



## **DEPARTMENT OF HEALTH**

### **MULTI-STEP INVITATION FOR BIDS (MS-IFB)**

**SOLICITATION NO. OPASS 19-18154**

**Issue Date: January 17, 2019**

#### **Dietary Services for the Eastern Shore Hospital Center**

#### **NOTICE**

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

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

**STATE OF MARYLAND  
NOTICE TO VENDORS**

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 this solicitation. Please return your comments with your response. If you have chosen not to respond to this Contract, please email or fax this completed form to the attention of the Procurement Officer (see the Key Information Sheet below for contact information).

**Title: Dietary Services for the Eastern Shore Hospital Center**  
**Solicitation No: OPASS 19-18154**

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

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

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

REMARKS:

---

---

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

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

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

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

**STATE OF MARYLAND  
DEPARTMENT OF HEALTH  
IFB KEY INFORMATION SUMMARY SHEET**

**Invitation for Bids:** Services: Eastern Shore Hospital Center Dietary Services

**Solicitation Number:** OPASS 19-18154

**IFB Issue Date:** January 17, 2019

**IFB Issuing Office:** Maryland Department of Health, Office of Procurement and Support Services

**Procurement Officer:** Dana Dembrow  
Maryland Department of Health  
Office of Procurement and Support Services  
201 West Preston Street, Baltimore, MD 21201  
Phone: 410-767- 0974 Fax: 410-333-5958  
E-mail: [mdh.solicitationquestions@maryland.gov](mailto:mdh.solicitationquestions@maryland.gov)

**Procurement Coordinator** Randy L. Bradford  
Maryland Department of Health  
Eastern Shore Hospital Center  
5262 Woods Road  
Cambridge, MD 21613  
Phone Number 410-221-2308  
Fax Number: 410-221-2558  
E-mail: [randy.bradford@maryland.gov](mailto:randy.bradford@maryland.gov)

**Contract Officer:** Calvin T. Johnson  
Maryland Department of Health  
Office of Procurement and Support Services  
201 West Preston Street, Baltimore, MD 21201  
Phone: 410-767-8216 Fax: 410-333-5958  
e-mail: [mdh.solicitationquestions@maryland.gov](mailto:mdh.solicitationquestions@maryland.gov)

**Contract Monitor:** Sarah Stevanus, Registered Dietician  
Eastern Shore Hospital Center  
P.O. Box 800  
5262 Woods Road  
Cambridge, MD 21613  
Phone: 410-221-2403 Fax: 410-221-2522  
E-mail: [Sarah.stevanus@maryland.gov](mailto:Sarah.stevanus@maryland.gov)

**Bids are to be sent to:** Calvin T. Johnson  
Maryland Department of Health  
Office of Procurement and Support Services  
201 West Preston Street, Baltimore, MD 21201  
Phone: 410-767-8216 Fax: 410-333-5958  
e-mail: mdh.solicitationquestions@maryland.gov

**Pre-Bid Conference:** January 31, 2019 Local Time 11:00 AM  
5262 Woods Road  
Cambridge, MD 21613  
Windsor Conference Room

**Bid Due (Closing) Date and Time:** February 21, 2019 Local Time 1:00 PM

**Public Bid Opening:** February 21, 2019 Local Time 1:15 PM

**MBE Subcontracting Goal:** 3 %

**VSBE Subcontracting Goal:** 0 %

**Contract Duration:** Five (5) Years with zero option terms  
Go-Live Date is March 1, 2019

## Table of Contents

<b>SECTION 1 - GENERAL INFORMATION.....</b>	<b>7</b>
1.1 Summary Statement .....	7
1.2 Abbreviations and Definitions .....	7
1.3 Contract Type.....	9
1.4 Contract Duration.....	9
<b>1.5 Procurement Officer, Contract Officer and Procurement Coordinator .....</b>	<b>9</b>
<b>1.6 Contract Monitor .....</b>	<b>10</b>
1.7 Pre-Bid Conference.....	11
1.8 eMarylandMarketplace .....	11
1.9 Questions.....	11
1.10 Procurement Method.....	12
1.11 Bids Due (Closing) Date and Time.....	12
1.12 Multiple or Alternate Bids .....	12
1.13 Receipt, Opening and Recording of Bids .....	12
1.14 Confidentiality of Bids.....	13
1.15 Award Basis .....	13
1.16 Tie Bids .....	13
1.17 Duration of Bid .....	13
1.18 Revisions to the IFB.....	13
1.19 Cancellations.....	14
1.20 Incurred Expenses .....	14
1.21 Protest/Disputes .....	14
1.22 Bidder Responsibilities .....	14
1.23 Substitution of Personnel .....	14
1.24 Mandatory Contractual Terms .....	14
1.25 Bid/Proposal Affidavit .....	15
1.26 Contract Affidavit .....	15
1.27 Compliance with Laws/Arrearages.....	15
1.28 Verification of Registration and Tax Payment .....	15
1.29 False Statements.....	15
1.30 Payments by Electronic Funds Transfer .....	16
1.31 Prompt Payment Policy.....	16
1.32 Electronic Procurements Authorized .....	16
1.33 Minority Business Enterprise Goals .....	17
1.34 Living Wage Requirements .....	20
1.35 Federal Funding Acknowledgement .....	21
1.36 Conflict of Interest Affidavit and Disclosure.....	21
1.37 Non-Disclosure Agreement .....	22
1.38 HIPAA - Business Associate Agreement .....	22
1.39 Nonvisual Access.....	22
1.40 Mercury and Products That Contain Mercury .....	22
1.41 Veteran-Owned Small Business Enterprise Goal .....	22
1.42 Location of the Performance of Services Disclosure.....	22
1.43 Department of Human Services (DHS) Hiring Agreement .....	22

1.44	Small Business Reserve (SBR) Procurement .....	22
<b>SECTION 2 – MINIMUM QUALIFICATIONS.....</b>		<b>23</b>
2.1	Bidder Minimum Qualifications .....	23
<b>SECTION 3 – SCOPE OF WORK .....</b>		<b>24</b>
3.1	Background and Purpose .....	24
3.2	Scope of Work - Requirements.....	24
3.3	Security Requirements .....	51
3.4	Insurance Requirements.....	55
3.5	Problem Escalation Procedure .....	56
3.6	Invoicing .....	57
3.7	MBE Reports .....	58
3.8	VSBE Reports.....	58
3.9	SOC 2 Type 2 Audit Report.....	58
3.10	Liquidated Damages for Performance Standards .....	58
3.11	End of Contract Transition.....	59
<b>SECTION 4 – BID FORMAT.....</b>		<b>60</b>
4.1	Two Part Submission.....	60
4.2	Technical Offer .....	60
4.3	Bid Price Form.....	63
4.4	Required Bid Submissions.....	63
4.5	Reciprocal Preference .....	66
4.6	Delivery.....	66
4.7	Documents Required upon Notice of Recommendation for Contract Award .....	66
<b>IFB ATTACHMENTS.....</b>		<b>68</b>
ATTACHMENT A – PRE-BID CONFERENCE RESPONSE FORM.....		72
ATTACHMENT B– BID PRICING INSTRUCTIONS.....		73
ATTACHMENT B – BID FORM .....		74
<b>ATTACHMENT C – BID/PROPOSAL AFFIDAVIT .....</b>		<b>75</b>
ATTACHMENTS D – MINORITY BUSINESS ENTERPRISE FORMS.....		76
ATTACHMENTS E – VETERAN-OWNED SMALL BUSINESS ENTERPRISE .....		77
ATTACHMENT F – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS ..		78
ATTACHMENT G - FEDERAL FUNDS ATTACHMENT .....		80
ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE .....		81
ATTACHMENT I – NON-DISCLOSURE AGREEMENT .....		82
ATTACHMENT J – HIPAA BUSINESS ASSOCIATE AGREEMENT.....		83
ATTACHMENT K – MERCURY AFFIDAVIT .....		84
ATTACHMENT L– LOCATION OF PERFORMANCE OF SERVICES DISCLOSURE....		85
ATTACHMENT M – CONTRACT.....		86
<b>ATTACHMENT N– CONTRACT AFFIDAVIT .....</b>		<b>101</b>
ATTACHMENT O – DHS HIRING AGREEMENT .....		102

## SECTION 1 - GENERAL INFORMATION

### **1.1 Summary Statement**

- 1.1.1 The Maryland Department of Health (MDH or the Department), Eastern Shore Hospital Center is issuing this Multi-Step Invitation for Bids (IFB) to provide the total operation of the Dietetic Department of the hospital. The Contractor shall provide clinical nutrition, food, and dietetic department services for approximately eighty (80) individuals.
- 1.1.2 It is the State's intention to obtain goods and services, as specified in this IFB, from a Contract between the selected Bidder and the State. The anticipated duration of services to be provided under this Contract is **five (5) years**. See Section 1.4 for more information.
- 1.1.3 The Department intends to make a single award as a result of this IFB. See IFB Section 1.15 for more information.
- 1.1.4 A Bidder, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Bidder (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

### **1.2 Abbreviations and Definitions**

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

- **Bid** – A statement of price offered by a Bidder in response to an IFB.
- **Bidder** – An entity that submits a Bid in response to this IFB.
- **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
- **Center** - Eastern Shore Hospital Center.
- **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us/COMAR/ComarHome.html](http://www.dsd.state.md.us/COMAR/ComarHome.html).
- **Contract** – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment M**.
- **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
- **Contract Monitor (CM)** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities.

- **Contract Officer (CO)** – The Office of Procurement and Support Services (OPASS) designated individual assigned to facilitate the procurement process. The Procurement Officer may designate the Contract Officer to conduct components of the procurement on behalf of the Procurement Officer.
- **Contractor** – The selected Bidder that is awarded a Contract by the State.
- **Department or** MDH – Maryland Department of Health.
- **eMM** – eMaryland Marketplace (see IFB Section 1.8).
- **ESHC** - Eastern Shore Hospital Center.
- **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation. See Section 1.4.
- **Invitation for Bids (IFB)** – This Invitation for Bids solicitation issued by the Maryland Department of Health with the Solicitation Number and date of issuance indicated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors), including any addenda.
- **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- **Mall Café** - Food preparation and serving area located on the ESHC treatment mall corridor that is independent of the cafeteria.
- **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- **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.
- **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go-Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Department Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- **Procurement Coordinator** – The State representative designated by the Procurement Officer to perform certain duties related to this solicitation which are expressly set forth herein
- **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment M), including being the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
- **State** – The State of Maryland.



- **Technical Offer** – A Bidder’s response to the Scope of Work requirements of this IFB. A Bidder’s Technical Offer will be determined to be acceptable or not acceptable prior to any opening of a Bidder’s Bid Price Form. See IFB Section 4.2 for more information.
- **Total Bid Price** - The Bidder’s total price for services in response to this solicitation, included in the Bid in Attachment B – Bid Form, and used in determining the recommended awardee (see IFB Section 1.15).
- **Veteran-owned Small Business Enterprise (VSBE)** – a business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

**1.3 Contract Type**

The Contract resulting from this solicitation shall be an indefinite quantity with fixed unit price contract as defined in COMAR 21.06.03.02 and 21.06.03.06.

**1.4 Contract Duration**

- 1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required (“Contract Commencement”).
- 1.4.2 The period of time from the date of Contract Commencement through the Go-Live Date (see Section 1.2 definition and Section 1.4.3) will be the Contract “Start-up Period.” During the Start-up Period the Contractor shall perform start-up activities such as are necessary to enable the Contractor to begin the successful performance of Contract activities as of the Go-Live Date. No compensation will be paid to the Contractor for any activities it performs during the Start-up Period.
- 1.4.3 As of the Go-Live Date contained in a Notice to Proceed (see Section 1.2 definition), anticipated to be on or about March 1, 2019 the Contractor shall perform all activities required by the Contract, including the requirements of this solicitation, for the compensation described in its Bid.
- 1.4.4 The duration of the Contract will be for the period of time from Contract Commencement to the Go-Live Date (the Start-Up Period as described in Section 1.4.2) plus five (5) years from the Go-Live Date for the provision of all services required by the Contract and the requirements of this solicitation.
- 1.4.5 The Contractor’s obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment M) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

**1.5 Procurement Officer, Contract Officer and Procurement Coordinator**

**1.5.1 Procurement Officer**

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

Dana Dembrow  
Procurement Officer  
Maryland Department of Health  
Office of Procurement and Support Services  
201 West Preston Street, Baltimore, MD 21201  
Phone Number: 410-767- 0974  
Fax Number: 410-333-5958  
E-mail: [mdh.solicitationquestions@maryland.gov](mailto:mdh.solicitationquestions@maryland.gov)

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

#### 1.5.2 **Contract Officer**

The Procurement Officer designates the following individual as the Contract Officer, who is authorized to act on behalf of the Procurement Officer:

Calvin T. Johnson  
Contract Officer  
Maryland Department of Health  
Office of Procurement and Support Services  
201 West Preston Street  
Baltimore, MD 21201  
Phone Number: (410) 767-8216  
Fax Number: (410) 333-5958  
E-mail: [mdh.solicitationquestions@maryland.gov](mailto:mdh.solicitationquestions@maryland.gov)

The Department may change the Contract Officer at any time by written notice.

#### 1.5.3 **Procurement Coordinator**

The Procurement Officer designates the following individual as the Procurement Coordinator, who is authorized to act on behalf of the Procurement Officer only as expressly set forth in this solicitation:

William Webb  
Procurement Coordinator  
Maryland Department of Health  
Eastern Shore Hospital Center  
5262 Woods Road  
Cambridge, MD 21613  
Phone Number: 410-221-2527  
Fax Number: 410-221-2522  
E-mail: [William.Webb@maryland.gov](mailto:William.Webb@maryland.gov)

The Department may change the Procurement Coordinator at any time by written notice.

### **1.6 Contract Monitor**

The Contract Monitor is:

Sarah Stevanus, Registered Dietitian

Contract Monitor  
Maryland Department of Health  
Eastern Shore Hospital Center  
5262 Woods Road  
Cambridge, MD 21613  
Phone Number: (410)-221-2403  
Fax Number: (410)-221-2522  
E-mail: Sarah.Stevanus@maryland.com

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

## **1.7 Pre-Bid Conference**

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

The Conference will be summarized. As promptly as is feasible subsequent to the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Bidders known to have received a copy of this IFB. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace. See IFB Section 1.8.

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

Immediately following the Pre-bid Conference, a site visit for all Bidders will be offered to better familiarize those preparing bids with the facilities at the Eastern Shore Hospital Center.

## **1.8 eMarylandMarketplace**

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

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the MDH website (<https://health.maryland.gov>) and possibly other means for transmitting the IFB and associated materials, the solicitation and summary of the Pre-Bid Conference, Bidder questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM.

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

## **1.9 Questions**

Written questions from prospective Bidders will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be

answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the Procurement Officer's e-mail address indicated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Bidders attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

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

### **1.10 Procurement Method**

This Contract will be awarded in accordance with the Multi-Step Competitive Sealed Bidding method under COMAR 21.05.02.17.

### **1.11 Bids Due (Closing) Date and Time**

Bids, in the number and form set forth in Section 4.4 "Required Bid Submissions," must be received by the Procurement Officer at the Procurement Officer's address and no later than the Bid Due date and time indicated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) in order to be considered.

Requests for extension of this time or date will not be granted. Bidders mailing Bids should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.02.10, Bids received after the due date and time listed in this section will not be considered.

Bids may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set for the opening.

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

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

### **1.12 Multiple or Alternate Bids**

Multiple and/or alternate Bids will not be accepted.

### **1.13 Receipt, Opening and Recording of Bids**

1.13.1 Receipt. Upon receipt, each Bid and any timely modification(s) to a Bid shall be stored in a secure place until the time and date set for bid opening. Before Bid opening, the State may not disclose the identity of any Bidder.

