor’s Technical Proposal, dated \_\_\_\_.

#### **2. Scope of Work**

- 2.1 The Contractor shall provide all deliverables as defined in the RFP Section 3. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. 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 – The Technical Proposal
- Exhibit C – The Financial Proposal
- Exhibit D - State Contract Affidavit, executed by the Contractor and dated \_\_\_\_.

- 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 Modifications to this Contract may be made provided (a) the modifications are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

### 3. **Period of Performance.**

The Contract resulting from this RFP shall be for a period of (enter number) years (change to months if necessary) beginning on (enter contract start date) and ending on (enter contract end date). The Contractor shall provide services upon receipt of official notification of award.

### 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 rates specified in Attachment F, Contractor's Financial Proposal. Except with the express written consent of the Procurement Officer, payment to the Contractor, pursuant to this Contract, shall not exceed \$\_\_\_\_\_.

(Insert in unknown quantity contracts) Contractor shall notify the Contract Monitor, in writing, at least 60 days before payments reach the 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: (i) 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 (insert in Information Technology contracts)(ii) secure data bases, systems, platforms and/or applications which the Contractor is working on 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 Number which is \_\_\_\_\_. Charges for late payment of invoices other than as prescribed by Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 1, 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 Contractor's eMarylandMarketplace vendor ID number is \_\_\_\_\_.

## 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 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.

## 6. Exclusive Use

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.

## 7. Patents, Copyrights, 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 attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) 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. Public Information**

8.1 Subject to the Maryland Public Information Act and any other applicable laws, 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 Offerors should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, Md. Code Ann., State Government Article, Title 10, Subtitle 6.

## **9. Loss of Data**

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** The State 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 obligations under this Contract.

**10.3** 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 obligations under this Contract.



**10.4** The Contractor shall immediately notify the Procurement Officer of any claim or suit 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, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

**11. Non-Hiring of Employees**

No official or employee of the State, as defined under Md. Code Ann., State Government Article, §15-102, 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**

This Contract shall be subject to the provisions of the 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 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 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 Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.

**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**

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, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (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**

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**

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 rights 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 Cause**

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**

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 21.07.01.12 (A)(2).

#### **19. Delays and Extensions of Time**

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 or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

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**

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**

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**

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 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**

The Contractor shall comply with Md. Code Ann., Election Law Article, §§14-101 - 14-108, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

## **24. Documents Retention and Inspection Clause**

The Contractor and sub-contractors 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, 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.

If the Contractor supplies services to a State residential health care facility under the Mental Hygiene Administration, the Family Health Administration, the Alcohol and Drug Abuse Administration, or the Developmental Disabilities Administration, the Contractor agrees, in addition to the requirements above:

- a. That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly authorized representatives, shall be granted access to the Contractor's contract, books, documents and records necessary to verify the cost of the services provided under this contract, until the expiration of four years after the services are furnished under this contract; and
- b. That similar access will be allowed to the books, documents and records of any organization related to the Contractor or controlled by the Contractor (as those terms are defined in 42

C.F.R. (420.301) if that organization is sub-contracting to provide services with a value of \$10,000 or more in a twelve-month period to be reimbursed through funds provided by this contract.

## **25. Compliance with Laws**

The Contractor hereby represents and warrants that:

- a. 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;
- b. 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;
- c. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,
- d. 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.

## **26. Cost and Price Certification**

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 bid or offer.

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 bid or offer, was inaccurate, incomplete, or not current.

## **27. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Department's Contract Manager, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Department's Contract Monitor. Any subcontracts shall include such language as may be required in various clauses contained within this solicitation 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.

## **28. Liability**

**28.1** For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

- a. For infringement of patents, copyrights, trademarks, service marks and/or trade secrets, as provided in Section 7 of this Contract;
- b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;
- c. For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to three (3) times the

total dollar amount of the Contract value up to the date of settlement or final award of any such claim. Third party claims, arising under Section 10, "Indemnification", of this Contract, are included in this limitation of liability only if the State is immune from liability. 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.

**29. Parent Company Guarantee (If Applicable)**

(Corporate name of 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 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 Parent Company) further agrees that if the State brings any claim, action, suit or proceeding against (Contractor), (Corporate name of Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

**30. Commercial Non-Discrimination**

- 30.1 As a condition of entering into this Contract, 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, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, 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 Contractor retaliate against any person for reporting instances of such discrimination. 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. 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 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 DBM, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 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 in Md. Code Ann., State Finance and Procurement Article, Title 19, and to 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 agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
  - b. An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement 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 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.
  - b. This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.
    - iv. Verification shall include a review of:

- (a) The Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
  - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- c. If the Department determines that the Contractor is in noncompliance 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.
- d. 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, the Department may then:
- 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 this Directive regarding the payment of undisputed amounts.
- e. 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. Administrative**

32.1 Contract Monitor. The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Contract Manger for determination.

32.2 Notices. All notices, excluding claims or disputes, are to be sent as follows:

If to the State: (Enter name of Contract Monitor)  
 (Enter name of facility, administration or office of Contract Monitor)  
 Maryland Department of Health and Mental Hygiene  
 (Enter complete address of Contract Monitor including room number)

If to the Contractor: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

32.3 As required in paragraph 12 of this Attachment A, notice of claims or disputes are to be sent to the Procurement Officer identified in Section 1, sub-section 1.5 of this RFP. Such notices shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid.

32.4 Incorporation by Reference

This contract, identified as Attachment A, consists of the entire RFP document DHMH/OPASS \_\_\_\_ - \_\_\_\_\_ all Parts, including all Exhibits, Appendices and Addenda, and the successful Offeror's entire final proposal including both the financial and the technical elements dated \_\_\_\_\_

(technical element) and \_\_\_\_\_ (financial element), which are incorporated into this contract by reference.

Note: Incorporation by reference does not necessarily create a public record permissible for disclosure.

**(The following clauses may be required under certain funding or other conditions. Use these clauses only when appropriate. Delete any clauses not used and renumber as needed.)**

(Mandatory clause 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.)

### **33 Federal Department of Health and Human Services (DHHS) Exclusion Requirements**

The Contractor agrees that it will comply with federal provisions (pursuant to §§1128 and 1156 of the Social Security Act and 42 CFR 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 OOE 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 these 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.)

