



## Department of Health

# REQUEST FOR PROPOSALS (RFP)

SOLICITATION NO. MDH/OPASS 18-17900

Issue Date: December 27, 2017

## **Medicaid Program Business Process Consulting Diagnostic Services and Roadmap for Change**

### NOTICE

A Prospective Offeror that has received this document from the Maryland Department of Health's website <https://health.maryland.gov/procumnt/Pages/Procopps.aspx>, the eMaryland Marketplace (see Section 4.2) web site <https://emaryland.buyspeed.com/bsol/>, or a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this RFP should immediately contact the Procurement Officer and provide the Prospective Offeror's name and mailing address so that addenda to the RFP or other communications can be sent to the Prospective Offeror.

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

**STATE OF MARYLAND  
NOTICE TO VENDORS**

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

**Title: Medicaid Program Business Process Consulting Diagnostic Services and Roadmap for Change**  
**Solicitation No: MDH/OPASS 18-17900**

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 Proposal is insufficient.
  - Start-up time is insufficient.
  - Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
  - 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**  
**RFP KEY INFORMATION SUMMARY SHEET**

**Request for Proposals:** **Medicaid Program Business Process Consulting Diagnostic Services and Roadmap for Change**

**Solicitation Number:** **MDH/OPASS 18-17900**

**RFP Purpose** **To obtain advisory consulting services to analyze the current administrative state of the Medicaid Program, identify opportunities for improvement and create a roadmap to implement Department accepted changes.**

**RFP Issue Date:** **December 27, 2017**

**RFP Issuing Office:** **Maryland Department of Health  
Medicaid Program**

**Procurement Officer:** **Dana Dembrow**  
**(See Appendix 1 Definition)** **Office of Procurement and Support Services**  
**201 W. Preston Street, Room 416 A**  
**Baltimore, MD 21201**  
**Phone: (410) 767-0974 Fax: (410) 767-5958**  
**e-mail: [mdh.solicitationquestions@maryland.gov](mailto:mdh.solicitationquestions@maryland.gov)**

**Contract Monitor:** **Tricia Roddy**  
**Director, Planning Administration**  
**Health Care Financing**

**Contract Officer:** **Jessica Fields**  
**(See Appendix 1 Definition)** **Office of Procurement and Support Services**  
**e-mail: [mdh.solicitationquestions@maryland.gov](mailto:mdh.solicitationquestions@maryland.gov)**

**Proposals are to be sent to:** **Maryland Department of Health**  
**(See RFP Section 5.2)** **Office of Procurement and Support Services**  
**201 West Preston Street, Room 416 B**  
**Baltimore, Maryland 21201**

**Attention: Jessica Fields**

|   |  |
|---|--|
| <b>Pre-Proposal Conference:</b><br>(See RFP Section 4.1)  | <b>January 12, 2018 1:00-3:00 pm Local Time</b><br><b>201 W. Preston Street, Conference Room L-3</b><br><b>Baltimore, Maryland 21201</b>   |
| <b>Closing Date and Time:</b><br>(See RFP Section 4.5)  | <b>February 8, 2018; 2:00 p.m. Local Time</b>  |
| <b>MBE Subcontracting Goal:</b><br>(See RFP Section 4.26)   | <b>0%</b>  |
| <b>VSBE Subcontracting Goal:</b><br>(See RFP Section 4.27)  | <b>0%</b>  |
| <b>Contract Type:</b><br>(See RFP Section 3.4.1)  | <b>Firm, fixed price component and labor hour component.</b>   |
| <b>Contract Duration:</b><br>(See RFP Section 2.1.3)  | <b>The later of six months from the anticipated Go-Live Date (see Appendix 1 Definition), of January 2, 2018, or two months after acceptance by the Contract Monitor of a Final Report. This six-month, or two months after acceptance of the Final Report term is in addition to the duration of the Start-Up Period (see Appendix 1 Definition).</b> |
| <b>Number of Contract Awards</b><br>(See RFP Section 4.9)   | <b>One</b>   |
| <b>SBR Designation:</b><br>(See RFP Section 4.31)   | <b>No</b>  |
| <b>Federal Funding:</b><br>(See REF Section 4.29)   | <b>Yes</b>   |
| <b>Offeror Minimum Qualification:</b><br>(See RFP Section 1)  | <b>Yes</b>   |
| <b>Contract Extended to Other Governments and/or Maryland Non-Profits</b><br>(See RFP Section 4.38) | <b>No</b>  |

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## **SECTION 1 – OFFEROR MINIMUM QUALIFICATIONS**

### **Offeror Minimum Qualifications**

- 1.1 Each Offeror responding to this RFP must satisfy the following qualifications. Within 5 years prior to the issue date of this RFP the Offeror must have performed:
  - 1.1.1 Consulting or advisory services for at least two U.S. state or territory Medicaid programs with each consulting or advisory service engagement valued at over \$200,000.
  - 1.1.2 A business process reengineering analysis for at least two public or private organizations with at least 500 employees each and valued at no less than \$100,000 each.
  - 1.1.3 The requirements in Sections 1.1.1 and 1.1.2 can be satisfied by the same engagements.
- 1.2 As proof that an Offeror satisfies the requirements listed in Section 1.1, the Offeror shall submit a statement that identifies the complying engagements that it has performed, including all the information required in Sections 5.4.2.5 and 5.4.2.9.