- 1.13.2 Opening and Recording. Technical Offers from each Bidder will not be opened publicly but will be opened in the presence of at least two (2) State employees. After review of the Technical Offers, a determination will be made as to whether each Bidder's Technical Offer is acceptable or not acceptable (see IFB Section 4.2). Afterwards, Bid Forms and timely modifications to Bid Forms from only those Bidders whose Technical Offers have been determined to be acceptable shall be opened publicly, at the time, date, and place designated in the IFB. The name of each such Bidder, their Total Bid Price, and such other information as is deemed appropriate shall be read aloud or otherwise made available. Bid Forms from Bidders whose Technical Offers have been found unacceptable shall be returned unopened. At the time of Bid Form opening, a Register of Bids will be prepared that identifies each Bidder, including Bidders whose Technical Offers were not found to be acceptable. The Register of Bids shall be open to inspection immediately after the public Bid opening
- 1.13.3 The Bid Opening shall be at the date, time, and location indicated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors)

#### **1.14 Confidentiality of Bids**

The Bids shall be tabulated or a Bid abstract made. The opened Bids shall be available for public inspection at a reasonable time after Bid opening, but in any case before contract award, except to the extent the Bidder designates trade secrets or other proprietary data to be confidential as set forth in this solicitation. Material so designated as confidential shall accompany the Bid and shall be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid, including the Total Bid Price.

For requests for information made under the Public Information Act (PIA), the Procurement Officer shall examine the Bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by the Office of the Attorney General.

#### **1.15 Award Basis**

The Contract shall be awarded to the responsible Bidder submitting a responsive Bid with the most favorable Total Bid Price, after that Bidder's Technical Offer has been found to be acceptable (see COMAR 21.05.02.17 and IFB Section 4.2), for providing the goods and services as specified in this IFB. The most favorable Total Bid Price will be the lowest price total on **Attachment B** - Bid Form.

#### **1.16 Tie Bids**

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

#### **1.17 Duration of Bid**

Bids submitted in response to this IFB are irrevocable for 120 days following the closing date of the Bids. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

#### **1.18 Revisions to the IFB**

If it becomes necessary to revise this IFB before the due date for Bids, the Department shall endeavor to provide addenda to all prospective Bidders that were sent this IFB or which are otherwise known by the Procurement Officer to have obtained this IFB. In addition, addenda to the IFB will be posted on the Department's procurement web page and through eMM. It remains the responsibility of all prospective Bidders to check all applicable websites for any addenda issued prior to the submission of Bids.

Acknowledgment of the receipt of all addenda to this IFB issued before the Bid due date shall be included in the Transmittal Letter accompanying the Bidder's Bid. Failure to acknowledge receipt of an addendum does not relieve the Bidder from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Bid to be rejected as being non-responsive to the requirements of the IFB.

### **1.19 Cancellations**

The State reserves the right to cancel this IFB, or accept or reject any and all Bids, in whole or in part, received in response to this IFB.

### **1.20 Incurred Expenses**

The State will not be responsible for any costs incurred by any Bidder in preparing and submitting a Bid or in performing any other activities related to submitting a Bid in response to this solicitation.

### **1.21 Protest/Disputes**

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

### **1.22 Bidder Responsibilities**

The selected Bidder shall be responsible for rendering services for which it has been selected as required by this IFB. All subcontractors shall be identified and a complete description of their role relative to the Bid shall be included in the Bidder's Bid. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this IFB (see Section 1.33 "Minority Business Enterprise Goals" and Section 1.41 "Veteran-Owned Small Business Enterprise Goals").

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

### **1.23 Substitution of Personnel**

If the solicitation requires that a particular individual or personnel be designated by the Bidder to work on the Contract, any substitution of personnel after the Contract has commenced must be approved in writing by the Contract Monitor prior to the substitution. If the Contractor substitutes personnel without the prior written approval of the Contract Monitor, the Contract may be terminated for default which shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

### **1.24 Mandatory Contractual Terms**

By submitting a Bid in response to this IFB, a Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this IFB and the Contract, attached herein as **Attachment M**. Any exceptions to this IFB or

the Contract must be raised prior to Bid submission. **Changes to the solicitation, including the Bid Form or Contract, made by the Bidder may result in Bid rejection.**

### **1.25 Bid/Proposal Affidavit**

A Bid submitted by a Bidder must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as **Attachment C** of this IFB.

### **1.26 Contract Affidavit**

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

### **1.27 Compliance with Laws/Arrearages**

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

By submitting a response to this solicitation, each Bidder 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 so in arrears during the term of the Contract if selected for Contract award.

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

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

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

### **1.29 False Statements**

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

1.29.1 In connection with a procurement contract a person may not willfully:

- (a) Falsify, conceal, or suppress a material fact by any scheme or device;
- (b) Make a false or fraudulent statement or representation of a material fact; or
- (c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

1.29.2 A person may not aid or conspire with another person to commit an act under subsection (1) of this section.

1.29.3 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.

### **1.30 Payments by Electronic Funds Transfer**

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

[http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/GADX10Form20150615.pdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf)

### **1.31 Prompt Payment Policy**

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

<http://www.gomdsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>

### **1.32 Electronic Procurements Authorized**

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 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 solicitation or the Contract. In the case of electronic transactions authorized by the IFB, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.
- 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 e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bso/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 "Payments by Electronic Funds Transfer") 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 eMM or e-mail to issue:
    - (a) the solicitation (e.g., the IFB/RFP);
    - (b) any amendments;
    - (c) pre-Bid/Proposal conference documents;
    - (d) questions and responses;
    - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
    - (f) notices of award selection or non-selection; and
    - (g) the Procurement Officer's decision on any Bid protest or Contract claim.
  
  2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail 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, but only on the terms specifically approved and directed by the Procurement Officer; and
    - c. submit a "No Bid/Proposal Response" to the solicitation.
  
  3. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail 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 Bid Protests;
  3. filing of Contract Claims;
  4. submission of documents determined by the Department 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 or Bidder/Offeror be provided in writing or hard copy.
- F. Any e-mail transmission is only authorized to the e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

<b>1.33 Minority Business Enterprise Goals</b>
------------------------------------------------

**i. Establishment of Goal and Subgoals.**

An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet representing a percentage of the total Contract dollar value, including all renewal option terms, if any, has been established for this procurement.

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

By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.

**An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 1.33 must submit a request for waiver with its proposal submission that is supported by good faith efforts documentation to meet the MBE goal made prior to submission of its proposal as outlined in Attachment D-1B, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP will result in the State's rejection of the Offeror's Proposal. This failure is not curable.**

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

<b>Attachment D-1A</b>	MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule <b>(must be submitted with Bid/Proposal)</b>
<b>Attachment D-1B</b>	Waiver Guidance
<b>Attachment D-1C</b>	Good Faith Efforts Documentation to Support Waiver Request
<b>Attachment D-2</b>	Outreach Efforts Compliance Statement
<b>Attachment D-3A</b>	MBE Subcontractor Project Participation Certification
<b>Attachment D-3B</b>	MBE Prime Project Participation Certification
<b>Attachment D-4A</b>	Prime Contractor Paid/Unpaid MBE Invoice Report
<b>Attachment D-4B</b>	MBE Prime Contractor Report
<b>Attachment D-5</b>	Subcontractor/Contractor Unpaid MBE Invoice Report

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

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

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

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

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

- (a) Outreach Efforts Compliance Statement (**Attachment D-2**).

- (b) MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**).
- (c) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.
- d. Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

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

- 1.33.6 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.state.md.us/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**
- 1.33.7 The Bidder/Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in **COMAR 21.11.03.11**.
- 1.33.8 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Bidder/Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Bid/Proposal for order of precedence purposes (see Contract – **Attachment A**, Section 2.1).
- 1.33.9 The Bidder/Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment A**, “Liquidated Damages” clause).
- 1.33.10 As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a Contract as a Prime Contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

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

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

1.33.11 With respect to Contract administration, the Contractor shall:

3. Submit to the Department's designated representative by the 10th of the month following the reporting period:
  4. A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
  5. (If Applicable) An MBE Prime Contractor Report (Attachment D-4B) identifying an MBE Prime's self-performing work to be counted towards the MBE participation goals.
6. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit to the Department's designated representative by the 10th of the month following the reporting period an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
7. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
8. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
9. Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

### **1.34 Living Wage Requirements**

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

If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website: <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

Additional information regarding the State’s living wage requirement is contained in **Attachment F**. Bidders/Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Bid/Proposal. If a Bidder/Offeror fails to complete and submit the required documentation, the State may determine a Bidder/Offeror to be not responsible under State law.

Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George’s, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.

The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Bidder/Offeror must identify in its Bid/Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.

- 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.
- If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 2 Contract.

Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

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

### **1.35 Federal Funding Acknowledgement**

This Contract does not contain Federal funds.

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

Bidders/Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with their Bid/Proposal. By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A. Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that “an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.” Any Offeror submitting a Proposal in violation of this provision shall be classified as “not responsible.” See COMAR 21.05.03.03

### **1.37 Non-Disclosure Agreement**

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

### **1.38 HIPAA - Business Associate Agreement**

Based on the determination by the Department that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in HIPAA, the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.501 and set forth in **Attachment J**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award; however, to expedite processing, it is suggested that this document be completed and submitted with the Bid/Proposal. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Bidder/Offeror with the next lowest Bid or next highest overall-ranked Proposal.

### **1.39 Nonvisual Access**

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

### **1.40 Mercury and Products That Contain Mercury**

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

### **1.41 Veteran-Owned Small Business Enterprise Goal**

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

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

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

### **1.43 Department of Human Services (DHS) Hiring Agreement**

This solicitation does not require a DHS Hiring Agreement.

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

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

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

## **SECTION 2 – MINIMUM QUALIFICATIONS**

### **2.1 Bidder Minimum Qualifications**

The Bidder must provide proof with its Bid that the following Minimum Qualifications have been met:

- 2.1.1 The Bidder shall have a minimum of five (5) years' experience providing food service in a hospital environment to patients. As proof of meeting this requirement, the Bidder shall provide with its bid three (3) references from the past five years able to attest to the Bidder's experience in providing food service in a hospital environment to patients.

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

## **SECTION 3 – SCOPE OF WORK**

### **3.1 Background and Purpose**

The Eastern Shore Hospital Center (ESHC) is a licensed eighty-four (84) bed adult residential psychiatric facility located in Cambridge, Maryland. It is one of the facilities administered by the Behavioral Health Administration, Maryland Department of Health. In November 2008, this facility transitioned from a state run dietary operation to a managed service operation.

This Multi-Step Invitation for Bid (IFB) is for a Contractor to provide for the total operation of the Dietetic Department at ESHC. The Contractor shall provide clinical nutrition, food, and dietetic department services. Additionally, the Contractor will operate a pay cafeteria and satellite café for employees, staff, and visitors. Finally, the Contractor will also offer catering services for outside groups using hospital facilities.

ESHC resides in a single, one-story structure, built in 2001. The kitchen, washing area, and storage area are located entirely in this building. Meal service for patients is provided in the cafeteria immediately adjacent to the kitchen and washing area. Service is provided to staff, visitors, and non-resident clients in the same area. Approximately 40% of the patients of the Eastern Shore Hospital Center are unable to come to the cafeteria and require meals to be served in their housing units. This is accomplished through the use of insulated trays.

### **3.2 Scope of Work - Requirements**

The Contractor shall:

#### **3.2.1 General Requirements**

##### **3.2.1.1 Population to be Served:**

Approximately 80 residents / inpatients

Hospital employees and volunteers

Official visitors to ESHC

##### **3.2.1.2 Type and Location of Service:**

This solicitation is to provide for the total operation of the Dietetic Department at Eastern Shore Hospital Center. The Contractor shall provide clinical nutrition, food, and dietetic department services for approximately 84 individuals.

The Contractor shall also operate a pay cafeteria at ESHC. The cafeteria shall provide meals at lunch and dinner and between meal offerings for employees and official visitors.

The Contractor shall also operate a satellite food preparation and sales area located on the hospital's main treatment mall corridor. This satellite facility is referred to as the Hospital's "Mall café."

The Contractor shall also offer catering services for non-hospital, outside groups using the ESHC's English Hall or other conference rooms.



**3.2.1.3 Patient/Client Meal Service Statistics for Period July 1, 2016 – June 30, 2017**

- a. Average number of patient/client meals (insulated tray and cafeteria style) served per meal per day (Sunday through Saturday) for the above referenced twelve-month period:

	<b>Avg. Number of Patient / Client Meals</b>
Breakfast	67
Lunch	67
Dinner	67

Some clients may require larger portions of food per physician’s order as part of their medical treatment

- b. The following figures represent actual patient/client days for the fiscal years indicated:

<b>Fiscal Year</b>	<b>Actual patient/client days</b>
FY 2013	21,400
FY 2014	20,106
FY 2015	21,926
FY 2016	21,433
FY 2017	22,099

- c. The anticipated average daily number of patients/clients for the contract period:

<b>Fiscal Year</b>	<b>Anticipated Avg. Daily # of Pt./clients</b>
FY 2019	76
FY 2020	76
FY 2021	76
FY 2022	76
FY 2023	76
FY 2024	76

- d. Total number of employee cafeteria transactions during the period of July 1, 2016, through June 30, 2017 was 11,635.
- e. The following is a list of diet types and the number of each type served at the Center for the period July 1, 2016, through June 30, 2017:

<b>Diet Type</b>	<b>Estimated Total for EACH Meal</b>	<b>Estimated Total ANNUALLY</b>
Regular	34	37,230
Reduced Calorie	12	14,235
High Calorie/High Protein	6	6,570
Modified Consistency	0	0
Low fat/Low Cholesterol	6	6,570
Low Sodium	5	5,475
Vegetarian	3	3,285
<b>TOTALS</b>	<b>66</b>	<b>73,365</b>

- f. The following is a list of the specific commercial supplements, tube feeding products, and food consistency modification products with the quantities utilized to meet the Centers patients/clients' needs during the period July 1, 2016, through June 30, 2017.

<b>Product</b>	<b>Number</b>	<b>Units</b>
Health Shakes (4 oz., 75 per case)	118	Cases

- g. The following is a list of juices and foods with quantities utilized for administering medications and for the hydration of the Center's patients/clients during the period July 1, 2016, through June 30, 2017:

<b>Product</b>	<b>Count Daily</b>	<b>Portion Size</b>	<b>Annually</b>	<b>Gallons / Year</b>
Orange Juice	5	Half Gallon	1,825	912.5
Grape Juice	4	Half Gallon	1,460	730
Apple Juice	2	Half Gallon	730	365
Kiwi-Strawberry Juice	3	Half Gallon	1,095	547.5
Green Apple Juice	2	Half Gallon	730	365
Fruit Punch	3	Half Gallon	1,095	547.5
Apple Sauce	2	16 oz.	730	92
Sugar Free Juice	2	Half Gallon	730	365
Prune Juice	13	4 oz.	4,745	148
Soy Milk	6	8 oz.	2,190	137
Lactaid	6	8 oz.	2,190	137

- h. Employee/Visitor Cafeteria Sales for Period of July 1, 2016, through June 30, 2017:

July	2016	\$1,163.90
August	2016	\$2,328.00
September	2016	\$2,281.80
October	2016	\$2,198.60
November	2016	\$1,822.00
December	2016	\$3,017.10
January	2017	\$2,428.75
February	2017	\$2,422.55
March	2017	\$2,743.40
April	2017	\$3,436.62
May	2017	\$3,081.15
June	2017	\$2,818.22
<b>TOTAL</b>		\$32,010.52

- i. Holidays observed by the State that will impact service are: New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Election Day (on applicable years), Thanksgiving Day, day after Thanksgiving, and Christmas Day. Essential employees would be the only individuals required to work the above-noted holidays. Therefore, both lunch and evening meals services in the cafeteria would be utilized by fewer individuals. Other days of lower demand may occur due to service reduction days. These events occur in response to Statewide budget shortfalls and they are dictated by the Governor through executive order. A schedule of holidays and service reduction days can be found on the webpage: <http://dbm.maryland.gov>.