(Use this clause when the DHMH unit is not a covered entity. The blank at the beginning would reference any statutory requirement unique to the DHMH unit/program, or, if there is none, the first two sentences are combined to reference “any applicable State...”)

### **34 Confidentiality**

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 CFR Parts 160 and 164) and the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General §§4-301 et seq., MCMRA). 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 Agency 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 – Use this confidentiality clause when the DHMH unit is a covered entity and the vendor is not a business associate.)

#### **34. Compliance With HIPAA And State Confidentiality Law**

- 34.1 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 CFR Parts 160 and 164. The contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General §§4-301 et seq., MCMRA). This obligation includes:
- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under federal HIPAA and State MCMRA and making the transmission of all electronic information compatible with the federal 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.
- 34.2 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 Services to Be Performed set forth in Part I 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 CFR §164.501.
- 34.3 Protected Health Information as defined in the HIPAA regulations at 45 CFR 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.

(OR – Use this confidentiality clause when the DHMH unit is a covered entity and the vendor is a business associate.)

#### **34. Compliance with Federal HIPAA and State Confidentiality Law**

- 34.1 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 CFR Parts 160 and 164. The contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General §§4-301 et seq., MCMRA). This obligation includes:

- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under federal HIPAA and State MCMRA and making the transmission of all electronic information compatible with the federal 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.
- 34.2 Based on the determination by the Department that the functions to be performed in accordance with the Services to Be Performed set forth in Part I constitute business associate functions as defined in HIPAA, the selected offeror shall execute a business associate agreement as required by HIPAA regulations at 45 CFR §164.501 and set forth in Appendix L. The fully executed business associate agreement must be submitted within 10 working days after notification of selection, or within 10 days after award, whichever is earlier. Upon expiration of the ten-day submission period, if the Department determines that the selected offeror has not provided the HIPAA agreement 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 next qualified offeror.
- 34.3 Protected Health Information as defined in the HIPAA regulations at 45 CFR 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.

(This clause should be added to contracts were there is a strong possibility of unskilled or entry level employment. The actual DHR Agreement must be included in the solicitation as an Appendix item. Delete if not applicable.)

### **35. Hiring Agreement**

By submitting a bid or proposal in response to this solicitation, the Bidder/Offeror agrees to execute and comply with the enclosed Maryland Department of Human Resources (DHR) Hiring Agreement (Attachment \_\_\_\_). The Hiring Agreement is to be executed by the Bidder/Offeror and delivered to the procurement officer within ten 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.

The Hiring Agreement provides that the contractor and DHR will work cooperatively to promote hiring by the contractor of qualified entry-level Maryland Temporary Case Assistance customers to fill entry-level job openings resulting from this procurement, in accordance with §13-224, State Finance and Procurement Article.

(This clause should be added to contracts when there is the probability of customers with limited ability in speaking English. Delete if not applicable.)

### **36. Limited English Proficiency**

The contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Gov't 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.

**IN WITNESS THEREOF**, the parties have executed this Contract as of the date hereinabove set forth.

FOR THE CONTRACTOR

FOR THE STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND MENTAL  
HYGIENE

By:

By: Joshua M. Sharfstein, M.D., Secretary

\_\_\_\_\_

\_\_\_\_\_

or designee:

\_\_\_\_\_

Date

\_\_\_\_\_

Date

Approved for form and legal sufficiency this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_

(Date)

\_\_\_\_\_

(BPW Item #)

**ATTACHMENT B – BID/PROPOSAL AFFIDAVIT**

**A. AUTHORITY**

I HEREBY AFFIRM THAT:

I, \_\_\_\_\_ (print name), possess the legal authority to make this Affidavit.

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder 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, 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 bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder 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 bidder 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 bid or 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 or 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 or 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 submitted by the bidder on this project, and terminate any contract awarded based on the bid.

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 or 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 bids or 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; or

(9) 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)—(8) 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 it 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. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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 bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or 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 or offer 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, the State Department of Assessments and Taxation, and the 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. 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 or 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)

Revised August, 2011



**ATTACHMENT C - CONTRACT AFFIDAVIT**

**A. AUTHORITY**

I HEREBY AFFIRM THAT:

I, \_\_\_\_\_ (print name), possess the legal authority to make this Affidavit.

**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, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other

agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

#### 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 or offer, 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 \_\_\_\_\_, 20\_\_\_\_, 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)

Revised August, 2011

**Attachment D1**

**MDOT Certified MBE Utilization and Fair Solicitation Affidavit**  
*(submit with bid or offer)*

This document **MUST BE** included with the bid or offer. If the Bidder or Offeror fails to complete and submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

In conjunction with the bid or offer submitted in response to Solicitation No. \_\_\_\_\_, I affirm the following:

1.  I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of \_\_\_\_ percent and, if specified in the solicitation, the following subgoals (complete for only those subgoals that apply):
- |                                 |                              |
|---------------------------------|------------------------------|
| _____ percent African American  | _____ percent Asian American |
| _____ percent Hispanic American | _____ Woman-Owned            |
- Therefore, I will not be seeking a waiver pursuant to COMAR 21.11.03.11.

**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. 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 21.11.03.11.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 working 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) Outreach Efforts Compliance Statement (Attachment D2)
  - (b) Subcontractor Project Participation Certification (Attachment D3)
  - (c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE 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.

3. In the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.
4. Set forth below are the (i) certified MBEs I intend to use and (ii) the percentage of the total contract amount allocated to each MBE for this project and the work activity(ies) each MBE will provide under the contract. I hereby affirm that the MBE firms are only providing those work activities for which they are MDOT certified.

<b>Prime Contractor:</b> (Firm Name, Address, Phone)	<b>Project Description:</b>
<b>Project Number:</b>	

**List Information For Each Certified MBE Subcontractor On This Project**

<b>Minority Firm Name</b>	<b>MBE Certification Number</b>
<b>FEIN</b> Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
<b>Minority Firm Name</b>	<b>MBE Certification Number</b>
<b>FEIN</b> Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
<b>Minority Firm Name</b>	<b>MBE Certification Number</b>
<b>FEIN</b> Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
<b>Minority Firm Name</b>	<b>MBE Certification Number</b>
<b>FEIN</b> Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	

Continue on a separate page, if needed.