**3.2.1.4 Policies and Procedures**

- a. The Contractor shall develop a comprehensive Policy and Procedure Manual specific to the needs of the Dietetic Department. During the transition period, the winning bidder will have access to the incumbent’s Policy and Procedure manual.
- b. The Policy and Procedure Manual shall clearly define all operational principles and methodologies to be utilized ongoing to ensure the ability to fulfill all of the requirements of the Contract in a consistent and satisfactory manner and ensure compliance with all requirements, standards and regulations of the Joint Commission (TJC), and all federal, State and local agencies having authority over the Center with respect to licensing and accreditation as well as compliance with requirements related to Health Insurance Portability Accessibility Accountability (HIPAA), the American with Disabilities Act, and federal Child Nutrition Program. Policies related to, but not limited to the following topics must be included within the manual: Hazard Analysis and Critical Control Point Standard Operating Procedures consistent with the National Food Service Management Institute Manual; menu preparation; food purchasing; storage; inventory; food production and service; modified diet orders; use of and adherence to protocols of nutritional care, nutritional assessment, nutritional counseling and diet instruction; the preparation or acquisition process, storage, distribution, and administration of enteral tube feedings and nutrition supplements; tray identification system; personal health and hygiene of employees; infection control; emergency/disaster menus and supplies; pertinent safety practices; protection of the food supply; sanitation including handling of cutting boards, dish, utensil and ware washing techniques, disposal of single use containers, disposal of damaged/unusable service ware; traffic control within the Department; personnel policies; record keeping; cost accounting; Department organization; employee orientation and training, ongoing training and continuing education; quality assessment and improvement; quality control and risk management; interdepartmental relations; consistent ongoing communications; and compliance with the federal Child Nutrition Program and the Department of Juvenile Services Wellness Policy.
- c. The Policy and Procedure Manual shall be submitted to the Center's Contract Monitor no less than two (2) weeks prior to the Go-Live Date for review and approval. This review will be accomplished within one week. The Contractor shall modify this Manual as required by the Center within seven (7) days of written notice of any necessary changes.
- d. The Contractor shall review and revise the Policy and Procedure Manual annually no less than two (2) weeks before the anniversary date of the Contract and submit it to the Center's Contract Monitor for approval.

**3.2.1.5 Reporting Requirement:**

The Contractor shall provide the Center’s Contract Monitor with an annual report no later than 30 days following the end of the State fiscal year (July 1 – June 30). The report shall at a minimum show the information as listed and detailed in Section 3.2.1.3.

**3.2.1.6 Patient/Client Food Service:**

- 1. The Contractor shall provide patients/clients with three (3) meals per day, seven (7) days per week at the following hours:

Breakfast	7:45 A.M. – 9:00 A.M.
Lunch	11:45 A.M. – 1:00 P.M.

Dinner 5:00 P.M. – 6:15 P.M.

Service times are approximate for purposes of this IFB. The actual operational hours are based on patient activity scheduling and will be set by the Contract Monitor.

- a. An insulated tray service is to be utilized by the Contractor to serve patients not served cafeteria style or in bulk and for service to all ESHC patients unable to come to the cafeteria. Insulated trays, tray-related disposables, and permanent ware shall be provided under the terms of this Contract. Trays shall be maintained in an acceptable condition at all times, free of cracks, chipping, stains, or other conditions unacceptable under State Health Department Regulations COMAR 10.15.03, Food Service Facilities and any Licensure or Accreditation standards. All food, beverages, utensils, and accessories on the tray are to be transported under a cover. Trays will be of a two piece design consisting of a base unit and a top which completely covers the base unit.
- b. Cafeteria style service meals served by the Contractor's employees will be provided in the cafeteria serving area adjoining the kitchen.
- c. Trays and bulk food shall be delivered to the patient/client units prior to opening the serving line in the cafeteria by the Contractor's employees:

Breakfast	7:30 A.M
Lunch	11:30 A.M
Dinner	4:00 P.M

Trays shall be picked up from the patient/client units by the Contractor's employees and returned to the ware washing area approximately one (1) hour after delivery.

Delivery times are approximate for purposes of this IFB. The actual timing of the deliveries is based on patient activity scheduling and will be set by the Contract Monitor.

Each patient/client tray shall be identified minimally with the patient's/resident name, location, diet type, likes/dislikes and beverage preferences.

- 2. The Contractor shall provide the following food and supplements seven (7) days per week for the patients/clients residing at Eastern Shore Hospital Center in addition to the meals:
  - a. An evening nutritious snack, which may include but not limited to a selection or combination of the following: juice, trail mix, cookies, fruit, raw carrot/celery sticks, and sandwich.
  - b. All commercial nutritional supplements required by a physician's medical prescription or identified by the clinical dietitian as required as a part of a patient/client nutrition care plan.
  - c. A variety of juices (orange, prune, cranberry, apple, grape, and fruit punch) as requested for use in administering medications and for patient/client hydration.
  - d. The snacks, commercial supplements, and juices will be prepared and delivered to all units by the Contractor's employees according to a schedule approved by the Contract Monitor.
- 3. The Contractor shall ensure that all potentially hazardous food, beverages, supplements etc. packaged on premise and sent to the patient/client units are labeled as to the contents and that a "use by" date is indicated. Purchased commercially prepared items shall contain similar information. Dating shall not be based upon the Julian calendar.

### 3.2.1.7 Employee/Visitor Food Service

- a. The Contractor shall provide three (3) meals a day, seven (7) days per week for employees and/or visitors in the cafeteria at the Eastern Shore Hospital Center during the following hours:

Breakfast 7:30 A.M. – 9:00 A.M  
Lunch: 11:00 A.M. - 1:00 P.M.  
Dinner: 4:30 P.M. – 6:00 P.M.

Service times are approximate for purposes of this IFB. The actual operational hours are based on patient activity scheduling and will be set by the Contract Monitor.

- b. A selective type menu shall be available to employees and visitors. The Contractor shall develop a cycle menu based on the patient menu with the addition of soup, an alternate entrée, sandwiches, salads, and desserts. All menus will include portion sizes.
- c. The Contractor shall submit the menus, with portion sizes, raw food cost, and selling price of all items to be sold in the cafeteria to the Center's Contract Monitor no less than two (2) weeks prior to the Go-Live Date for review and approval. The Contractor shall submit simultaneously, in a written policy, a schedule for periodic price review and revision. Any price revision shall be submitted to the Center's Contract Monitor for approval no less than two (2) weeks prior to the effective date.
- d. The Contractor shall post menus in the employees' cafeteria no less than one (1) week in advance of scheduled service. Each department head at ESHC shall also receive a copy of the menus via e-mail.
- e. The Contractor shall ensure that sufficient employees are available in the cafeteria at all times to serve to staff members and visitors.
- f. The Contractor shall be responsible for the collection of money from sales in the employee's cafeteria. Payment for purchases in the employee cafeteria shall be by cash. The Center's Administration may approve the use of budgeted gratuitous funds for certain functions or visitors' meals. Such approved service is to be separately itemized and billed to the Center.
- g. The security of all monies associated with the employee cafeteria will be the responsibility of the Contractor.
- h. A cash register system shall be utilized which provides a receipt tape for the customer and an audit tape for accounting records. This equipment will be provided by the Center. A register receipt shall be given for all food purchases.
- i. A daily summary of the employee cafeteria operation shall be maintained, which shall also include month to date totals. The Daily Employee Food Sales Report, MDH 351 or a comparable form with at least the same information and approved by the Center's Contract Monitor shall be used.
- j. All records related to income, operational cost, and menu changes shall be maintained by the Contractor for three (3) years from the expiration of the Contract or until audited, whichever is sooner.

- k. The employee cafeteria is available to State employees, employees of the Contractor, and authorized visitors only.

#### 3.2.1.8 **Special Food Requests:**

- a. All special food requests shall be submitted by the individual or group for review and approval by the Center's Contract Monitor one (1) week prior to the required date.
  - (1) Food and/or beverage requests for meetings, luncheons, dinners, employee related functions, etc., which have been approved, are to be provided by the Contractor. All food, beverages, related disposable ware, and services will be paid for by the person or group initiating the request. The total cost of food, beverage, supplies, and services is to be billed to the Center with a notation as to the requesting department and/or person.
  - (2) Requests for service for special functions (dedications, graduations, open house, etc.,) by the Center's Administration shall be provided within a pre-established budget. The Center in consultation with the Contractor shall determine a menu for which the Contractor shall quote an estimated cost. Charges for these functions shall be itemized and billed separately to the Center.
  - (3) Requests for special activities, bag lunches, picnics, etc. for patients/clients which have been approved by the Contract Monitor, shall be in lieu of that meal.

#### 3.2.1.9 **Nutritional /Operational Requirements**

##### **a. Patients/Clients Menu**

- 1. All menus shall be planned as to be nutritionally adequate for the patient/client population. All menus shall be in conformance and consistent with the meal plans for specified diets as outlined and approved in the Diet Manual in use for the Center. A copy of this Diet Manual will be provided if requested from the Procurement Officer. The Diet Manual shall contain all diet types required to accommodate the nutritional needs of the patients/clients of the Center. Diets included shall be consistent with current generally accepted theories of dietetic practice, and be based on the Recommended Dietary Allowances as defined by the Food and Nutrition Board, National Academy of Sciences, National Research Council adjusted to meet the specific needs of the patients/clients of the Center.
- 2. A non-selective, seasonally appropriate, five (5) week cycle menu shall be used. The Contractor shall prepare and utilize a minimum of two (2) menu cycles (Spring/Summer, Fall/Winter) for all diet types.

Regular menus shall be modified for clients as required to comply with physician's diet prescriptions. All modified menus and diet plans shall be developed and analyzed by the Contractor's Registered Dietitian to ensure compliance with the Center's approved Diet Manual.

A current copy of the patients/clients menu will be posted in each dining/serving area and through electronic mail. The Contractor shall determine an appropriate procedure to achieve this with the Center's Administration

Evening snacks provided shall be planned to enhance the nutritional content of the daily menu for all patients/clients and not constitute a portion of their daily requirement, except where counter-indicated by diet prescription. A cycle menu for the evening snacks, with a minimum of five (5) weeks in length will be developed by the Contractor's Registered Dietitian to correspond to the two (2) regular menu cycles (Spring/Summer, Fall/Winter).

The initial menu cycle with analyses shall be submitted to the Center's Contract Monitor at least two (2) weeks prior to the Go-Live Date for review and approval. Subsequently, each year, no later than January 15<sup>th</sup>, the Contractor shall submit for review and approval the Spring/Summer menu cycle and no later than July 15<sup>th</sup>, the Fall/Winter menu cycle to be utilized. Requests for any menu cycle revisions by the Center shall be accomplished within seven (7) days.

3. Bag lunches, picnics, etc. for patients/clients, requested and approved by the Center's Contract Monitor, which are in lieu of a regularly planned meal, shall provide the same nutritional value and be comparable in cost to the meal for which they are substituted. The alternative meal is to include no less than the protein requirement normally served for the meal replaced, two (2) servings of vegetables and/or fruit, dessert, bread, butter and beverage.
4. Food requests for patient/client activities not in lieu of a meal, require the approval of the Center's Administration (i.e., the ESHC Chief Executive Officer (CEO) or Chief Operating Officer (COO)) who shall also approve the Contractor's quoted cost. Charges for these activities shall be itemized and billed separately at the pre-established cost to the facility requesting services.
5. Nutritional supplements, commercially prepared formulas for use as tube feedings, and food consistency modification products required to comply with physician's diet prescriptions shall be purchased by the Contractor. The Center's Clinical Dietitian and the Medical Director/Unit Physician shall agree to any change of or substitution of any product before it is put into use.
6. The Contractor's Clinical Dietitian will include and maintain in the Center's approved Diet Manual all appropriate nutritional information for the products in use at the Center.
7. Standardized recipes shall be developed and utilized for the preparation of all menu items. The recipes shall be developed in a standard format which shall include State Hazard Analysis Critical Control Point (CCP) elements (i.e., identification of CCP, CCP monitors and corrective action to be implemented if CCP is violated). Recipes shall comply with State Hazard Analysis Critical Control Point (HACCP) requirements of COMAR 10.15.03.

Standardized recipes for consistency modified menu items will be formulated to:

- a) identify the method of manipulation;
- b) define the type and quantity of fluids and or food products added to achieve desired consistency;
- c) adjust the portion size of the manipulated food to equal the nutrient value of the regular diet portion; and

d) be consistent with the standardized recipe format.

All standardized recipes shall indicate the nutritional analysis for the stated portion size.

8. The Contractor's Registered Dietitian shall perform a nutritional analysis for each cycle of menus to be used at the Center. The analysis shall be based on the nutritional composition of the Contractor's standardized recipes in use and the nutritional composition provided by the manufacturer for any purchased commercially prepared ready to use or any heat/cook serve products used to determine the menus adequacy for each reference group. A copy of the approved menus with the corresponding analyses and documentation of adequacy for the Center's population shall be maintained on file by the Contractor for review by licensing and accreditation surveyors upon request.
9. The Contractor shall develop an Emergency Menu Plan that includes the provision of meals for no less than three (3) days, based upon service of three (3) meals per day. Menus shall be developed and posted, and employees trained to ensure adequate and continued service during emergencies related to weather, floods, lack of steam, water, electricity, fire, labor strike, etc. The Plan shall detail instructions for food preparation, distribution, transportation, and all associated supplies required to implement the Plan (i.e. disposable ware, can openers, trash bags, serving utensils, etc.). The Contractor shall maintain the corresponding food inventory on the premises for feeding patients/clients and employees. A similar inventory of the required emergency supplies (i.e. disposable ware, can openers, trash bags, service utensils, etc.) shall also be maintained. The emergency food inventory and emergency supplies inventory are to be maintained separate from the regular inventories and identified for emergency use only. The plan should identify the means of access to these items twenty-four (24) hours per day, seven (7) days per week. The Department policy related to the Emergency Menu Plan shall identify a routine food inventory rotation schedule. The Plan shall be submitted to the Center's Contract Monitor at least two (2) weeks prior to the Go-Live Date for review and approval. The Contractor will make any required adjustments within seven (7) days of written notice. The Contractor shall review and revise the plan annually no less than two (2) weeks prior to the Contract anniversary date and submit it to the Center's Contract Monitor for approval.
10. The Contractor shall develop a separate plan for responding to both an internal and an external disaster. It shall include the following as a minimum: evacuation plan for the Dietetic Department; location of firefighting equipment; a plan for the provision of food service following the loss of utilities; plan for contacting essential personnel; instructions for utilizing volunteers and a plan for providing a continuous source of uncontaminated food and supplies. Additionally, an integral part of the overall plan shall be a separately-defined plan that ensures the availability of an adequate supply of food within the Center in the event of a disaster (i.e. terrorist attack, etc.) and is of such a nature as to require an official declaration of a state of "Shelter in Place". Under this condition, in an effort to prevent contamination, no one will be permitted to enter or leave the Center. A defined rotation schedule will be developed by the Contractor for this food inventory. The plan shall be submitted to the Center's Contract Monitor at least two (2) weeks prior to the Go-Live Date for review and approval. The Contractor will make any required adjustments within seven (7) days of written notice. The Contractor shall review and revise the plan



annually no less than two (2) weeks prior to the Contract anniversary date and submit it to the Center's Contract Monitor for approval. The Contractor will provide a copy of these plans to Eastern Shore Hospital Center for inclusion in their Emergency Preparedness Plan.

The Contractor shall also provide the Center's Contract Monitor with a list of the Contractor's employees, including their phone numbers, who should be notified in emergency situations by the Center's staff. The Contractor's Dietetic Department Director shall be responsible to assure the list is current.

11. The Contractor shall not change, by deletion or substitution, an item on any menu which has been approved except in such emergencies as:
  - (1) an item cannot be served due to non-delivery or late delivery of the item itself and/or other items required for its correct preparation;
  - (2) an item is not fit for human consumption due to spoilage;
  - (3) an item does not meet the Contractor's purchasing specifications or the standard of quality when delivered, and there is insufficient time available to allow for a redelivery;
  - (4) an item is unavailable when scheduled for delivery due to a condition or conditions beyond the control of the Contractor.

#### **3.2.1.10 Clinical Nutrition Services**

- a. The Contractor shall provide a Dietetic Department Director for the Eastern Shore Hospital Center to oversee the dietetic operations at the respective Center, perform administrative duties and coordinate the delivery of food services in conjunction with the Center's Clinical Dietitian.
- b. In the absence of the regular Dietetic Department Director, the Contractor shall provide a qualified individual to assume the administrative responsibility of the Dietetic Department.
- c. The Contractor's Dietetic Department Director performing the clinical dietary requirements of this Contract shall be a Registered Dietitian (RD), licensed by the Board of Dietetic Practice, State of Maryland.
- d. The Dietetic Department Director shall supervise and assume responsibility for the training of tray assembly employees and/or client cafeteria service employees with respect to modified diets.
- e. The Contractor shall ensure that a Licensed Dietitian coordinates and provides the following:
  - (1) A minimum of two (2) five (5) week cycle menus (Spring/Summer, Fall/Winter) for all modified diets served which:
    - (a) includes food items consistent with the regular menu prepared for the patient/client population to the degree permitted by the diet restriction;
    - (b) meets the scope of modified diets required by the Center;

- (c) identifies all food items to be served to meet each diet type's requirements;
  - (d) reflects portion sizes, including adjusted portion sizes for food manipulation, as required to meet the diet requirements;
  - (e) are acceptable to the patients/clients as evidenced by "food acceptance surveys."
- f. Jointly, the Center's Clinical Dietitian and the Contractor's Dietetic Department Director shall perform the following duties:
- (1) Revise, whenever necessary, and completely review annually, the nutrition care policies and procedures to assure that they are at all times in compliance with the current requirements, standards and regulations of all accreditation, licensing, and any other federal, State, or local agency having jurisdiction of the Center.
  - (2) Maintain a file of menus, as served, for all patients/clients of the Center for period of no less than (3) years.
  - (3) Develop, implement, and maintain a system of tray card identification for each patient/client receiving a tray and an identifying mechanism for each patient/client who requires a modified diet but uses the patient/client cafeteria type service.
  - (4) Develop, implement, and maintain a system to identify, document, and respond to individual patient/client food likes and dislikes.
  - (5) Prepare and provide the clinical nutrition education component of the department employee orientation and an on-going in-service education program. Sessions are to be identified as part of the Department's overall orientation and in-service training education plan.
  - (6) Provide no less than one (1) hour of normal nutrition education and diet modification education to each new employee at the Eastern Shore Hospital Center and to each new employee of the Contractor providing direct care to patients/clients as part of the Center's orientation programs.
  - (7) Develop, implement, and monitor the clinical nutrition care aspects of the quality assessment and improvement program for the Department. This shall be achieved through clinical nutrition care studies, outcome evaluations, problem identification, solution, and follow-up. As part of the clinical aspects, at least semi-annually, the following studies shall be performed:
    - (a) A food acceptance study at all individual patient/resident units that give every patient/resident the opportunity to participate.
    - (b) A meal/tray accuracy study representing a minimum of 95% of the meal/trays served at one meal. Meals studied shall not be consecutively the same but shall vary. The Dietetic Department Director shall combine all clinical nutrition care quality assessment and improvement elements above into the overall department plan.

(8) Annually, no less than two (2) weeks prior to the anniversary date of the Contract, review, and update as necessary, the clinical nutrition care aspects of the overall Dietetic Department Quality Assurance and Improvement/Quality Control Program. With the Dietetic Department Director, add new, revised, updated aspects to the overall program which will then be resubmitted to the Quality Assurance Board and the Quality Council for review and approval.

3.2.1.11 **Food Quality**

All food purchased by the Contractor shall comply minimally with the quality and grade standards identified in this section and shall be wholesome and free from spoilage and decay. All food sources shall be approved by the Contract Monitor. Purveyors and distributors shall maintain all storage and distribution facilities in full compliance with the applicable State of Maryland sanitation regulations and those of their local jurisdiction.

- A. **Meats**: All solid cut meats shall be USDA good or better and shall have been inspected and passed by the United States Department of Agriculture. Ground beef shall be purchased to include a maximum 20% fat content. Grading certificate shall be provided where required. The latest revision of the USDA Institutional Meat Purchase Summary (IMPS) shall be used. All deliveries of potentially hazardous foods shall conform to the Maryland State Department of Health regulations governing temperature maintenance during transportation.
- B. **Fresh Fruits and Vegetables**: All fresh fruits and vegetables shall be top grade, depending on the specific fruit or vegetable and its use in preparation of finished products.
- C. **Frozen Foods**: All frozen foods shall be USDA Grade AA or A depending on the specific food and shall have been packed under continuous inspection of the U.S. Department of Agriculture. All deliveries of frozen foods shall conform to the Maryland State Department of Health regulations governing transportation of frozen foods and temperature maintenance during transportation.
- D. **Fresh Eggs**: Fresh shell eggs shall not be used except for hard cooked eggs and egg salad. All fresh liquid and frozen eggs shall be pasteurized and processed under continuous inspection of the USDA. All cans and packages shall bear the USDA seal showing the date of inspection. Frozen eggs, once thawed, shall be used promptly and may not be refrozen. All deliveries of potentially hazardous foods shall conform to the Maryland State Department of Health regulations governing temperature maintenance during transportation.
- E. **Fresh Poultry**: All poultry, fresh or frozen, shall have been inspected and passed for wholesomeness by the USDA, and shall be Grade A or better.
- F. **Fresh and/or Frozen Seafood**: All seafood shall be of the best quality and fresh chilled or frozen, and shall conform to all standards and regulations of any Health Department or agency having jurisdiction over the processing, packing, sale, transportation, or distribution of seafood.
- G. **Canned Foods**: All canned foods shall be USDA inspected and no less than Grade A, or extra standard; except that Grade B may be used for soups, stews, purees and similar items.
- H. **Dairy Products**: All dairy products shall conform to Maryland State Department of Health standards. Fluid milk shall contain a minimum of 400 IU of vitamin D and 2,000 IU of vitamin A per quart. All deliveries of potentially hazardous foods shall conform to the Maryland State Department of Health regulations governing temperature maintenance during transportation.

### 3.2.1.12 **Storage**

- a. Designated storage areas shall be provided to the Contractor by the Center. The Contractor shall be responsible for the security and cleanliness of these areas.
- b. The Contractor is responsible for maintaining adequate inventory of all food items to serve clients and employees, and to provide for emergency menu requirements. Sufficient inventory of cleaning supplies, dishwashing compounds, glassware, china, utensils, pots and pans, office supplies, sanitation supplies, trashcan liners, and paper goods shall be maintained.
- c. A bi-weekly (every two weeks) physical inventory of food and supplies shall be taken by the Contractor. A perpetual inventory may be substituted for the bi-weekly inventory.

### 3.2.1.13 **Sanitation**

- a. Operations under this Contract shall be conducted in conformance with regulations of any health department having jurisdiction, including those promulgated by the Maryland State Department of Health, COMAR 10.15.03 Food Service Facilities, and in compliance with the requirements of Dorchester County. It shall be the Contractor's responsibility to be familiar and comply with these regulations provided that the Contractor shall not be held responsible for structural deficiencies which are the responsibility of the Center.
- b. The premises, furniture, fixtures, and equipment are to be kept in a clean, sanitary, and safe condition at all times according to all applicable regulations including HACCP – based SOPs. The Contractor shall be responsible for the sanitation of the following areas:
  - 1) Kitchen - food preparation surfaces, equipment, floor drains, floors, light fixtures, vents, fans, walls, small equipment, utility carts, cutting boards, etc. The Contractor shall be responsible for exhaust hoods and filters except that the Center shall be responsible for the exhaust ducts above the ceiling.
  - 2) Dishwashing and Utensil Washing Areas - to include all equipment, floor drains, floors, walls, etc.
  - 3) Patient Cafeteria - walls, tables, and chairs will be cleaned after each meal; floors will be swept after each meal and wet-mopped daily.
  - 4) Receiving Dock - the area that is adjacent to the Dietetic Department will be maintained in a clean and orderly manner at all times and will include scrubbing and hosing as required.
  - 5) Storage Areas - those under control of the Contractor including walk-in refrigerators and freezers will be maintained in a clean and orderly manner at all times.
  - 6) Office Areas - those assigned to the Contractor, including floors and walls, etc.
  - 7) Janitors Closets and Employee Restrooms - those for the exclusive use of the Contractor and that are within the Dietetic Department.
  - 8) Cafeteria Serving Area - to include that walls, tables and chairs will be cleaned after each meal; floors will be swept after each meal and mopped daily.

- c. The Contractor shall budget for and purchase all cleaning agents and chemicals, and be responsible for the storage and controlled usage of these products. All such compounds shall be non-phosphorus and of a type approved for use within food service areas.

The Contractor shall comply with all requirements of the "Access to Information about Hazardous and Toxic Substances Law and Regulation" as established by the State of Maryland Department of Labor, Licensing and Regulation, Division of Labor and Industry.

- d. The Contractor is responsible for moving all refuse to a designated location for pick-up and removal. The Contractor will not be responsible for the removal of refuse from the Center's property.
- e. The Contractor shall regularly include basic sanitation as part of the on-going in-service training program for employees at all levels. This training shall be supplemented as necessary to reinforce specific sanitation problem areas. As a minimum, the Dietetic Department Director shall have completed a formal sanitation certification course acceptable to the Dorchester County Health Department. It is recommended that all supervisory level personnel have similar training.
- f. The Contractor shall develop a sanitation manual to include procedures for the cleaning and sanitizing of all food service equipment for which it is responsible. Procedures shall identify as a minimum the cleaning equipment to be used, method of cleaning and sanitizing equipment, including instructions regarding dilutions and/or concentrations of specific chemical compounds and/or cleaning agents as well as necessary safety precautions. The manual shall be submitted to the Center's Contract Monitor for approval no less than two (2) weeks prior to the Go-Live Date. Any changes required shall be made within seven (7) days of notification to the Contractor.
- g. The Contractor shall develop, implement, and monitor a daily cleaning and sanitation schedule for the Dietetic Department. The schedule shall be submitted to the Center's Contract Monitor for approval no less than two (2) weeks prior to the Go-Live Date. Any changes required shall be made within seven (7) days of notification to the Contractor.
- i. The Center will maintain a separate contract for pest control. The Contractor shall ensure that the Dietetic Department Director or a supervisory level designee is on duty when service is provided.
- j. The Contractor shall log and monitor the temperature of all refrigerators, freezers, and the dish machine at least three times a day to assure appropriate temperatures are maintained.
- k. The Contractor shall create, implement, and enforce guidelines and procedures in regard to making sure that all kitchen equipment not necessary for the maintenance and/or storage of food are shut down at the end of the Contractor's working day.
- l. The Contractor shall forward all manuals, schedules, and documents required to be submitted to the Center's Contract Monitor for approval no less than two (2) weeks prior to the Go-Live Date unless otherwise specified. Review and approval or requests for changes will be made to Contractor within seven (7) days after materials are received. All requests for changes shall then be performed within one (1) week of notice to the Contractor.

3.2.1.14 **Security**

- a. Keys will be provided to the Contractor by the Center for all storage and Dietetic Department areas assigned to the Contractor's use. The only Center personnel to have access to keys to these areas will be the Security Personnel on duty.
- b. Security and key control for all storage and Dietetic Department areas assigned to the Contractor's use shall be the Contractor's responsibility.
- c. Any loss of keys shall be reported immediately to the Center's Contract Monitor and Hospital Police. At the Center's option, the Contractor may be charged for replacement keys and/or for lock changes resulting because keys were lost.
- d. Duplication of keys or their possession by unauthorized personnel is a criminal offense. (See Annotated Code of Maryland, Criminal Law Article 7-204).

3.2.1.15 **Vehicles**

- a. The Contractor shall be responsible for the provision of all vehicles and drivers required for the performance of this Contract. Insurance, maintenance, service, and/or replacement of vehicles shall be the responsibility of the Contractor. Employees of the Contractor may not drive State owned vehicles.
- b. The Contractor shall utilize parking places adjacent to the loading dock area unless otherwise notified by the Center. Employees of the Contractor may only enter the Center through the loading dock doors adjacent to the kitchen area found in the service wing at the Eastern Shore Hospital Center.

3.2.1.16 **Expendable Inventory**

- a. The Center and Contractor shall jointly inventory at the commencement of this Contract, all china, flatware, glassware, and other equipment and supplies. A signed copy of the inventory shall be provided to both parties. The Center and Contractor shall then mutually agree as to the adequacy of these inventory levels for normal requirements; the Center shall bring below-normal inventories up to the agreed upon operating level at the Center's expense. The Contractor shall be responsible thereafter for making necessary replacement to maintain the agreed upon level. The Contractor shall bring below-normal inventories to the agreed upon operating level at the termination of the Contract.
- b. The Contractor shall sign for all other items provided and return them in good condition to the Center at completion of the Contract, taking into consideration normal wear and tear.

3.2.1.17 **Quality Assessment and Improvement/Quality Control**

- a. The Contractor shall develop a quality assessment and improvement/quality control program for the Dietetic Department and submit it to the Center's Contract Monitor for review and approval within thirty (30) days of commencement of the Contract. The Dietetic Department quality assessment and improvement/quality control program will be subject to review and acceptance by the Center's Quality Assessment and Improvement/Quality Control Committee for inclusion in the Center's overall plan. The program shall be reviewed annually by the Contractor's Dietetic Department Director with contemplated revisions submitted for review and approval to the Center's Contract Monitor and Quality Assessment and Improvement Committee. A written report documenting quality assessment and improvement/quality

control activities completed during the year shall be submitted to the Center's Contract Monitor annually no less than two (2) weeks prior to the anniversary date of the Contract.

- b. The focus of the quality assessment and improvement/quality control program shall be the identification and resolution of problems associated with any aspect of the Dietetic Department services. The review and evaluation of identified problems shall include corrective action and plans for restudy.
- c. The quality assessment and improvement/quality control program in addition to assessing and resolving identified problems shall include annually at a minimum:
  - Evaluation of the nutritional adequacy of the menus;
  - Evaluation of the tray identification system;
  - Evaluation of portion control accuracy;
  - Evaluation of tray assembly food temperatures;
  - Evaluation of patient/client tray/cafeteria style service food temperatures;
  - Evaluation of completed tray accuracy;
  - Evaluation of food palatability;
  - Evaluation of compliance with patient food preferences;
  - Performance and evaluation of plate waste studies;
  - Evaluation of food and supplies receiving and storage;
  - Evaluation of the adequacy of refrigeration, freezer and dish machine temperatures;
  - Evaluation of the effectiveness of overall sanitation program;
  - Evaluation of pest control measures;
  - Evaluation of employee injuries; and
  - Evaluation of the preventive maintenance program.

The Dietetic Department plan shall include an appropriate number of interdisciplinary/interdepartmental studies.

3.2.1.18 **Vending Services**

Vending machines for use within the Center shall not be part of this Contract. Contractor shall not be permitted to install or place vending machines in the facility.

3.2.1.19 **Mall Café Services**

The Contractor will operate a satellite food preparation and serving area that is separate from the Center's main cafeteria and kitchen. Referred to as the "Mall Café", this entity is a cash and carry operation that will serve patients, staff, and visitors. It is located within the same building where other food operations occur. This facility will be operated, maintained, and staffed to the same standards as the Center's other food service operations.

1. Hours of Operation

Monday through Friday

10:15-10:45 AM for patients

10:45-1:00 for staff

1:00-2:00 PM CLOSED

2:00-2:30 PM for patients (and staff if time permits)

Service times are approximate for purposes of this IFB. The actual operational hours are based on patient activity scheduling and will be set by the Contract Monitor.

2. Physical facilities

- a. The Mall Café is approximately 300 feet from the main cafeteria and kitchen.
- b. The food preparation, storage, clean up, and serving areas consist of approximately 380 square feet.
- c. Equipment includes:
  - i. A six (6) foot refrigerated serving line
  - ii. Fifteen inch flat grill with vent
  - iii. Small dual basket deep fryer with vent
  - iv. Fountain drink dispenser
  - v. Commercial refrigerator and freezer
  - vi. Small commercial ice maker
  - vii. Microwave oven

3. Menu Offerings

- a. The Mall Café historically has served light snacks and ala carte lunch offerings. The Contractor will work with the Contract Monitor to develop a menu of available goods. Potential offerings must be approved by the Contract Monitor prior to being put on sale.