***SUMMARY***

Total <i>African-American</i> MBE Participation:	_____ %
Total <i>Asian American</i> MBE Participation:	_____ %
Total <i>Hispanic American</i> MBE Participation:	_____ %
Total Woman-Owned MBE Participation:	_____ %
Total <i>Other</i> Participation:	_____ %
<b>Total All MBE Participation:</b>	_____ %

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: \_\_\_\_\_

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

**Outreach Efforts Compliance Statement**

**Complete and submit this form within 10 working days of notification of apparent award or actual award, whichever is earlier.**

In conjunction with the bid or offer submitted in response to Solicitation No. \_\_\_\_\_, Bidder/Offeror states the following:

- 1. Bidder/Offeror identified opportunities to subcontract in these specific work categories.
- 2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit MDOT certified MBEs for these subcontract opportunities.
- 3. Bidder/Offeror made the following attempts to contact personally the solicited MDOT certified MBEs.
- 4. Select ONE of the following:
  - a.  This project does not involve bonding requirements.
  - OR**
  - b.  Bidder/Offeror assisted MDOT certified MBEs to fulfill or seek waiver of bonding requirements (*describe efforts*).
  
- 5. Select ONE of the following:
  - a.  Bidder/Offeror did/did not attend the pre-bid/proposal conference.
  - OR**
  - b.  No pre-bid/proposal conference was held.

\_\_\_\_\_ By: \_\_\_\_\_  
Bidder/Offeror Printed Name Signature

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

**Subcontractor Project Participation Certification**

*Please complete and submit one form for each MDOT certified MBE listed on Attachment A within 10 working 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 Address and Phone	Project Description
Project Number	Total Contract Amount \$
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Percentage of Total Contract	

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have 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 or 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 bid or proposal;
- (2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of the bid or 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 or proposal.

**PRIME CONTRACTOR SIGNATURE**

**SUBCONTRACTOR SIGNATURE**

By: \_\_\_\_\_  
 Name, Title  
 Date

By: \_\_\_\_\_  
 Name, Title  
 Date



This form is to be completed monthly by the prime contractor.

**Attachment D4**

**Maryland Department of Health and Mental Hygiene  
Minority Business Enterprise Participation  
Prime Contractor Paid/Unpaid MBE Invoice Report**

Report #: _____	Contract #: _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
<b>Report is due to the MBE Officer by the 10<sup>th</sup> of the month following the month the services were provided.</b>	Contract Amount: _____
	MBE Subcontract Amt: _____
	Project Begin Date: _____
	Project End Date: _____
<b>Note: Please number reports in sequence</b>	Services Provided: _____

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	FAX:	Email:	
Subcontractor Name:		Contact Person:	
Phone:	FAX:		
Subcontractor Services Provided:			
<b>List all payments made to MBE 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 MBE subcontractor is used for this contract, you must use separate D-5 forms.

**\*\*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
Department of Health and Mental Hygiene
_____
_____
_____

**Minority Business Enterprise Participation  
Subcontractor Paid/Unpaid MBE 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: _____ MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
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MBE Subcontractor Name: _____																																
MDOT Certification #: _____																																
Contact Person: _____		Email: _____																														
Address: _____																																
City: Baltimore	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: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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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 Department of Health and Mental Hygiene _____ _____ _____
--

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

**MARYLAND DEPARTMENT OF HEALTH & MENTAL HYGIENE**  
Code of Maryland Regulations (COMAR)  
Title 21, State Procurement Regulations  
*(regarding a waiver to a Minority Business Enterprise subcontracting goal)*

**COMAR 21.11.03.11 - Waiver.**

- A. If, for any reason, the apparent successful bidder or offeror is unable to achieve the contract goal for certified MBE participation, the bidder or offeror may request, in writing, a waiver to include the following:
- (1) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs in order to increase the likelihood of achieving the stated goal;
  - (2) A detailed statement of the efforts made to contact and negotiate with certified MBEs including:
    - (a) The names, addresses, dates, and telephone numbers of certified MBEs contacted, and
    - (b) A description of the information provided to certified MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;
  - (3) As to each certified MBE that placed a subcontract quotation or offer that the apparent successful bidder or offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion;
  - (4) A list of minority subcontractors found to be unavailable. This list should be accompanied by an MBE unavailability certification (MBE Attachment D6) signed by the minority business enterprise, or a statement from the apparent successful bidder or offeror that the minority business refused to give the written certification: and
  - (5) The record of the apparent successful bidder or offeror's compliance with the outreach efforts required under Regulation .09B(2)(b).
- A waiver may only be granted upon a reasonable demonstration by that MBE participation could not be obtained or could not be obtained at a reasonable price.
- If the waiver request is determined not to meet this standard, the bidder or offeror will be found non-responsive (bid) or not reasonably susceptible for award (proposal) and removed from further consideration.
- B. A waiver of a certified MBE contract goal may be granted only upon reasonable demonstration by the bidder or offeror that certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price and if the agency head or designee determines that the public interest is served by a waiver. In making a determination under this section, the agency head or designee may consider engineering estimates, catalogue prices, general market availability, and availability of certified MBEs 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 cost of participation, and their impact on the overall cost of the contract to the State and any other relevant factor.
- C. An agency head may waive any of the provisions of Regulations .09-.10 for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures.
- D. When a waiver is granted, except waivers under Section C, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE Liaison Officer with another copy forwarded to the Office of Minority Affairs.

**MBE ATTACHMENT D6  
MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE**

**Section I (to be completed by PRIME CONTRACTOR)**

I hereby certify that the firm of \_\_\_\_\_  
Name of Prime Contractor)

located at \_\_\_\_\_,  
(Number) (Street) (City) (State) (Zip)

on \_\_\_\_\_ contacted certified minority business enterprise, \_\_\_\_\_  
(Date) (Name of Minority Business)

\_\_\_\_\_ located at \_\_\_\_\_,  
(Number) (Street) (City) (State) (Zip)

seeking to obtain a bid for work/service for project number \_\_\_\_\_, project name \_\_\_\_\_

List below the type of work/ service requested:

Indicate the type of bid sought, \_\_\_\_\_. The minority business enterprise identified above is either unavailable for the work /service in relation to project number \_\_\_\_\_, or is unable to prepare a bid for the following reasons(s):

The statements contained above are, to the best of my knowledge and belief, true and accurate.