Deep fryer services are not available during the morning or afternoon patient time slots except on Friday afternoons.

4. Revenue from previous years. These numbers include employee and patient transactions:

July	2016	\$1,163.90
August	2016	\$2,328.00
September	2016	\$2,281.80
October	2016	\$2,198.60
November	2016	\$1,822.00
December	2016	\$3,017.10
January	2017	\$2,428.75
February	2017	\$2,422.55
March	2017	\$2,743.40
April	2017	\$3,436.62
May	2017	\$3,081.15
June	2017	\$2,818.22
<b>TOTAL</b>		<b>\$32,010.52</b>

5. Payment options

- a. The Contractor will accept cash, credit, and debit cards as payment for goods at the Mall Cafe.



- b. The Contractor will also accept "Mall Money" and "Healthy Choice Coupons" from patients. These items are imitation financial instruments that are issued by hospital staff to patients. The Contractor will periodically submit these instruments to the Center for reimbursement at face value.

#### 3.2.1.19 Catering Services for Outside Groups Using Hospital Facilities

1. The Eastern Shore Hospital Center frequently allows groups from other government agencies or civic organizations to use the Hospital's conference rooms. Often these groups wish to serve coffee, snacks, or full meals to their attendees. The Center will refer these groups to the Contractor if they desire to have food items for their meeting. However, a group is not required to use the Contractor and may make different arrangements for food service while using Hospital facilities.
2. The Contractor will provide a menu of catering services for outside groups. This menu of services must be approved by the Contract Monitor before they can be offered to the outside groups. The Center reserves the right to modify or discontinue menu offerings after they have been approved.
3. The Contractor will have full authority to set prices for their catering services. They will notify the Chief Executive Officer's (CEO's) office 30 days prior to implementing price changes to their menu of services.
4. The Contractor will limit catering services to outside groups that are using hospital facilities. The Contractor is strictly prohibited from using the Center's kitchen to provide catering services beyond the hospital's grounds.
5. Booking of hospital facilities by outside groups must be approved by either the Chief Executive Officer or Chief Operating Officer. The Contractor must verify the booking details with the CEO's office before finalizing any catering arrangements.
6. The Contractor will use formal written catering agreements with the outside groups. These contracts must stipulate that the provision of services represents an explicit agreement between the Contractor and the outside group and that ESHC is not materially responsible for commitments made between these parties.
7. At no time will alcoholic beverages be served during these events. This is a violation of hospital policy, State regulation, and local liquor law. This includes but is not limited to beer, wine, distilled spirits, hard cider, and malt liquor.
8. The Center will provide all tables and chairs needed for catering events. The CEO's office will coordinate with the outside group the number and placement of these items.
9. Other than modest table decorations, Contractor is prohibited from decorating or enhancing the facilities for the event. There shall be no decorations that include open flames such as candles, lanterns, etc. Any decorations provided by the Contractor must comply with NFPA regulations in terms of materials and placement.
10. The Contractor will provide sufficient manpower for catering events so that food service to other areas is not adversely affected.

11. At the conclusion of catering events, the Contractor will be responsible for clearing all food service related items and disposing refuse in the Center's dumpsters.
12. The Contractor will pay the ESHC volunteer auxiliary a commission on all catering sales. The commission percentages are as follows
  - a. Ten percent (10%) for all events whose total bill is \$500.00 or less.
  - b. Fifteen percent (15%) for all events whose total bill is over \$500.00.
  - c. If multiple catering events occur on a specific day, those events will be considered separate events if they are paid/sponsored by different entities. Multiple service times to the same meeting group will otherwise will be considered one large event and standard catering commission procedures will apply.
13. ESHC Facilities available for booking include:
  - a. English Hall
    - i. 4800 square foot space that seats a maximum of 80 with tables and 125 without tables.
    - ii. 500 square foot lobby that can used for buffet style meal service.
  - b. Shoal Conference Room
    - i. 600 square foot room that seats a maximum of 30
  - c. Windsor Conference Room
    - i. 300 square foot room that seats a maximum of 10
  - d. Conference room 743
    - i. 350 square foot room that seats a maximum of 12
  - e. Conference room 717
    - i. 300 square foot room that seats a maximum of 10

### 3.2.2 Staffing Requirements

3.2.2.1 The Contractor's full-time Dietetic Department Director shall have at least the following qualifications:

a. Education

Possession of a bachelor's degree from a four year accredited college or university in Dietetics, Foods, Nutrition, Food Service Management, Food Service Administration, Hotel and Restaurant Administration, Hospitality Management or a similar major with a curriculum that requires the completion of a variety of courses such as quantity food purchasing and food production, menu development, inventory management, food cost control, budgeting, sanitation and nutrition courses required to satisfactorily direct the functions of a complex dietetic department in the provision of quality nutrition care and food services.

b. Experience:

Four (4) years full-time successful experience in a management position of a Dietetic Department, full-service menu restaurant or similar type food service operation with a minimum of two (2) years current, continuous employment with the Contractor during which one (1) year shall have been managing a complex food service operation.

c. Professional Qualifications:

Be a Registered Dietitian with the Commission on Dietetic Registration and be licensed by the Board of Dietetic Practice, State of Maryland. A photocopy of current registration and license shall be maintained by the Contractor in the Department and be updated annually for review by licensure and accreditation surveyors.

OR

Possess current membership in comparable food service oriented professional associations and provide annually proof of a minimum of fifteen (15) hours of professional continuing education related to the administrative and management responsibilities of a complex dietetic department. Documentation of continuing education shall be updated annually and maintained by the Contractor in the Department for review by licensure and accreditation surveyors.

d. Certification:

Certification of the completion of a Sanitation course approved by the Department of Health with recertification as required.

Possession of a ServSafe Certification is highly desirable but not a mandate for this position.

At the discretion of the Center's Administration, an individual with lesser qualifications may be considered, provided the Contractor can satisfactorily substantiate the inability to recruit an acceptable candidate who meets all the qualifications for the full-time Dietetic Department Director.

The Contractor may not transfer the Dietetic Department Director prior to a two (2) year tenure without the written consent of the Center's Administration. If the Dietetic Department Director ceases to be employed by the Contractor, any replacement shall meet all the above stipulated requirements and also be acceptable to the Center.

- 3.2.2.2 When the Dietetic Department Director is the sole management representative of the Contractor, and he/she is absent beyond two (2) weeks or when there are two (2) management representatives, the Dietetic Director and a designated subordinate and (1) of these employees is absent beyond four (4) weeks, the Contractor must provide at that point as a replacement, an individual with the same defined qualifications who is acceptable to the Center.
- 3.2.2.3 The Contractor shall provide supervisory employees in sufficient number to ensure that at least one (1) employee of the Contractor with designated supervisory responsibility is on duty whenever the Dietetic Department is operational. This means that from the time the first food service employee reports for duty in the morning until the last food service employee departs in the evening, there shall be at least one (1) person with supervisory responsibility on duty seven (7) days per week.
- 3.2.2.4 The number of employees to be employed and their classifications shall be defined in the Contractor's proposal and be authorized by the Center's Administration prior to employment. For all employee classifications, the term full-time shall be defined as forty (40) hours per week. For employee classifications designated other than full-time, specify the number of hours.
- 3.2.2.5 The Contractor shall provide job specifications for all authorized positions to the Center's Contract Monitor for review and approval no less than two (2) weeks prior to the Go-Live Date. Any changes required shall be made within seven (7) days of notification to the Contractor. The Contractor shall

review and revise job specifications annually no less than two (2) weeks prior to the anniversary date of the Contract and submit them to the Center's Contract Monitor for review and approval.

- 3.2.2.6 The Contractor shall develop detailed job descriptions for each employee which identify all assigned tasks and indicate the time each task is to be performed. These shall be submitted to the Center's Contract Monitor no less than two (2) weeks prior to the Go-Live Date for review and approval. Any changes required shall be made within seven (7) days of notification to the Contractor. The Contractor shall review and revise the job descriptions annually no less than two (2) weeks prior to the anniversary date of the Contract and submit to the Center's Contract Monitor for review and approval
- 3.2.2.7 A monthly employee time schedule shall be prepared in sufficient time for it to be posted two (2) weeks prior to implementation. It shall include the work hours for all employees of the Contractor. A copy shall be submitted simultaneously to the Center's Contract Monitor.
- 3.2.2.8 The Contractor shall submit to the Center's Contract Monitor, no less than two (2) Business Days prior to the beginning of each month, a schedule for the Dietetic Department Director indicating duty days, work hours, vacation days, holidays, in-service training days, etc. The Center's Contract Monitor shall be notified of any subsequent non-emergency changes to the schedule as soon as they are known.
- 3.2.2.9 It shall be the Contractor's responsibility to provide the number of employees as agreed regardless of absences due to vacation, illness, labor dispute strikes, or any other reason.
- 3.2.2.10 The Contractor shall be responsible for all personnel timekeeping related functions.
- 3.2.2.11 The Contractor shall be responsible for the supervision of its employees at all times that work is in progress to ensure compliance with all requirements of these specifications and that appropriate procedures are utilized to prohibit injury to the employees, public, and patients/clients, or damage to the physical facilities. The Contractor shall be familiar with and enforce all regulations of Occupational Safety and Health Administration (OSHA) and any other State or federal requirements pertaining to safety, fire, etc.
- 3.2.2.12 All Contractor employees shall attend a general orientation program given by the Center during their first week of employment. Documentation of employees' attendance at the orientation shall be maintained in their personnel files for review by licensure and accreditation surveyors. All employees shall participate in a Departmental orientation conducted by the Contractor during the first week of their employment. As appropriate to the employee's level of responsibility, each employee shall receive instruction and demonstrate competence in: fire safety procedures; client and staff courtesy; personal hygiene and infection control; the proper inspection, handling, preparation, serving, and storing of food; portion control; comprehending modified diet menus; sanitation procedures; waste disposal; safe operation of equipment; general safety; writing modified diets; giving diet instruction; developing, implementing, and following nutritional care protocol; employee supervision; management; etc. Documentation of the employees' orientation within the Department shall be maintained in their personnel files for review by licensure and accreditation surveyors.

Additionally, as part of the Department orientation, the Center's clinical dietitian will instruct new employees with respect to the special nutritional requirements of the Center patient/client types.

- 3.2.2.13 The Contractor shall provide relevant monthly in-service training/education programs for all Dietetic Department employees on all shifts. The Contractor shall develop an annual schedule. The annual in-service training/education program shall include safety, sanitation, and infection control each year and other subjects as required by licensure and accreditation agencies.

- 3.2.2.14 The Contractor shall develop a written plan to provide orientation training for new employees and on-going training for all employees in Hazard Analysis Critical Control Point (HACCP) procedures and the handling of food if a critical control point is not under control due to employee error, equipment malfunction, or power failure.
- 3.2.2.15 The Contractor shall provide outside educational opportunities for the Dietetic Department professional employees as part of their continuing education program. A reasonable amount of release time to attend such programs will be granted provided the subject matter is consistent with the individual's direct responsibilities at the Center. Requests for release time shall be submitted and approved in advance by the Center's Contract Monitor. Requests will be submitted in writing to the Center's Contract Monitor no less than five (5) Business Days prior to the date for which release time is being requested indicating the activity to be attended, location, date(s) it will be attended, the specific work hours for which relief time is requested, and a brief explanation of how the subject matter relates to assigned responsibilities. The Contractor will maintain documentation of continuing education participation in the employee's file.
- 3.2.2.16 The Contractor shall ensure that a representative from the corporate management staff and a supervising Registered Dietitian of the company will visit the Center at least monthly. Visits are to be coordinated so as to assure that the Center's Contract Monitor is available at the time of the visit(s). A written report of all visit(s) shall be provided to the Contractor's Dietetic Department Director and the Center's Contract Monitor within one (1) week following the visit.
- 3.2.2.17 The Dietetic Department Director shall maintain weekly performance records. This record shall be of specific services performed and is to be summarized and submitted on a quarterly basis to the Center's Contract Monitor.
- 3.2.2.18 The Contractor shall require all prospective employees to complete an application for employment.
- 3.2.2.19 All Dietetic Department employees, prior to employment, shall be required to pass a medical examination as specified by Center policy. The Contractor's policy shall minimally be the same as the Center policy. Medical Certificates shall be maintained in the employee's file at the Center for review by licensure and accreditation surveyors. The Contractor shall comply with any other health testing requirements that are initiated during the term of this Contract. The cost of all such testing shall be the sole responsibility of the Contractor.
- 3.2.2.20 All employees assigned to the Center shall be screened and/or tested for Tuberculosis. The Tuberculosis screening/testing shall be of a type acceptable for licensure standards or other applicable regulations. Each employee shall be certified free of Tuberculosis before being assigned to work at the Center. The cost of this initial test shall be the responsibility of the Contractor.
- a. Each employee shall be screened/tested annually and remain Tuberculosis free for the full time of employment.
  - b. The Center shall provide Tuberculosis testing or questionnaire for all employees who have been at the Center for one year.
  - c. If the employee requires additional diagnostic testing to determine if the employee has infectious Tuberculosis, the tests shall be conducted at the Contractor's expense.

- 3.2.2.21 Annually, the Contractor shall offer Hepatitis B vaccinations to its employees who will be working at the Center. The cost of the Hepatitis B vaccinations shall be borne by the Contractor. Annually, the Contractor shall provide documentation to the Eastern Shore Hospital Center that this requirement has been met.
- 3.2.2.22 The Contractor shall maintain records of all required medical information on each employee as required by regulation and law. The Contractor shall also provide this information to the Center's Contract Monitor upon request.
- 3.2.2.23 The Contractor shall employ and assign to duty only those employees acceptable to the Center.
- 3.2.2.24 All prospective professional/management employees shall be interviewed and approved by the Center's Administration.
- 3.2.2.25 If the Center determines, during the probationary period and/or course of employment, that an employee of the Contractor is unacceptable, the Contractor shall dismiss the employee or otherwise remove him/her from participation in this Contract.
- 3.2.2.26 The Contractor shall require all employees to comply with the rules and regulations of the Eastern Shore Hospital Center.
- 3.2.2.27 The Contractor shall develop an organization chart and submit it to the Center's Contract Monitor for Center approval at least two (2) weeks prior to the Go-Live Date. The organization chart shall be updated as needed to remain current and will be reviewed annually by the Center's Contract Monitor.
- 3.2.2.28 The Contractor shall include all personnel policies in their Policy and Procedure Manual as detailed in 3.2.1.4.a. The following policies shall be included as a minimum: employment process, orientation procedures, employee classifications, salary scales, employee benefits, performance review procedures, disciplinary process, grievance process, promotions, work hours, employee health (including physical, illness, and injury), dress code, and timekeeping.
- 3.2.2.29 All employees shall wear hair restraints when present in food service and/or production areas.
- 3.2.2.30 The Center will provide the contractor's employees with identification badges. Badges shall be worn at all times when in the Center. The Contractor shall collect ID badges and keys from employees when they cease working at the Center and turn them in to Hospital Police at the earliest possible opportunity.
- 3.2.2.31 The Contractor shall require all Dietetic Department employees other than the Dietary Director to wear uniforms and develop and enforce a dress code. Proposed uniform will be subject to Center approval. The dress code must be in accordance with State of Maryland Regulations COMAR 10.15.03. Food Service Facilities and policies as included in the Department Policy and Procedure Manual. The cost of uniforms and laundering will be the sole responsibility of the Contractor
- 3.2.2.32 The Contractor shall require all professional employees to follow an appropriate dress code when present in the food service and/or production areas. Professional employee's attire when performing job responsibilities within other areas of the Center will conform to the same dress code policy in effect for other professionals. These requirements shall be identified within the Department's dress code policy and included in the Department Policy and Procedure Manual. The dress codes shall be submitted to the Center's Contract Monitor for approval.
- 3.2.2.33 The Contractor shall be responsible for the provision of all office equipment necessary to support the food services operation such as a computer, calculator, duplicating machine, fax machine, printer, etc.

The Center will furnish local, wired telephone service and Internet connectivity. If the Contractor requires more Internet capacity than the Center provides, the Contractor agrees to pay for the cost of the additional service.

3.2.2.34 The Contractor shall be responsible for implementing a system to ensure that all food service equipment used in the daily preparation/maintenance of food products have been turned off at the end of the business day. A letter will be sent to the on-site manager notifying them of the problem within three (3) days of the discovery. If the number of occasions where food preparation/maintenance equipment being left on after the close of the business day exceeds three (3) times in a twelve (12) month period, a warning will be sent to the Contractor's headquarters. If the number of occasions exceeds six (6) in a twelve (12) month period, a letter will be sent to the corporate office of the Contractor notifying them that the manager on-site will need to be replaced.

### **3.2.3 Performance Requirements / Review**

A. Quarterly, an on premise departmental review will be conducted by the Center's Contract Monitor or designee. At a minimum, participants will include a representative of the Contractor's Corporate Management Staff, the Contractor's Supervising Corporate Dietitian, and the Contractor's Dietetic Department Director and the Center's Clinical Dietitian

The Contract specifications will form the basis of the performance review as a means of quality control and quality assurance to determine the degree of Contractor compliance and level of performance satisfaction. The minimum metrics by which the Contractor shall be evaluated include but are not limited to:

- 1) Food tray delivery on-time percentage by month;
- 2) Food tray accuracy by month; and
- 3) Patient satisfaction survey scores.

For identified areas of non-compliance or unsatisfactory compliance the Contractor will submit a plan of correction identifying the time frame for completion to the Contract Monitor within two (2) days of the review for approval. The Center will approve or reject the plan within one (1) Business Day.

A summary of the quarterly review findings will be documented by the Contract Monitor with a copy to each participant.

B. At any time, when the Contractor's level of performance and/or conditions in any area of their responsibilities is marginal or unacceptable, it will be reviewed by the Center's Contract Monitor with the Contractor's Dietetic Department Director and/or Clinical Registered Dietitian(s) as appropriate.

The Dietetic Department Director shall submit a plan of correction to the Center's Contract Monitor within two (2) Business Days from the time an unacceptable condition is reviewed with the Dietetic Department Director and/or Clinical Registered Dietitian(s), indicating corrective action and time frame for completion. The Center's Contract Monitor will approve or reject the plan within one (1) Business Day.

C. Marginal or unacceptable performance and/or conditions will be documented with a copy to the Dietetic Department Director and to the corporate management representative and/or supervising dietitian, as appropriate.

- D. In the event an unacceptable condition is life-threatening to patients/clients, employees, etc., corrective action, as directed by the Center's Contract Monitor, shall be initiated within one Business Day, if not immediately.
- E. Continuing failure to satisfactorily respond in the time frames required in accordance with this section, including but not limited to more than one (1) instance of unacceptable conditions that are life-threatening, or more than a total of three (3) situations involving marginal or unacceptable conditions during a twelve (12) month period, may be viewed as grounds for termination.

### **3.2.4 Responsibility of the Eastern Shore Hospital Center**

#### **A. FACILITY AND EQUIPMENT**

The Center will provide the Contractor with general kitchen facilities, permanently installed food service equipment, designated furnished office space, storage areas, locker area, restroom facilities, and all utensils and tableware associated with the food service operation.

#### **B. UTILITIES**

1. The Center will provide the Contractor with and pay for electric, gas, steam, water, and refrigeration as associated with and required for the sanitary operation of the Dietetic Department.
2. The Center will provide the Contractor with local telephone service and equipment within the Center. The Contractor shall be responsible for all associated long distance expenses.
3. The Center will provide the Contractor with a high speed Internet connection. The Contractor will be responsible for furnishing any networking equipment to deliver data from the building's demarcation point to offices needing Internet connectivity. The Center will provide all wiring infrastructure needed by the Contractor.

#### **C. MAINTENANCE AND REPAIRS**

1. The Center will maintain and repair the building structure, including the maintenance of water, steam, sewer, and electrical lines, ventilation, electrical lighting fixtures, and space heating systems. The Contractor will bear the expense of repairs necessitated by its employees' negligence or maliciousness.
2. All requests for repair service or replacement of equipment shall be approved by the Center's Administration. The Center will assume responsibility for payment of all equipment repairs and replacements approved by the Center.

#### **D. REFUSE REMOVAL AND HOUSEKEEPING**

The Center will provide refuse removal and all other housekeeping services not delegated to the Contractor.

#### **E. PEST CONTROL**

The Center will maintain a separate contract for pest control.



F. MEDICAL EXAMINATIONS

The Center may provide medical services to prospective food service employees to meet the requirements listed above. The Contractor, however, will be responsible for the cost of the services rendered by the Center. This includes but is not limited to pre-employment medical examinations, Hepatitis B vaccinations, and required Tuberculosis screening.

**3.2.5 Role of the Center's Contract Monitor**

The Center's Contract Monitor is the liaison between the Center's Administration and the Contractor. The Center's Contract Monitor may obtain assistance for any of the following responsibilities from an appropriate source. The Center's Contract Monitor may designate a qualified alternate in his/her absence. The Center's Contract Monitor:

1. Reviews the Contractor's operating policies and procedures for the Dietetic Department prior to final approval.
2. Reviews and approves the Policy and Procedure Manual prepared by the Contractor prior to the Go-Live Date and annually thereafter.
3. Reviews and approves all job specifications developed by the Contractor and annual revisions thereafter.
4. Reviews and approves individual employee job descriptions developed by the Contractor and annual revisions thereafter.
5. Approves all special food/function requests.
6. Reviews and recommends changes in the Contractor's employment practices and/or staffing patterns.
7. Reviews and approves the Contractor's in-service training plans and observes in-service training.
8. Establishes a regular meeting schedule with the Dietetic Department Director.
9. Monitors the performance of the clinical dietitian(s) by reviewing quarterly accomplishment reports of the dietitian(s) with the Dietetic Department Director; and by meeting monthly with the Contractor's supervising dietitian to review findings and assess that all licensure and accreditation/standards are being performed at an acceptable level of compliance.
10. Meets with the Contractor's Corporate Management representative and the supervising Registered Dietitian monthly.
11. Reviews and approves all cycle menus and monthly, anticipated menu changes/revisions.
12. Reviews and approves portion sizes and selling prices of food in the employees' cafeteria prior to the Go-Live Date and thereafter, according to price revision schedule developed by the Contractor.
13. Reviews and approves emergency menu plan and related inventory.

14. Facilitates the coordination of the Contractor's plan for responding to both an internal and external disaster with the appropriate individual/committee responsible for the total Center plan and the annual revisions thereafter.
15. Reviews and makes determinations concerning any requests for additional or replacement equipment by the Contractor and equipment repairs and/or service.
16. Monitors the Contractor's performance with respect to the Contract requirements, through review of licensing and accreditation inspection reports, conducting the performance reviews, staff consultations and other appropriate methods.
17. Reviews and approves the sanitation manual and schedule developed by the Contractor.
18. Coordinates the quarterly contract performance requirements/review evaluation.
19. Initiates requests to the Contractor concerning any aspect of the Dietetic Department operation.
20. Ensures that the Center policies and procedures are understood and complied with by the Contractor's employees.

### **3.2.6 Successor Transition**

- A. In the event the Contractor is not awarded a subsequent contract when this procurement is re-solicited, the Contractor must cooperate with the incoming new contract awardee in the following manner:
  1. Mutually take and verify all food, beverages, cleaning and sanitation supplies, and equipment inventories.
  2. Leave premises and equipment in the same condition as when the Contract began with the exception of normal wear and tear. This will be verified by an inspection conducted by the Center's Contract Monitor in the presence of the current Contractor's Dietetic Department Director.
  3. In order to enhance the transition from one contractor to another, and in keeping with the intent of item D of this section, Bidders shall certify that they will not impede any of their employees working under this Contract from accepting employment with a successor vendor for a subsequent contract.
- B. The current Contractor will verify in writing all transition activities which occurred relative to the transfer of food, supplies, equipment, and/or funds identifying the value and purpose to the Center's Contract Monitor with a copy to the incoming contractor.
- C. The Center will make space available to the incoming Contractor two (2) weeks prior to takeover for job interviews and overall planning for the transition.
- D. In the event the current Contractor is not awarded a subsequent contract when this procurement is re-solicited, the incoming new contract awardee is encouraged to extend the opportunity of employment to as many of the previous Contractor's employees as are desirous of continuing employment under the new contract as the new contract awardee determines it can accommodate.

### 3.2.8 Standards of Performance

The Contractor shall deliver comprehensive dietary services as detailed in this Multi-step IFB, all Joint Commission Standards, and the Conditions of Participation defined by the Center for Medicare and Medicaid Services.

## 3.3 Security Requirements

### 3.3.1 Employee Identification

- (a) Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.
- (b) Contractor Personnel shall cooperate with State site requirements, including but are not limited to, being prepared to be escorted at all times, and providing information for badge issuance.
- (c) Contractor shall remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion that Contractor Personnel has not adhered to the Security requirements specified herein.
- (d) The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

### 3.3.2 Criminal Background Check

- (a) A criminal background check for each Contractor Personnel shall be completed prior to each Contractor Personnel providing any services under the Contract.
- (b) The Contractor shall secure at its own expense a Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, for all Contractor Personnel listed in sub-paragraph (a). This check may be performed by a public or private entity.
- (c) The Contractor shall provide certification to the Department that the Contractor has completed the required criminal background check described in this RFP for each required Contractor Personnel prior to assignment, and that Contractor Personnel have successfully passed this check.
- (d) Persons with a criminal record may not perform services under the Contract unless prior written approval is obtained from the Contract Monitor. The Contract Monitor reserves the right to reject any individual based upon the results of the background check. Decisions of the Contract Monitor as to acceptability of a candidate are final. The State reserves the right to refuse any individual Contractor Personnel to work on State premises, based upon certain specified criminal convictions, as specified by the State.

### 3.3.3 Information Technology

For purposes of this solicitation and the resulting Contract:

- (a) "Sensitive Data" means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes information

about an individual that (1) can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of "personal information" under Md. Code Ann., Com. Law § 14-3501(d); or (4) falls within the definition of "personal information" under Md. Code Ann., State Govt. § 10-1301(c).

- (b) "Relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.
- (c) The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and shall ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of this solicitation and resulting Contract.
- (d) The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>. The State IT Security Policy may be revised from time to time. The Contractor and all subcontractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.

### 3.3.3.1 Information Security Requirements

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

- (a) Establish separate production, test, and training environments for systems supporting the services provided under this Contract and ensure that production data is not replicated in the test and/or training environment unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements.
- (b) Apply hardware and software hardening procedures as recommended by the manufacturer to reduce the Contractor/subcontractor's systems' surface of vulnerability. The purpose of system hardening procedures is to eliminate as many security risks as possible. These procedures may include but are not limited to removal of unnecessary software, disabling or removing of unnecessary services, the removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor/subcontractor's system configuration files.
- (c) Establish policies and procedures to implement and maintain mechanisms for regular internal vulnerability testing of operating system, application, and network devices supporting the services provided under this Contract. Such testing is intended to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate

compliance with or deviations from the Contractor's and/or subcontractor's security policy. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.

- (d) Where website hosting or Internet access is the service provided or part of the service provided, the Contractor and any relevant subcontractor(s) shall conduct regular external vulnerability testing. External vulnerability testing is an assessment designed to examine the Contractor's and subcontractor's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- (e) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation.
- (f) Enforce strong user authentication and password control measures over the Contractor/subcontractor's systems supporting the services provided under this Contract to minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- (g) Ensure State data under this service is not processed, transferred, or stored outside of the United States.
- (h) Ensure that State data is not comingled with the Contractor's and subcontractor's other clients' data through the proper application of data compartmentalization security measures. This includes but is not limited to classifying data elements and controlling access to those elements based on the classification and the user's access or security level.
- (i) Apply data encryption to protect State data, especially Sensitive Data, from improper disclosure or alteration. Data encryption should be applied to State data in transit over networks and, where possible, State data at rest within the system, as well as to State data when archived for backup purposes. Encryption algorithms which are utilized for this purpose must comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2.  
  
<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>  
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
- (j) Enable appropriate logging parameters on systems supporting services provided under this Contract to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information security standards including the current State of

Maryland Department of Information Security Policy:  
<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>

- (k) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under this Contract.
- (l) Ensure system and network environments are separated by properly configured and updated firewalls to preserve the protection and isolation of Sensitive Data from unauthorized access as well as the separation of production and non-production environments.
- (m) Restrict network connections between trusted and untrusted networks by physically and/or logically isolating systems supporting the services being provided under the Contract from unsolicited and unauthenticated network traffic.
- (n) Review at regular intervals the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
- (o) Ensure that the Contractor's and any subcontractor's personnel shall not connect any of their own equipment to a State LAN/WAN without prior written approval by the State. The Contractor/subcontractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor/subcontractor-owned equipment to a State LAN/WAN.

#### 3.3.3.2 Contingency / Disaster Recovery Plans

- (a) The Contractor and any relevant subcontractor(s) shall have robust contingency and disaster recovery plans in place to ensure that the services provided under this Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
- (b) The contingency and disaster recovery plans must be designed to ensure that services under this Contract are restored after a disruption within 72 hours in order to avoid unacceptable consequences due to the unavailability of services.
- (c) The Contractor and any relevant subcontractor(s) shall test the contingency/disaster recovery plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one annual test shall include backup media restoration and failover / fallback operations.
- (d) Such contingency and disaster recovery plans shall be available for the Department to inspect and to practically test at any reasonable time, and shall be subject to regular updating, revision, and testing throughout the term of the Contract.

#### 3.3.3.3 Incident Response Requirement

- (a) The Contractor shall notify the Contract Monitor when any Contractor and/or subcontractor system that may access, process, or store State data or work product is subject to unintended

access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.

- (b) The Contractor shall notify the Contract Monitor within one (1) Business Day of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Monitor and Procurement Officer.
- (c) The Contractor shall notify the Contract Monitor within two (2) hours if there is a threat to the Contractor and/or subcontractor's systems as it pertains to the use, disclosure, and security of the Department's Sensitive Data.
- (d) If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Contract Monitor within one (1) Business Day after the Contractor's discovery of such use or disclosure and, thereafter, all information the State requests concerning such unauthorized use or disclosure.
- (e) The Contractor, within one (1) Business Day of discovery, shall report to the Contract Monitor any improper or non-authorized use or disclosure of Sensitive Data. The Contractor's report shall identify:
  - 1. the nature of the unauthorized use or disclosure;
  - 2. the Sensitive Data used or disclosed;
  - 3. who made the unauthorized use or received the unauthorized disclosure;
  - 4. what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and;
  - 5. what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
  - 6. the Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- (f) The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.
- (g) This Section 3.3.3.3 shall survive expiration or termination of the Contract.

### **3.4 Insurance Requirements**

- 3.4.1 The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, with a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.

- 3.4.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with a minimum limit of \$5,000,000 per claim and annual aggregate
- 3.4.3 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.
- 3.4.4 The Contractor shall maintain Crime Insurance to cover employee theft with minimum single loss limit of \$1,000,000 per loss, and a single loss retention not to exceed \$10,000.
- 3.4.5 The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act, to not be less than one million dollars (\$1,000,000) per occurrence (unless a state's law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.
- 3.4.6 The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance and professional liability.
- 3.4.7 All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Procurement Officer, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.
- 3.4.8 Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State/
- 3.4.9 The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits, and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Monitor.
- 3.4.7 The Contractor shall require that any subcontractors to obtain and maintain the comparable levels of coverage and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

**3.5 Problem Escalation Procedure**

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

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

- 3.5.2 The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:



- The process for establishing the existence of a problem;
- Names, titles, and contact information for progressively higher levels of personnel in the Contractor’s organization who would become involved in resolving a problem;
- For each individual listed in the Contractor’s PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor’s PEP;
- Expedited escalation procedures and any circumstances that would trigger expedited escalation procedures;
- The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- A process for updating and notifying the Contract Monitor of any changes to the PEP.