\_\_\_\_\_  
(Name) (Title)

\_\_\_\_\_  
(Number) (Street) (City) (State) (Zip)

\_\_\_\_\_  
(Signature) (Date)

**Note:** Certified minority business enterprise must complete Section II on reverse side.

**Section II (to be completed by CERTIFIED MINORITY BUSINESS ENTERPRISE)**

I hereby certify that the firm of \_\_\_\_\_ MBE Cert.# \_\_\_\_\_  
(Name of MBE Firm)

located at \_\_\_\_\_  
(Number) (Street) (City) (State) (Zip)

was offered the opportunity to bid on project number \_\_\_\_\_, ON \_\_\_\_\_  
(Date)

by \_\_\_\_\_  
(Prime Contractor's Name) (Prime Contractor Official's Name) (Title)

The statements contained in Section I and Section II of this document are, to the best of my knowledge and belief, true and accurate.

\_\_\_\_\_  
(Name) (Title) (Phone)

\_\_\_\_\_  
(Signature) (Fax Number)



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

**Solicitation Number - DHMH OPASS (Enter RFP Number)  
(Enter RFP Title)**

A Pre-Proposal Conference will be held at (enter time), on (enter month, day and year), at (enter address, building name and room number). Please return this form by (enter month, day and year), advising us of your intentions to attend.

Return via e-mail or fax this form to the Point of Contact:

(enter name)  
(administration, office or facility)  
Department of Health and Mental Hygiene  
(enter address)  
Email: (enter user name)@dhmh.state.md.us  
Fax #: (enter facsimile machine number)

Please indicate:

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

- 1.  
\_\_\_\_\_
- 2.  
\_\_\_\_\_
- 3.  
\_\_\_\_\_

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

---

Signature	Title
-----------	-------

---

Name of Firm (please print)

## **FINANCIAL INSTRUCTION FORM**

**A. Instructions**

In order to assist Offerors in the preparation of their financial proposal and to comply with the requirements of this solicitation, Financial Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their financial proposal on the form in accordance with the instructions on the form and as specified herein. Do not alter the forms or the financial proposal may be rejected. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to all proposed prices.

The financial proposal form is used to calculate the Offeror's TOTAL PRICE PROPOSED.

- A) All Unit/Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15
- B) All Unit Prices must be the actual unit price the State shall pay for the proposed item per 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) All goods or services required or requested by the State 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 the financial proposal form shall be filled in.
- F) Except as instructed on the form, nothing shall be entered on the financial proposal form that alters or proposes conditions or contingencies on the prices.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the vendor and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the vendor will be treated as provided in COMAR 21.05.03.03.E.

# Attachment F - Financial Proposal Form

Authorized Signature: \_\_\_\_\_

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

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

Company Name: \_\_\_\_\_

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

FEIN: \_\_\_\_\_

eMM #: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_



**ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS**

**Living Wage Requirements for Service Contracts**

- A. This contract is subject to the Living Wage requirements in the Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services 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 the 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 of Labor and Industry 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 the Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage set at 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 of Labor and Industry.
- 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 and Finance 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 at <http://www.dllr.state.md.us/labor/> and clicking on Living Wage.

**ATTACHMENT G-1 - MARYLAND LIVING WAGE AFFIDAVIT OF AGREEMENT**

Contract No. \_\_\_\_\_ Tier \_\_\_\_\_

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):

- Bidder/Offeror is a nonprofit organization
- Bidder/Offeror is a public service company
- Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Bidder/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 our commitment to comply with the Md. Code Ann., State Finance and Procurement Article, Title 18 and, if required, to 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 to 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/are 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 Bid/Proposal**

## ATTACHMENT H – FEDERAL FUNDS REQUIREMENTS AND CERTIFICATIONS

A Summary of Certain Federal Fund Requirements and Restrictions  
[Details of particular laws, which may levy a penalty for noncompliance,  
are available from the Department of Health and Mental Hygiene.]

1. Form and rule enclosed: 18 U.S.C. 1913 and section 1352 of P.L. 101-121 require that all *prospective* and present subgrantees (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: Subrecipients 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) OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations requires that grantees (both recipients and subrecipients) which expend a total of \$500,000 or more 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 of 1996, P.L. 104-156, and the Office of Management and Budget (OMB) Circular A-133. All subgrantee audit reports, performed in compliance with the aforementioned Circular shall be forwarded within 30 days of report issuance to the DHMH, Audit Division, 605 S. Chapel Gate Lane, Old School Building, Baltimore, MD 21229.
  - B) All subrecipients 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:

- a) 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.
- b) The contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor issued pursuant to the act.
- c) 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.
- d) 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.
- e) 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 is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- f) 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 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 subrecipients 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 subrecipients 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 in excess of Executive Level 1 per year. (This includes, but is not limited to, subrecipients 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 that (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.

Rev. 3/2008

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), 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 the 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 source or 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 \$1,000 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 agrees that it will require that the language of this certification be included in any subawards which contain provisions for children's services and that all subrecipients shall certify accordingly.

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

GRANT NO: \_\_\_\_\_

STATE: \_\_\_\_\_



U.S. Department of Health and Human Services

Certification Regarding Lobby

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 Lobby," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients 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.	Organization Entity
Name and Title of Official for Organization Entity	Telephone No. of Signing Official
Signature of Above Official	Date Signed

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

Approved by  
OMB0348-0046

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. Contract <input type="checkbox"/> b. Grant <input type="checkbox"/> c. Cooperative Agreement <input type="checkbox"/> d. Loan <input type="checkbox"/> e. Loan guarantee <input type="checkbox"/> f. Loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. Bid/offer/application <input type="checkbox"/> b. Initial award <input type="checkbox"/> c. Post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. Initial filing <input type="checkbox"/> b. Material change For Material Change Only: Year _____ quarter _____ Date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known:	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known:	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a) (last name, first name, MI):</i>	
<b>11. Amount of Payment</b> <i>(check all that apply)</i> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment</b> <i>(check all that apply)</i> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
<b>12. Form of Payment</b> <i>(check all that apply)</i> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
<b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b>   <p align="center"><i>(attach Continuation Sheet(s) SF-LLLA, if necessary)</i></p>		
<b>15. Continuation Sheet(s) SF-LLLA attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee 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 subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," 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.

A PDF version of this form is available on-line at:

<http://www.whitehouse.gov/sites/default/files/omb/grants/sflll.pdf>

**ATTACHMENT I – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

**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 an 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 or offer 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 THE TECHNICAL RESPONSE

## ATTACHMENT J – BUSINESS ASSOCIATE AGREEMENT

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and among the Maryland Medical Assistance Program, a unit of the Maryland Department of Health and Mental Hygiene (herein referred to as “Covered Entity”) and \_\_\_\_\_ (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties”.

WHEREAS, Covered Entity have 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 regulations (45 CFR Parts 160 and 64), 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. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- B. Breach. “Breach” shall have the same meaning as the term “breach” in 45 CFR § 164.402.
- C. Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501.
- D. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

- E. Protected Health Information. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- F. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.
- G. Secretary. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.
- H. Unsecured Protected Health Information. “Unsecured Protected Health Information” or “Unsecured PHI” shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the §13402(h) of the HITECH Act.

## **II. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE.**

- A. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule.
- B. Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e).
- C. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as Covered Entity.

## **III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.**

- A. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement, the MCMRA, or as Required By Law.
- B. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- C. Business Associate shall immediately notify Covered Entity of any use or disclosure of PHI in violation of this Agreement
- D. In addition to its obligations in Section III.C, Business Associate shall document and notify Covered Entity of a Breach of Unsecured PHI. Business Associate’s notification to Covered Entity hereunder shall:
  - 1. Be made to Covered Entity without unreasonable delay and in no case later than 50 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 CFR Part E within 50 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;
2. Include the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
  3. Be in substantially the same form as Exhibit A hereto; and
  4. Include a draft letter for the Covered Entity to utilize to notify the 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:
    - a) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - b) 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);
    - c) Any steps the Individuals should take to protect themselves from potential harm resulting from the Breach;
    - d) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
    - e) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- E. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.
- F. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- G. To the extent applicable, Business Associate shall provide access to Protected Health Information in a Designated Record Set at reasonable times, at the request of Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.
- H. To the extent applicable, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual.
- I. Business Associate shall, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

- J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Should an individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. §164.528, Business Associate agrees to promptly provide Covered Entity with information in a format and manner sufficient to respond to the individual's request.
- K. Business Associate shall, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.
- L. Business Associate shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate.
- M. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).
- N. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

#### **IV. TERM AND TERMINATION.**

- A. Term. The Term of this Agreement shall be effective as of \_\_\_\_\_, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section IV.
- 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;
  2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  3. If neither termination nor cure is feasible, report the violation to the Secretary.



### C. Effect of Termination.

1. Except as provided in paragraph C(2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of the Protected Health Information.
2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.
3. 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 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.

## 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 to 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 (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

## 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 Privacy Rule and HIPAA.

**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 records 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 protected health information, 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 Rule.
- B. Regulatory References. A reference in this Agreement to a section in the Privacy Rule 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:

Caroline Baker  
Privacy Officer  
Department of Health & Mental Hygiene  
Division of Corporate Compliance & Integrity  
201 W. Preston Street  
Room 522  
Baltimore, MD 21201-2301  
Phone: (410) 767-6039

- 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: \_\_\_\_\_

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: \_\_\_\_\_

**ATTACHMENT J-1 - BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

**NOTIFICATION TO THE  
MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
ABOUT A  
BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This notification is made pursuant to Section IIID(3) of the Business Associate Agreement between:

- \_\_\_\_\_, a unit of the Maryland Department of Health and Mental Hygiene (DHMH),  
and
- \_\_\_\_\_ (Business Associate).

Business Associate hereby notifies DHMH 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, to mitigate losses, and to protect against any further breaches: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Phone Number: \_\_\_\_\_

**ATTACHMENT K (1) - NON-DISCLOSURE AGREEMENT (SOLICITATION)**

**THIS AGREEMENT** (“Agreement”), made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the State of Maryland (hereinafter "the State"), acting by and through its Department of Health & Mental Hygiene (hereinafter the “Department”), and \_\_\_\_\_, a corporation with its principal business offices located at \_\_\_\_\_ (hereinafter the “Offeror”).

**RECITALS**

**WHEREAS**, Offeror intends to submit a proposal in response to a Request for Proposals numbered DHMH-OPASS (enter solicitation number) and titled (enter RFP title) (the “RFP”), and

**WHEREAS**, in order for the Offeror to submit such a proposal, it will be necessary for the State to provide the Offeror with access to certain confidential information regarding the State’s (enter the type or nature of the information to be used by the Offeror in preparing a proposal), collectively, the “Confidential Information”.

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the Offeror’s proposal to the RFP (hereinafter referred to as the “Proposal”), and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Recitals. The Recitals are not merely prefatory but are an integral part hereof.
2. Offeror’s qualifications. Offeror represents and warrants that:
  - A. It is qualified to do business in the State and that it will take such actions, from time to time hereafter, as may be necessary to remain so qualified during the period covered by this Agreement;
  - B. 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 period covered by this Agreement;
  - C. It is in compliance with all federal, State and local laws, regulations, and ordinances applicable to its business and it is not aware of any actual or threatened actions, claims, suits, orders, or other matters that would prevent or limit its ability to satisfactorily and fully perform its obligations under this Agreement or under any subsequent agreement that it may enter into with the State in connection with its Proposal; and
  - D. It is the correctly named and identified entity that intends to submit the Proposal and it is not controlling, controlled by, or under common control with the entity that intends to submit the Proposal. If the Proposal will be submitted by a joint venture or any other group of separate

business entities, each entity comprising such group has been clearly identified in and has executed this Agreement.