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

<b>3.6 Invoicing</b>
----------------------

**3.6.1 General**

- (a) All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor. All invoices shall include the following information:
- (a) Contractor name and address;
  - (b) Remittance address;
  - (c) Federal taxpayer identification number (or if sole proprietorship, the individual’s social security number);
  - (d) Invoice period (i.e. time period during which services covered by invoice were performed);
  - (e) Invoice date;
  - (f) Invoice number;
  - (g) State assigned Contract number;
  - (h) State assigned (Blanket) Purchase Order number(s);
  - (i) Goods or services provided; and
  - (j) Amount due.

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

- (b) The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or 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. Also see the “Living Wage” provision of the Contract, if applicable, which allows for withholding of payment under certain circumstances. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.02.

**3.6.2 Invoice Submission Schedule**

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

Invoices are due by the 15<sup>th</sup> of the month following the month in which services were performed.

Invoices for reimbursement of “Healthy Choice Certificates” or “Mall Money” shall be submitted weekly. “Healthy Choice Certificates” or “Mall Money” are the hospital issued financial instruments that patients redeem for items sold at the Mall Café.

### **3.7 MBE Reports**

If this solicitation includes an MBE Goal (see Section 1.33), the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports based upon the commitment to the goal:

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

### **3.8 VSBE Reports**

If this solicitation includes a VSBE Goal (see Section 1.41), the Contractor and its VSBE subcontractors shall provide the following VSBE Monthly Reports based upon the commitment to the goal:

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

### **3.9 SOC 2 Type 2 Audit Report**

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

### **3.10 Liquidated Damages for Performance Standards**

The Contractor shall submit reports with the monthly invoice detailing measurements for the month against the performance standards in this section by the 15<sup>th</sup> of the following month. For any month in which the Contractor fails to meet one or more of the performance standards, the Contractor shall, in lieu of actual damages, pay the Department as fixed, agreed, and liquidated damages the following amounts for each standard not met. The liquidated damages shall be a credit against the following month’s invoice. The liquidated damages in this section are in addition to and not in substitution for the Department’s other rights under the Contract, including the right to terminate the Contract.

<b>Standard</b>	<b>Measurement</b>	<b>Liquidated Damages</b>
Timeliness of food tray deliveries.	The Contractor shall deliver food trays to the four patient care units no later than 10 minutes after the scheduled times for breakfast, lunch and dinner.	Less than 95% - credit of 5%
Accuracy of food trays.	Food delivered to the patient units on the food trays shall accurately correspond to the menu ordered by the hospital's dietician for breakfast, lunch and dinner.	Less than 90% - credit of 5%.
Menu substitutions.	Menu choices for the cafeteria serving line and patient trays shall not deviate from the hospital dietician's written plan.	More than two (2) menu substitutions in any week – credit of 2.5 % for each weekly occurrence.
Annual inspection.	The operation of the kitchen shall satisfy periodic inspection by the Dorchester County Health Department.	Less than 100 % - credit of 10 %.

**3.11 End of Contract Transition**

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

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

## **SECTION 4 – BID FORMAT**

### **4.1 Two Part Submission**

Bids shall be submitted in the following manner:

- A Technical Offer, including any sample(s) if appropriate, but not including any Bid pricing/cost information (see Section 4.2); and
- A Bid Price Form including all Bid pricing/cost information (see Section 4.3)

One original and three (3) copies of each, the Technical Offer and the Bid Price Form, shall be placed in separate, sealed envelopes or other appropriate packaging, with labels indicating “Technical Offer” or “Bid Price Form” as appropriate. These two separate envelopes/packages should then be placed in a singled sealed envelope or other appropriate package along with any Minimum Qualification documentation that may be required (see Section 2) and all other Required Bid Submissions (see Section 4.4). This single envelope/package shall bear the IFB title and number, name and address of the Bidder, and closing date and time for receipt of the Bids.

### **4.2 Technical Offer**

4.2.1 Technical Offer Requirements: The Bidder shall:

- a. Address each Scope of Work requirement (Section 3.2) in its Technical Offer and describe how its proposed services will meet or exceed the requirement(s). If the State is seeking Bidder agreement to any requirement(s), the Bidder shall state its agreement or disagreement. Any paragraph in the Technical Offer that responds to a Scope of Work (Section 3.2) requirement shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Bid classified as not responsive or the Bidder deemed not responsible, and the Technical Offer determined not acceptable.

Responses in the Bidder’s Technical Offer should reference the organization and numbering of Sections in the IFB (ex. “Section 3.2.1 Response . . . ; “Section 3.2.2 Response . . . ,” etc.). This Technical Offer organization will allow State officials to “map” Bidder responses directly to IFB requirements by Section number and will aid in the review process.

- b. Give a definitive description of the proposed plan to meet the requirements of the IFB, i.e., a Work Plan. It shall include the specific methodology and techniques to be used by the Bidder in providing the required services as outlined in IFB Section 3, Scope of Work. The description shall include an outline of the overall management concepts employed by the Bidder and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
- c. Provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department’s Contract Monitor should problems arise under the Contract and explain how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures must be submitted as indicated in IFB Section 3.5.
- d. Identify the location(s) in which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State’s requirements as outlined in this IFB.

- e. Provide the overall operational plan outlining the mechanisms by which the Bidder proposes to provide the required services. This narrative presentation shall describe activities, programs, and/or systems, in addition to those generally associated with the provision of nutrition care in health care facilities, which are available to be implemented and are specifically dedicated to support the provision of nutrition care in residential settings, psychiatric treatment, addiction treatments, behavior modification programs, community day treatment programs, etc. Distinguish those activities, programs, and/or systems currently functional within existing accounts and those for which initiation is proposed. The presentation shall include the proposed staffing requirements, by classification, to accomplish this plan, and shall also include a description of the information systems (computer hardware and software) to be utilized and the intended use in the performance of this contract.
- f. Identify the company's management resources and technical support systems currently utilized by the bidders in the provision of the type and extent of services requested.
- g. Identify the company's management personnel areas of responsibility, designated headquarters, and those who are available within forty-eight (48) hours of notification to meet with Center's Administration concerning unresolved problems. Describe the extent to which staff is available to provide emergency service
- h. Provide a list of personnel classifications for both professional and non-professional staff to be utilized and the number of productive labor hours for each and indicate the minimum salary of employees (at the beginning of the contract, at the end of twelve (12) months for continuously employed employees, and at the end of twenty-four (24) months for continuously employed employees). These should be costs for individual employee classifications only, not any actual bid prices.
- i. Provide a transitional plan for implementing the food service program at the Eastern Shore Hospital Center.
- j. Provide the benefit package to be provided for both professional and non-professional employees; identify if benefits are prorated for part-time and hourly employees and, if so, on what scale.
- k. Provide for each of the five (5) Contract years the percentage distribution of expenditures (but not any actual costs), by the following item expense areas:
  1. Food
  2. Labor:
  3. Administrative Professional / Management Staff
  4. Clinical Professional Staff
  5. Non-Management Staff
  6. General Operating Expenses
  7. Management Fee
  8. Administrative Expenses
- l. Provide a list of names and addresses of all health care facilities with which the company currently has accounts. Include the name of the client contact, title, telephone number, date of initial contract, and type and size of facility. If the company has established regions of operation, provide this information for the region to which the Eastern Shore account would be assigned.
- m. Provide a list of names and addresses of health care facilities that have terminated accounts with the company in the last three years. Include the name of the client contact, title, telephone number, type and size of facility, date of initial contract and termination, and the reason for termination, i.e., lost re-bid,

switched to in-house performance, etc. The Center and/or the Evaluation Committee reserve the right to contact any current or former account identified in this Section or in item #8 above.

- n. Provide a proposed complete table of contents for the Dietetic Department Policy and Procedure Manual.
- o. Provide two (2) samples of the policies and the correlated procedures that are typically included in the following section of the Dietetic Department Policy and Procedure Manual:
  - Quality Assurance and Improvement/Quality Control (include two (2) samples each of clinical and non-clinical examples)
  - Clinical Nutrition Care Protocol
  - Purchasing
  - Safety
  - Evidence of the formal procedures and controls to be implemented at the Center.
- p. Provide a minimum sample of two (2) weeks menus representative of those to be included in the Cycle Menus proposed for use at the Centers.
- q. Provide a sample of three (3) days emergency menus typical of those to be included in an emergency plan.
- r. Provide an index of the Standardized recipes available to be used to fulfill the requirements of this Contract which have been developed in Hazard Analysis Critical Control Point (HACCP) format consistent with all related requirements of COMAR 10.15.03 Food Service Facilities regulations. Provide five (5) of these standardized recipes for each of the following categories: entree, potato/vegetable, salad (two protein, one fruit and two vegetables), dessert which include the nutritional analyses and which are representative of those which will be utilized at the Centers.  
  
Provide two (2) samples of standardized recipes for consistency-modified foods, one meat, one vegetable consistent with the format specified above.
- s. Provide an in-service training and education policy and a corresponding comprehensive sample annual in-service training plan outline representative of the plan to be implemented at this Center for employees at all levels.
- t. Provide a sample table of contents for a complete Sanitation Program Manual. Provide separate detailed sanitation procedures for the following: cleaning of grease filters, cleaning of a dish machine, cleaning and sanitizing food contact surfaces, cleaning and sanitizing a food slicer and cleaning of kitchen floors similar to those which would be implemented in this Center.
- u. Provide a sample menu of catering services, and a sample catering services contract.

Some of the documents required to be submitted with the Technical Offer are samples to be representative of those to be developed for use at the Centers. The recommended awardee shall be required to furnish the Center's Contract Monitor with a complete set of all actual documents to be used at the Center no less than two (2) weeks prior to the commencement of the contract for review and approval.

The technical offer shall be presented in a clearly organized manner. Pages shall be consistently numbered and organized into sections addressing each of the requirements listed above. The bid's general format and presentation shall be unified and appear professional. The Bidder shall use proper spelling and grammar throughout. Excessive errors may constitute grounds for disqualification.

4.2.2 Technical Offers will not be opened publicly, but will be opened in the presence of at least two (2) State employees. Technical Offers will then be reviewed. Prior to the Bid Price Form opening, Technical Offers will be shown only to State employees and members of the review committee with a legitimate interest in them.

#### 4.2.3 Technical Criteria

The following criteria shall be used to determine the acceptability of each item listed or provided under Section 4.2.1 “Technical Offer Requirements.” All criteria are pass/fail. Technical Offers are not ranked but determined to be acceptable or not acceptable.

- a. The Bidder’s comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done (i.e., response to IFB Section 3.2 requirements). (see Section 4.2.1.a.)
- b. The Bidder’s Work Plan. (see Section 4.2.1.b.)
- c. The Bidder’s Problem Escalation Procedure. (see Section 4.2.1.c.)

4.2.4 After Technical Offers have been reviewed, Bidders whose Technical Offers are determined not to be acceptable, based upon the technical criteria as set forth in Section 4.2.3, will be notified in writing that their Bids are not acceptable and being rejected. Included with the rejection notice, the unopened Bid Form will also be returned. Bid Forms from only those Bidders whose Technical Offers have been found acceptable shall be publicly opened at the date, time, and place specified in the Key Information Summary Sheet and IFB Section 1.13.3.

### 4.3 Bid Price Form

The Bid shall contain all price information in the format specified on the Bid Form (**Attachment B**). Complete the Bid Form only as provided in the Bid Pricing Instructions. Do not amend, alter, or leave blank any items on the Bid Form or include additional clarifying or contingent language on or attached to the Bid Form. If option years are included, Bidders must submit Bids for each option year. Failure to adhere to any of these instructions may result in the Bid being determined to be non-responsive and rejected by the Department.

### 4.4 Required Bid Submissions

Bidders shall include the following with their Bid:

#### 4.4.1 Transmittal Letter:

A Transmittal Letter shall accompany the Bid. The purpose of this letter is to transmit the Bid and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Bidder to the services and requirements as stated in this IFB. The Transmittal Letter should include the following:

- (a) Name and address of the Bidder;
- (b) Name, title, e-mail address, and telephone number of primary contact for the Bidder;
- (c) Solicitation Title and Solicitation Number that the Bid is in response to;
- (d) Signature, typed name, and title of an individual authorized to commit the Bidder to its Bid;
- (e) Federal Employer Identification Number (FEIN) of the Bidder, or if a single individual, that individual’s Social Security Number (SSN);
- (f) Bidder’s eMM number;
- (g) Bidder’s MBE certification number (if applicable);

- (h) Acceptance of all State IFB and Contract terms and conditions (see Section 1.24); and
- (i) Acknowledgement of all addenda to this IFB.

Any information which is claimed to be confidential is to be noted by reference and included after the Transmittal Letter. An explanation for each claim of confidentiality shall be included (see Section 1.14 “Confidentiality of Bids”).

In addition, the Transmittal Letter shall indicate whether the Bidder is the subsidiary of another entity, and if so, whether all information submitted by the Bidder pertains exclusively to the Bidder. If not, the subsidiary Bidder shall include a guarantee of performance from its parent organization as part of its Executive Summary (see RFP Section 1.22 for more information).

#### 4.4.2 **Minimum Qualifications Documentation:**

The Bidder shall submit any Minimum Qualifications documentation that may be required, as set forth in Section 2 “Bidder Minimum Qualifications.”

#### 4.4.3 **Completed Required Attachments:** Submit three (3) copies of each with original signatures:

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

#### 4.4.4 **Additional Documents \*If Required:** Submit three (3) copies of each with original signatures, if required. \* See appropriate IFB Section to determine whether the document is required for this procurement:

- A Signed Statement from the Bidder’s Parent Organization Guaranteeing Performance of the Bidder. **\*see Section 1.22**
- Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) **\*see Section 1.33**.
- Completed Federal Funds Attachment (**Attachment G**) **\*see Section 1.35**.
- Completed Conflict of Interest Affidavit and Disclosure (**Attachment H**) **\*see Section 1.36**.
- Completed Mercury Affidavit (**Attachment K**) **\*see Section 1.40**.
- Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule. (**Attachment E-1**) **\*see Section 1.41**.
- Completed Location of the Performance of Services Disclosure (**Attachment L**) **\*see Section 1.42**.

#### 4.4.5 **References:**

At least three (3) references are requested from customers who are capable of documenting the Bidder’s ability to provide the services specified in this IFB. References used to meet any Bidder Minimum Qualifications (see Section 2) may be used to meet this request. Each reference shall be from a client for whom the Bidder has provided services within the past five (5) years and shall include the following information:

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

The Department reserves the right to request additional references or utilize references not provided by a Bidder.



#### 4.4.6 **List of Current or Prior State Contracts:**

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

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
  - a. The dollar value of the contract;
  - b. The term of the contract;
  - c. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
  - d. 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 Bidder's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

#### 4.4.7 **Financial Capabilities:**

The Bidder shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

#### 4.4.8 **Certificate of Insurance:**

The Bidder shall provide a copy of the Bidder's current certificate of insurance. The recommended awardee must provide a certificate of insurance with the prescribed limits set forth in Section 3.4 "Insurance Requirements," naming the State as an additional insured if required, within five (5) Business Days from notification by the Procurement Officer that the Bidder has been determined to be the apparent awardee.

#### 4.4.9 **Subcontractors:**

The Bidder shall provide a complete list of all subcontractors that will work on the Contract if the Bidder receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform.

#### 4.4.10 **Legal Action Summary:**

This summary shall include:

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

## 4.5 Reciprocal Preference

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

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

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

## 4.6 Delivery

Bidders may either mail or hand-deliver Bids.

- 4.6.1 For U.S. Postal Service deliveries, any bid that has been received at the appropriate mail room, or typical place of mail receipt for the respective procuring unit by the time and date listed in the IFB will be deemed to be timely. If a Bidder chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. It could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit and a Bidder using first class mail will not be able to prove a timely delivery at the mailroom..
- 4.6.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Bidder. For any type of direct (non-mail) delivery, a Bidder is advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.