3. Term of Agreement. The term of this Agreement shall commence on the date it is fully signed by both parties and shall continue thereafter until the earlier to occur of: (i) three (3) years following the return of the Confidential Information in accordance with Section 6 of this Agreement; (ii) receipt of written notice given by the State to Offeror terminating this Agreement; or (iii) the date upon which the terms of this Agreement are expressly superseded by the confidentiality provisions of any subsequent agreement which the parties may enter into in connection with the Proposal. If all Confidential Information is not returned to the State in accordance with Section 6 of this Agreement, then this Agreement shall continue in full force and effect until such time as all Confidential Information is returned to the State and the State acknowledges its receipt in writing.
4. What constitutes “Confidential Information”. Confidential Information means any and all information provided by or made available by the State to Offeror in connection with the Proposal, 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 includes, by way of example only, information that Offeror 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 for Offeror to prepare and submit its Proposal.
5. Use of Confidential Information. In consideration of the State’s allowing Offeror access to the Confidential Information:
  - A. Offeror hereby agrees to hold the Confidential Information in trust and in strictest confidence, and to take all measures necessary 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.
  - B. Offeror 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 provided by the State except for the sole and exclusive purpose of preparing its Proposal. Offeror shall limit access to Confidential Information to its employees and agents (“Offeror’s Personnel”) who have a demonstrable need to know such Confidential Information in order to prepare the Proposal and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of Offeror’s Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute and date Exhibit A next to their name and by doing so agrees to be subject to the terms and conditions of this Agreement to the same extent as Offeror. If Offeror intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the preparation of the Proposal or who will otherwise have a role in performing any aspect of the Proposal, Offeror 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.
6. Return of Confidential Information. Offeror shall return all Confidential Information to the Department within five (5) business days of the State’s acceptance of Offeror’s Proposal. If Offeror does not submit a Proposal, Offeror shall return the Confidential Information to the Department within 30 days of receiving the material. All Confidential Information returned to the State shall be

accompanied by the Certification that is attached hereto and made a part hereof as Exhibit B and shall be signed by an officer of Offeror authorized to bind the Offeror.

7. Liability for Confidential Information. Offeror acknowledges that any failure by Offeror or Offeror'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, Offeror and each of Offeror's Personnel agree that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Offeror and each of Offeror's Personnel consent 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/or to seek damages from Offeror and/or each of Offeror's Personnel, as applicable, 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 Offeror or any of Offeror's Personnel to comply with the requirements of this Agreement, Offeror and such Offeror's Personnel shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.
8. Unauthorized Use. Offeror shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of Confidential Information by any of Offeror's Personnel or Offeror's former Personnel. Offeror shall, at Offeror's expense, cooperate with the State in seeking injunctive or other equitable relief against any such person.
9. Governing law. This Agreement shall be governed by the laws of the State of Maryland.
10. False and fraudulent statements. Offeror acknowledges that pursuant to the Md. Code Ann., State Finance and Procurement Article, § 11-205.1, a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Persons making such statements are guilty of a felony and on conviction subject to a fine of not more than \$20,000 and/or imprisonment not exceeding 5 years or both. Offeror further acknowledges that this Agreement is a statement made in connection with a procurement contract.
11. Signing authority for Offeror. The individual signing below on behalf of Offeror warrants and represents that s/he is fully authorized to bind Offeror to the terms and conditions specified in this Agreement. The individual signing below acknowledges that a breach of this warranty and representation may result in personal liability.
12. Other obligations. The parties further agree that, unless otherwise agreed in writing: (a) this Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and none of the terms of this Agreement may be amended or modified except by a written instrument signed by both parties; (b) the State may waive any rights under this Agreement only by written waiver duly signed by the State, and no failure by the State to exercise or delay in exercising a right under this Agreement shall constitute a waiver of such right; (c) the rights and obligations of Offeror may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State; (d) the State makes no representations or warranties as to the accuracy or completeness of any Confidential Information; (e) the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement; (f) all notices under this Agreement must be in writing and shall be deemed to have been delivered to and received by a party, and will otherwise become

effective, on the date of actual delivery thereof (by personal delivery, express delivery service or certified mail) to the Notice Address of such party set forth below; and (g) signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures.

14. Notices. All notices hereunder shall be in writing and either delivered personally, by express delivery, or sent by certified or registered mail, postage prepaid as follows:

If to the State:            (name of Contract Monitor)  
                                  (name of facility, program or administration)  
                                  Department of Health and Mental Hygiene  
                                  (enter complete mailing address including building name and room number)

If to the Offeror:        \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

STATE OF MARYLAND

OFFEROR

By: DEPARTMENT OF HEALTH &  
MENTAL HYGIENE

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



**EXHIBIT A**

**LIST OF OFFEROR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE  
CONFIDENTIAL INFORMATION**

Printed Name and Address of Individual or Agent	Employee (E) or Agent (A)	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
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_____	_____	_____	_____
_____	_____	_____	_____

**EXHIBIT B**

**CERTIFICATION TO ACCOMPANY RETURN 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 Agreement by and between the State of Maryland and \_\_\_\_\_ (“Offeror”) 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 Offeror to this affirmation.

**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 OFFEROR: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)

**ATTACHMENT K (2) – NON-DISCLOSURE AGREEMENT (AWARD)**

**THIS NON-DISCLOSURE AGREEMENT** (the “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the State of Maryland (the “State”), acting by and through its Department of Health and Mental Hygiene (the “Department”) and \_\_\_\_\_ (the “Contractor”).

**RECITALS**

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) for (enter a short description of the service) Contract No. DHMH-OPASS \_\_\_\_\_ - \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_\_ (the “Contract”); 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 the “Contractor’s Personnel”) with access to certain information the State deems confidential information (the “Confidential Information”).

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the RFP 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. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, 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 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. 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 provided by the State except for the sole and exclusive purpose of performing under the Contract. 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 Exhibit A. Each individual whose name appears on Exhibit A shall execute a copy of this Agreement and thereby be subject to the terms and conditions of this Agreement to the same extent as the Contractor. Contractor shall update Exhibit A 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 RFP or who will otherwise have a role in performing any aspect of the RFP, 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. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to 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. 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. 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. Confidential Information returned to the State shall be accompanied by the Certification that is attached hereto and made a part hereof as Exhibit B and shall be signed by an officer of the Contractor authorized to bind the Contractor.
7. A breach of this Agreement by the Contractor or by 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 to 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 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; and
  - f. The Recitals are not merely prefatory but are an integral part hereof.

Contractor: <INSERT NAME>  
\_\_\_\_\_

Maryland Department of Health & Mental  
Hygiene:

By: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_ (SEAL)

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

EXHIBIT A

**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>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

EXHIBIT B

**CERTIFICATION TO ACCOMPANY RETURN 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 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.

**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)

**ARRA Contract Clauses**

**1. General**

This contract is governed by the provisions of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA), federal regulations and ARRA implementing guidance from the federal government as may be revised and updated from time to time (collectively “ARRA Requirements”).

- A. **Compliance.** The Contractor agrees that it will comply with all ARRA Requirements applicable to this contract, including modifications or additional requirements that may be imposed by law, future guidance and clarifications of ARRA requirements.
- B. **Conflict of Laws.** The Contractor agrees that to the extent ARRA requirements conflict with State requirements, the ARRA requirements shall control.
- C. **Enforceability.** The Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

**2. DUNS Number:**

All Contractors are required to provide the State with their unique Dun & Bradstreet Data Universal Numbering System (DUNS) number prior to award. Contractors can request a DUNS number or modification to an existing DUNS record by using the online Webform process at <http://fedgov.dnb.com/webform> (for US and International locations) or they can call 866-705-5711, option 3. The toll free number is for US locations only. Registrants will be asked for their entity name, address, city, state, country, postal code, highest ranking individual’s name and title, line of business, # of employees and legal structure (corporation, non profit, etc.) and socio-economic data (veteran owned, woman owned, etc.). If the Webform is used, there are mailing address area, SIC code and annual revenue data lines, but these are optional.

**3. Job Creation and Retention**

The Contractor shall timely report to the State all of the data noted on the enclosed **Monthly Employment Report**, Attachment L-1, no later than 8<sup>th</sup> day of each month, for the previous month’s reporting data. For any subcontracts of less than \$25,000 or to individuals, the required information may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate. Contractor agrees to provide any other information reasonably requested by the State or required by State or federal law or regulation.

Further instructions for reporting are provided in this attachment.

Contractor's failure to provide complete, accurate and timely reports under this section shall constitute an event of default under the Contract.

Electronic reporting is preferred. The required information shall be submitted to:

(enter Contract Monitor's name)

(enter Contract Monitor's complete address including room number)

(enter Contract Monitor's email address)

(enter Contract Monitor's phone number)

4. **Access to Project Records and Employees Clause**

A. U.S. Comptroller General Authority to Inspect

1. Pursuant to Section 902 of ARRA, the U.S. Comptroller General (CG) and the CG's representatives have the authority to:
  - (a) Examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontracts; and
  - (b) Interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.
2. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the CG.

B. U.S. Inspector General Authority to Inspect

1. Pursuant to Section 1515 of ARRA, the U.S. Inspector General (IG) and any of the IG's representatives have the authority to:
  - (a) Examine any records of the contractor or grantee or any of its subcontractors, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract or subcontract; and
  - (b) Interview any officer or employee of the contractor, or any of its subcontractors, or of any State or local government agency administering the contract or grant, regarding such transactions.
2. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an IG.

C. Requirements Extended to Subcontractors. Contractor shall include in all of the Contractor's agreements with its subcontractors performing work funded in whole or in part with ARRA funds under this Contract, and shall require subcontractors to include with lower tier subcontractors, the language provided in Parts A, B and C of this subsection.

## 5. **Whistleblower Protections Under ARRA**

- A. Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits the Contractor and its subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to a State contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.
- B. The investigation of complaints, remedies and enforcement under this section shall be governed by §1553 of ARRA, applicable federal regulations and federal law.
- C. The Contractor and its subcontractors at any tier shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of ARRA.
- D. The Contractor and its subcontractors shall post notice of the rights and remedies available. The Contractor shall include the substance of these Whistleblower Protections under ARRA, including this paragraph D in its contracts with employees and subcontractors, and require its subcontractors to do the same.

More information related to ARRA Whistleblower Protection requirements, including a downloadable poster, can be found at the following link:

<http://www.oig.dol.gov/recovery/arrawhistleblowers.htm>

## 6. **Construction Clauses**

- A. **Buy American Act** - Check with your Assistant Attorney General and your federal partner agency for specific language.
- B. **Davis-Bacon Act** (Prevailing Wage Rates and Labor Standards) - Check with your Assistant Attorney General and your federal partner agency for specific language.

## 7. **Use of Maryland Workforce Exchange** – Required clause for all State ARRA contracts

The contract that will result from this solicitation is fully or partially funded with federal American Recovery and Reinvestment Act (ARRA) monies. To as quickly as possible help achieve the hiring of individuals into jobs that are ARRA-funded in whole or in part, the bidder(s) or offeror(s) awarded the contract(s) that results from this solicitation shall:

- A. Post all jobs which are to be newly filled, whether for an entirely new job or for an existing job that is currently vacant, on the Maryland Workforce Exchange website of the Maryland Department of Labor, Licensing and Regulation. Link: <https://mwe.dllr.state.md.us/default.asp?SessionUID=a>. Posting shall be done after contract award, as part of “start-up” procedures to fulfill the requirements of this contract.
- B. Continue to post for the duration of this contract, on the Maryland Workforce Exchange new jobs that are created to perform under this contract, and existing jobs that are filled as a result of turnover of existing employees that fully or substantially work under the contract.

- C. Stipulate the requirements for posting job openings with the Maryland Workforce Exchange, as per clauses 1 and 2 of this section, as requirements for any subcontractor(s) the contractor uses in the fulfillment of this contract.

The requirements to post ARRA-funded job openings on the Maryland Workforce Exchange, as per clauses 1-3 of this section, are not meant to be the exclusive means for the contractor or subcontractors to hire employees. The contractor or subcontractors may use any other means of job advertising and recruitment, in addition to the use of the Maryland Workforce Exchange.