## 4.7 Documents Required upon Notice of Recommendation for Contract Award

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

- a. signed Contract (**Attachment M**),
- b. completed Contract Affidavit (**Attachment N**),
- c. completed MBE **Attachments D-2 and D-3A/B**, within ten (10) Business Days, if applicable; \*see **Section 1.33**,
- d. MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; \*see **Section 1.33**),
- e. signed Non-Disclosure Agreement (**Attachment I**), if applicable; \*see **Section 1.37**,
- f. signed HIPAA Business Associate Agreement (**Attachment J**), if applicable; \*see **Section 1.38**,
- e. completed VSBE **Attachment E-2**, if applicable \*see **Section 1.41**,
- f. completed DHS Hiring Agreement, **Attachment N**, if applicable \*see **Section 1.43**, and

- i. copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.4 “Insurance Requirements,” listing the State as an additional insured, if applicable; \*see **Section 3.4.**

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

## IFB ATTACHMENTS

### Instructions Page

A Bid submitted by the Offeror must be accompanied by the completed forms and/or affidavits identified as “with Proposal” in the “When to Submit” column in Table 1 below. All forms and affidavits applicable to this MS-IFB, including any applicable instructions and/or terms, are identified in the “Applies” and “Label” columns in Table 1.

For documents required as part of the Proposal:

1. For e-mail submissions, submit one (1) copy of each with signatures.
2. For paper submissions, submit two (2) copies of each with original signatures. All signatures must be clearly visible.

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete certain forms and affidavits after notification of recommended award. The list of forms and affidavits that must be provided is described in Table 1 below in the “When to Submit” column.

For documents required after award, submit three (3) copies of each document within the appropriate number of days after notification of recommended award, as listed in Table 1 below in the “When to Submit” column.

TABLE 1: MS-IFB ATTACHMENTS AND APPENDICES

Applies?	When to Submit	Label	Attachment Name
Y	Before Proposal	A	Pre-Bid Conference Response Form
Y	With Proposal	B	Financial Proposal Instructions and Form
Y	With Proposal	C	Bid/Proposal Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf</a> )
Y	With Proposal	D	MBE Forms D-1A (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> ) <b>IMPORTANT:</b> If this MS-IFB contains different Functional Areas or Service Categories. A separate Attachment D-1A is to be submitted for each Functional Area or Service Category where there is a MBE goal.
Y	10 Business Days after recommended award	D	MBE Forms D-1B, D-1C, D-2, D-3A, D-3B (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> ) <b>Important:</b> Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award.

Applies?	When to Submit	Label	Attachment Name
Y	As directed in forms	D	MBE Forms D-4A, D-4B, D-5 (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> )
N	With Proposal	E	<p>Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a>)</p> <p><b>IMPORTANT:</b> If this MS-IFB contains different Functional Areas or Service Categories. A separate Attachment E-1A is to be submitted for each Functional Area or Service Category where there is a VSBE goal.</p>
N	5 Business Days after recommended award	E	<p>VSBE Forms E-1B, E-2, E-3 (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a>)</p> <p><b>Important:</b> Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award.</p>
Y	With Proposal	F	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf</a> )
N	With Proposal	G	Federal Funds Attachments (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf</a> )
Y	With Proposal	H	Conflict of Interest Affidavit and Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf</a> )
Y	5 Business Days after recommended award – However, suggested with Proposal	I	Non-Disclosure Agreement (Contractor) (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf</a> )
Y	5 Business Days after recommended award – However, suggested with Proposal	J	HIPAA Business Associate Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf</a> )

<b>Applies?</b>	<b>When to Submit</b>	<b>Label</b>	<b>Attachment Name</b>
N	With Proposal	K	Mercury Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf</a> )
N	With Proposal	L	Location of the Performance of Services Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf</a> )
Y	5 Business Days after recommended award	M	Sample Contract (included in this MS-IFB)
Y	5 Business Days after recommended award	N	Contract Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf</a> )
N	5 Business Days after recommended award	O	DHS Hiring Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf</a> )
<b>Appendices</b>			
<b>Applies?</b>	<b>When to Submit</b>	<b>Label</b>	<b>Attachment Name</b>
Y	n/a	1	Abbreviations and Definitions (included in this MS-IFB)
Y	With Proposal	2	Offeror Information Sheet (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf</a> )

<b>Additional Submissions</b>			
<b>Applies?</b>	<b>When to Submit</b>	<b>Label</b>	<b>Document Name</b>
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see <b>Section 3.6</b> ); 1 copy
Y	10 Business Days after recommended award		Problem Escalation Procedure; 1 copy
Y	With Proposal		Proof of 5 years experience
Y	10 Business Days after recommended award		Verification of Payment by Electronic Funds
Y	10 Business Days after recommended award		Transitional Plan for implementing food services at ESHC
Y	With Proposal		List of health care facilities where bidder currently operates
Y	With Proposal		Proposed Table of Contents for Dietetic Department Policy & Procedure Manual
Y	With Proposal		Sample policies and procedures - 10 total
Y	With Proposal		Sample menus two (2) seven (7) day menus
Y	With Proposal		Sample three (3) day emergency menu
Y	With Proposal		Index of Standardized Recipes
Y	With Proposal		Standardized Recipes for regular food service with nutritional analysis - twenty (20) total
Y	With Proposal		Standardized Recipes for consistency modified food with nutritional analysis - two (2) total
Y	With Proposal		Sample in-service training and educational manual
Y	With Proposal		Sample Sanitation Manual Table of contents
Y	With Proposal		Sample sanitation procedure - grease traps
Y	With Proposal		Sample Sanitation procedure - cleaning dish machine
Y	With Proposal		Sample sanitation procedure - cleaning kitchen floors
Y	With Proposal		Sample Catering Services Menu
Y	With Proposal		Transmittal Letter
Y	With Proposal		Three (3) References
Y	With Proposal		Bidders Financial Statements for two (2) years
Y	With Proposal		List of Subcontractors who will perform duties under this contract
Y	With Proposal		Legal Action Summary

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

**Solicitation Number Dietary Services for the Eastern Shore Hospital Center  
OPASS 19-18154**

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

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

Please indicate:

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

- 1.
- 2.
- 3.

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

Please specify whether any reasonable accommodations are requested (see IFB § 1.7 “Pre-Bid Conference”):

---

Signature

Title

---

Name of Firm (please print)



## ATTACHMENT B– BID PRICING INSTRUCTIONS

In order to assist Bidders in the preparation of their Bid and to comply with the requirements of this solicitation, Bid Pricing Instructions and a Bid Form have been prepared. Bidders shall submit their Bid on the Bid Form in accordance with the instructions on the Bid Form and as specified herein. Do not alter the Bid Form or the Bid Form may be rejected. The Bid Form is to be signed and dated, where requested, by an individual who is authorized to bind the Bidder to the prices entered on the Bid Form.

The Bid Form is used to calculate the Bidder's TOTAL BID PRICE. Follow these instructions carefully when completing your Bid Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this IFB and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Bid Form shall be filled in. Any blanks may result in the Bid being regarded as non-responsive and thus rejected. Any changes or corrections made to the Bid Form by the Bidder prior to submission shall be initialed and dated.
- F) Except as instructed on the Bid Form, nothing shall be entered on or attached to the Bid Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions usually render the Bid non-responsive, which means it will be rejected.
- G) It is imperative that the prices included on the Bid Form have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Form. Any incorrect entries or inaccurate calculations by the Bidder will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12, and may cause the Bid to be rejected.
- H) If option years are included, Bidders must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and will comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the IFB at the prices entered in the Bid Form.
- I) All Bid prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the IFB. The Bid price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the IFB, sample amounts used for calculations on the Bid Form are typically estimates for bidding purposes only. The Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.
- K) Failure to adhere to any of these instructions may result in the Bid being determined non-responsive and rejected by the Department.

## **ATTACHMENT B – BID FORM**

### **BID FORM**

The Bid shall contain all price information in the format specified on these pages. Complete the Bid Form only as provided in the Bid Pricing Instructions. Do not amend, alter or leave blank any items on the Bid Form. If option years are included, Bidders must submit Bids for each option year. Failure to adhere to any of these instructions may result in the bid being determined non-responsive and rejected by the Department.

See Separate Excel Bid Form labeled OPASS 19-18154 Bid Price Form.xls.

**ATTACHMENT C – BID/PROPOSAL AFFIDAVIT**

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid\\_Proposal-Affidavit.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf).

## ATTACHMENTS D – MINORITY BUSINESS ENTERPRISE FORMS

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf>.

This solicitation includes a Minority Business Enterprise (MBE) participation goal of 3 percent and no subgoals.

**ATTACHMENTS E – VETERAN-OWNED SMALL BUSINESS ENTERPRISE**

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

## ATTACHMENT F – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf> to complete the Affidavit.

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
    - (a) Has a State contract for services valued at less than \$100,000, or
    - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
  - (2) A Subcontractor who:
    - (a) Performs work on a State contract for services valued at less than \$100,000,
    - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
    - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B(3) or C below.
  - (3) Service contracts for the following:
    - (a) Services with a Public Service Company;
    - (b) Services with a nonprofit organization;
    - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
    - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.

- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dlir.state.md.us/labor/> and clicking on Living Wage for State Service Contracts.

**ATTACHMENT G - FEDERAL FUNDS ATTACHMENT**

This solicitation does not include a Federal Funds Attachment.



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

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf>.

**ATTACHMENT I – NON-DISCLOSURE AGREEMENT**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf>.

**ATTACHMENT J – HIPAA BUSINESS ASSOCIATE AGREEMENT**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf>.

**ATTACHMENT K – MERCURY AFFIDAVIT**

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

**ATTACHMENT L– LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf>.

**ATTACHMENT M – CONTRACT**

**DIETARY SERVICES FOR THE EASTERN SHORE HOSPITAL CENTER**

THIS CONTRACT (the “Contract”) is made this \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year) by and between \_\_\_\_\_ (Contractor’s name) and the STATE OF MARYLAND, acting through the Department of Health.

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

**1. Definitions**

In this Contract, the following words have the meanings indicated:

- 1.1 “Bid” means the Contractor’s Bid dated (Bid date).
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contract” means this agreement between \_\_\_\_\_ (Contractor’s name) and the State of Maryland, acting through the Department of Health
- 1.4 “Contract Monitor” means the Department employee identified in Section 1.6 of the IFB as the Contract Monitor.
- 1.5 “Contractor” means \_\_\_\_\_ (Contractor’s name) whose principal business address is \_\_\_\_\_ (Contractor’s primary address) and whose principal office in Maryland is \_\_\_\_\_ (Contractor’s local address).
- 1.6 “Department” means the Maryland Department of Health.
- 1.7 “IFB” means the Invitation for Bids for Dietary Services For the Eastern Shore Hospital Center Solicitation # OPASS 19-18154), and any addenda thereto issued in writing by the State.
- 1.8 “Procurement Officer” means the Department employee identified in Section 1.5 of the IFB as the Procurement Officer.
- 1.9 “State” means the State of Maryland.

**2. Scope of Contract**

- 2.1 The Contractor shall provide deliverables, programs, goods, and services specific to the Contract for comprehensive dietary services at the Eastern Shore Hospital Center awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The IFB

Exhibit B – State Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_ (date of Attachment N)

Exhibit C – The Bid

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 IFB. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

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

3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately Five (5) beginning March 1, 2019 and ending on February 29, 2024.

3.2 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

### **4. Consideration and Payment**

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal.

4.2 Unless a payment is unauthorized, deferred, delayed, or set off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than thirty (30) days after the State's receipt of a proper invoice from the Contractor. The Contractor may be eligible to receive late payment interest at a rate of 9% per annum if: (1) The Contractor submits an invoice for the late payment interest within 30 days after the date of the State's payment of the amount on which the interest accrued; and (2) A Contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is \_\_\_\_\_. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any

invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

4.5 Contractor's eMaryland Marketplace vendor ID number is \_\_\_\_\_.

## **5. Rights to Records**

5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

5.5 Upon termination of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## **6. Exclusive Use**

6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Department's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract.



## **7. Patents, Copyrights, and Intellectual Property**

- 7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.
- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **8. Confidential or Proprietary Information and Documentation**

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH ACT, and the Maryland Medical Records Act and the implementation of regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.
- 8.2 This Section 8 shall survive expiration or termination of this Contract.

## **9. Loss of Data**

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.

## **10. Indemnification**

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and

disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.

- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 10.3 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or 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.
- 10.6 This Section 10 shall survive termination of this Contract.

## **11. Non-Hiring of Employees**

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## **12. Disputes**

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## **13. Maryland Law**

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.
- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

## **14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

#### **15. Contingent Fee Prohibition**

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 21.07.01.12A(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, interruptions, interferences, 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 thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

**23. Political Contribution Disclosure**

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

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

The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

## **25. Right to Audit**

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or subcontractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the Contract services being performed for the State.
- 25.2 Upon three (3) Business Days' notice, the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy, at its own expense, any record related to the services performed and provided under this Contract.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the Department has the right to audit such subcontractor(s).
- 25.4 The Contractor and/or subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.
- 25.5 This Section shall survive expiration or termination of the Contract.

## **26. Compliance with Laws**

The Contractor hereby represents and warrants that:

- 26.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 26.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 26.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

26.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

**27. Cost and Price Certification**

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/Proposal.

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/Proposal, was inaccurate, incomplete, or not current.

**28. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer provided, however, that a Contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

**29. Liability**

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

29.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;

29.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and

29.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

**30. Commercial Nondiscrimination**

30.1 As a condition of entering into this Contract, 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, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall 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 the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and 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 Contract between the Contractor and subcontractor, due to be distributed to the subcontractor; and
  - b. An amount withheld because of issues arising out of a Contract or occurrence unrelated to the Contract under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- a. Affect the rights of the contracting parties under any other provision of law;
  - b. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
  - c. Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:

- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
- 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 thirty (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 thirty (30) days and invoices for which the subcontractor has not been paid.
- c. If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- 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, then the Department may:
  - i. Terminate the contract;
  - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
  - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- 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. Living Wage**

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the agency may withhold payment of any invoice or retainage. The agency may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

### **33. Variations in Estimated Quantities**

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

### **34. Contract Monitor and Procurement Officer**

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



**35. Notices**

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

If to the State: Dana Dembrow  
Procurement Officer  
Office of Procurement and Support Services  
Maryland Department of Health  
201 West Preston Street  
Baltimore, MD 21201

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

**36. Liquidated Damages**

36.1 The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor expressly agrees that the State may withhold payment on any invoices as an offset against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of each violation.

36.1.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): \$50.00 per day until the monthly report is submitted as required.

36.1.2 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): \$50.00 per MBE subcontractor.

36.1.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.

36.1.4 Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

36.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$50.00 per day until the undisputed amount due to the subcontractor is paid.

36.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and to exercise any and all other rights or remedies which may be available under the Contract or which otherwise may be available at law or in equity.

**37. Parent Company Guarantee**

If a Contractor intends to rely on its Parent Company in some manner while performing on the State Contract, the following clause should be included and completed for the Contractor's Parent Company to guarantee performance of the Contractor. The guarantor/Contractor's Parent Company should be named as a party and signatory to the Contract and should be in good standing with SDAT.)

\_\_\_\_\_ (Corporate name of Contractor's Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by \_\_\_\_\_ (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. \_\_\_\_\_ (Corporate name of Contractor's Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. \_\_\_\_\_ (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, suit or proceeding against \_\_\_\_\_ (Contractor), \_\_\_\_\_ (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

**38. 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 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the Department immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

**39. Compliance with Federal HIPAA and State Confidentiality Law**

39.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:

- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;

- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
- (c) Otherwise providing good information management practices regarding all health information and medical records.

39.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form as required by the Department.

39.3 Protected Health Information as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

#### **40. 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 Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and MDH Policy 02.06.07.

#### **41. Miscellaneous**

41.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.

41.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

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

CONTRACTOR

STATE OF MARYLAND  
DEPARTMENT OF HEALTH

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

By: Robert Neall, Secretary  
Or designee: \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Date

PARENT COMPANY GUARANTEE  
(If Applicable)

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

Date \_\_\_\_\_

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Assistant Attorney General

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

(Date)

\_\_\_\_\_  
(BPW Item #)

**ATTACHMENT N- CONTRACT AFFIDAVIT**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf>.

**ATTACHMENT O – DHS HIRING AGREEMENT**

This solicitation does not require a DHS Hiring Agreement.