**ATTACHMENT L-1 – ARRA FUNDS MONTHLY EMPLOYMENT REPORT**

**Monthly Employment Report**

**Part 1:**

Report for the Month Ending: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Name of Individual Completing Report: \_\_\_\_\_

Title of Individual Completing Report: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email of Individual Completing Report: \_\_\_\_\_

Date Report Completed: \_\_\_\_\_

**Part 2:**

Contractor Information:

Name: \_\_\_\_\_

Contractor Business Address/Location: \_\_\_\_\_

Type: \_\_\_\_\_

DUNS Number: \_\_\_\_\_

**Part 3:**

Five Most Highly Compensated Officers of the Entity:

	Name	Compensation
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

Check if contractor does NOT meet reporting criteria (see instructions)

**Part 4:**

Jobs Created/Retained by Prime Contractor:

(a)	(b)	(c)	(d)	(e)
Address/Location Where Work is Being Performed	Description of Created/Retained Jobs	Total Hours Worked in Reporting Period	Total Hours in Reporting Period for a Full Time Job	No. of Full Time Equivalents (c) ÷ (d)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(Add additional lines if needed.)

**Part 5:**

Jobs Created/Retained by Subcontractors:

(a)	(b)	(c)	(d)	(e)
Name of Subcontractor	Description of Jobs Created/Retained	Total Hours Worked in Reporting Period	Total Hours in Reporting Period for a Full Time Job	No. of Full Time Equivalents (c) ÷ (d)
_____	_____	_____	_____	_____


**Instructions for Completing the Monthly Employment Report**

**Part 1:** Enter the last day of the Month being Reported (e.g. September 30, 2009), the Contract Number (to be provided by the State), and contact information for the individual completing the report.

**Part 2:** Enter Prime Contractor information.

Type of Organization: Contractor should use one of the following types that represent the Contractor's organization:

- Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)
- Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)
- Individual
- For-Profit Organization (other than small business)
- Small Business
- State, County or Local Government
- Special District or Regional Government
- US Territory or Possession
- Independent School District
- Hispanic-Serving Institution
- Alaska Native and Native Hawaiian Serving Institutions
- Public/State Controlled Institution of Higher Education
- Indian/Native American Tribal Government (Federally Recognized)
- Indian/Native American Tribally Designated Organization
- Public/Indian Housing Authority
- Tribally Controlled Colleges and Universities
- Historically Black Colleges and Universities (HBCUs)
- Private Institution of Higher Education
- Non-domestic (non-US) entity
- Other

**Part 3:** Enter the names and total compensation of the five most highly compensated officers of the Contractor entity if:

- A. The Contractor in its preceding fiscal year received:
  - 1. 80% or more of its annual gross revenues in Federal awards; and
  - 2. \$25,000,000 or more in annual gross revenues from Federal awards; **and**
- B. The public does not have access to information about the compensation of the senior executives of the contractor's entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 USC 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986 (26 USC §6104).
- C. **Total Compensation** means the cash and noncash dollar value earned by the executive during the Contractor's past fiscal year for the following (for more information see 17 CFR 229.402( c)(2)):

1. Salary and bonus.
2. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R.
3. Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
5. Above-market earnings on deferred compensation which are not tax qualified.
6. Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

**Part 4:** Only jobs directly created or retained as a result of the contract activity should be reported. A job created is a new position created and filled or an existing unfilled position filled with ARRA funding. A job retained is an existing position that would not have continued to be filled without ARRA funding. A job cannot be both created and retained. Aggregate numbers for jobs created/retained are to be reported as noted below.

Column a: enter the address or work location where the work, or majority of work, is being performed.

Column b: enter a brief narrative description of the jobs created/retained by the Prime Contractor. For example: construction trades jobs, health care professionals, consultants.

Column c: enter the cumulative number of hours worked for the month by individuals in jobs created/retained.

*Example #1:* if there were 3 individuals working in jobs that were created/retained, and two individuals worked 176 hours each and the third worked 40 hours, then enter 392 ( $176+176+40=392$ ).

*Example #2:* if during a reporting month that included 4.4 work weeks, there were 5 individuals that each worked 20 hours per week period, enter 440 ( $5 \text{ individuals} \times 20 \text{ hours} \times 4.4 \text{ weeks} = 440$ ).

Column d: enter the total hours in the month that would be worked by an individual working full time.

*Example #1:* if an individual in a full time job would have worked 40 hours per week and there were 4.4 work weeks in the reporting period, enter 176 ( $40 \text{ hours} \times 4.4 \text{ work weeks} = 176 \text{ hours}$ ).

*Example #2:* if an individual in a full time job would have worked 35 hours per week and there were 4.4 work weeks during the month being reported, enter 154 ( $35 \text{ hours} \times 4.4 \text{ work weeks} = 154$ ).

Column e: Do not enter anything in column e. This column will automatically calculate the number of full time equivalents in jobs created/retained based on the data entered in column c and column d.

*Example #1:* if there were 392 hours worked during the month being reported by individuals in jobs created/retained, and an individual working full time during the month being reported would have worked 176 hours, then this column will calculate as 2.2 FTE's ( $392 \text{ total hours worked} \div 176 \text{ hours in a full time work schedule} = 2.2$ ).

*Example #2:* if there were a total of 440 hours worked during the month being reported by individuals in jobs created/retained, and an individual working full time during the month being reported would have worked 154 hours, then this will calculate as 2.9 FTE's ( $440 \text{ total hours worked} \div 154 \text{ hours in a full time work schedule} = 2.8$ ).

**Part 5:** For each subcontractor that is not an individual and receives a subcontract valued at \$25,000 or more, report the name of the subcontractor in column a, and the same data in columns (b) through (e) as indicated in Part 4. Insert additional lines if needed.

For contractors who have more than 37 subcontractors that must be individually reported, additional data entry space has been provided after Part 7.

**Part 6:** For subcontractors that are individuals or receive a subcontract valued under \$25,000, jobs created/retained shall be reported in aggregate.

Column a: enter the total number of subcontractors that have been reported in aggregate

For columns (b) through (e), follow the instructions in Part 4.

**Part 7:** Contractor signature required.

**ATTACHMENT M – MERCURY AFFIDAVIT**

**AUTHORIZED REPRESENTATIVE THEREBY AFFIRM THAT:**

I am the \_\_\_\_\_ (Title) and the duly authorized representative of \_\_\_\_\_ (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.

**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 or 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