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

### **2.1 Summary Statements**

- 2.1.1 The Maryland Department of Health (MDH or the Department) intends to obtain services, as specified in this RFP, from a Contract between the selected Offeror and the Department.
- 2.1.2 An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.3 The duration of this Contract will be the period of time between Contract Commencement (see Appendix 1, Definition.) and the Go-Live Date (see Appendix 1, Definition.), which as of the issue date of this RFP is anticipated to be January 2, 2018, plus either six months after the Contract Go-Live Date or two months after the Final Report is accepted by the Contract Monitor, whichever timeframe is later. (See Section 2.3.2.5.2.3.)

### **2.2 Purpose and Background**

#### **2.2.1 Purpose**

The Department is issuing this solicitation to obtain a Contractor to provide a small team of senior advisors that, within a four month period after the Contract Go-Live Date, will: 1. perform an analysis of the administrative aspects of the Department’s Medicaid program (i.e., perform an AS-IS analysis); 2. recommend business process, organization, etc., changes to improve the performance of the Medicaid Program, including associated analyses of the rough magnitude of economic impacts, resource allocation, and implementation timeframe (i.e., make TO-BE recommendations); and 3. provide guidance (a “roadmap”) for how over a several year period the Department might best implement the changes. Within 4 months after the Go-Live Date, the Contractor is to summarize all its analysis, findings and recommendations in a Final Report. Also, after the Final Report is accepted by the Contract Monitor, appropriate Contractor staff are to be available for two or more additional months to attend meetings with non-Department State officials to help explain the recommendations and their rationale. (See Section 2.3.) The objective is not detailed analysis and recommendations for implementing systems and programs, but rather executive-level analysis and recommendations to inform strategy and priorities.

#### **2.2.2 Background**

The Maryland Medicaid Program, a unit of the Department, currently serves over 1.3 million Marylanders, through approximately 100,000 approved providers and eight (8) managed care organizations, with an annual expenditure of \$11 billion. The Program currently has roughly 600 employees to perform its responsibilities, plus contracts with a number of vendors for such activities as member and provider call center, eligibility determinations for beneficiaries, quality assurance, data-base management, payment error recoveries, pharmacy program rebates and preferred drug list, and prior approvals for certain services.

Collectively, the Medicaid Program has perhaps the biggest direct impact within the Department on Maryland citizens, the largest number of contracted providers and by far the largest percentage of cost of all units of the Department. In fact, expenditures for all aspects of the Medicaid Program account for almost 30% of the total annual budget of the State. Due to both the huge impact of the Program on the health of Marylanders and its very

high cost, it is imperative that the Program operates as efficiently as possible from both a service delivery and cost perspective.

Whereas, the Program and Department are continually performing self-analyses of ways for the Program to optimally perform its critical health delivery mission and to do so as economically as feasible, it is believed that analysis by an outside entity skilled in the intricacies of the national Medicaid program and the health care industry generally, as well as business process re-engineering and change management, can validate those areas where the Program is performing appropriately and recommend changes to improve areas judged to be sub-optimal.

Moreover, the position of Deputy Secretary for Medicaid, which oversees the Program within the Department, became vacant in August 2017. While a national recruitment effort has been initiated to fill this position, it will take a number of months before this position is actually filled and the selected person is on the job. It will take additional time for the new Deputy Secretary to become familiar with all aspects of the Program he/she will oversee. Accordingly, this is an especially opportune time to “step-back”, figuratively speaking, and have outside experts perform a diagnostic assessment of all components of the Program and its strategies and recommend the best manner to operate the Program in the foreseeable future.

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

### **2.3.1. High-Level Deliverables**

The Contractor shall:

- 2.3.1.1 Analyze existing workflow processes and organizational structure to identify opportunities for improvement;
- 2.3.1.2 Present a portfolio of opportunities for improvement that are prioritized on the basis of expected benefits (cost reductions, cost avoidance, service improvement, compliance, risk mitigation, and other factors) and anticipated costs (budget, time, organizational change, and other factors), with benefits and costs being rough orders of magnitude estimates;
- 2.3.1.3 Develop points of view and recommendations for MDH success with key initiatives related to Medicaid, including, *but not limited to*, the Maryland Medicare Contract (and the embedded All-Payer Model), along with the related Primary Care Model and Rural Health Care Model;  
<http://hscrc.maryland.gov/Pages/progression.aspx>
- 2.3.1.4 Assist with change management planning and the execution of reengineered business processes;
  - 2.3.1.4.1 Present a high-level roadmap for change over the next three to five years. This roadmap will consist of initiatives or projects for consideration by the Secretary and incoming Deputy Secretary.

### **2.3.2. Detailed Deliverables**

#### **2.3.2.1: Contractor Team**

The Contractor shall:

- 2.3.2.1.1 Provide a small team of highly competent, senior level advisors who will perform an analysis of administrative aspects of the Medicaid Program. Activities should focus on engaging the Department's Medicaid organization to learn the people, processes, and technology, to develop an assessment of capabilities, especially relative to benchmarks and leading practices for Medicaid programs in other states.
- a. It is expected that this team will be comprised of three or four core members, although there may be more depending upon what has been recommended in the Contractor's Proposal.
    - i. In accordance with Sections 3.10, Substitution of Personnel, and 5.4.2.7 all core team members shall be the same persons identified in the Contractor's Proposal, unless a substitution has been approved by the Contract Monitor.
  - b. The core team members may be augmented by other Contractor personnel or resources with expertise in specific aspects of the Program, as recommended in the Contractor's Proposal or as approved by the Contract Monitor.
    - i. If any non-core team members were identified in the Contractor's Proposal, they also shall be the same personnel who will perform the duties described for them in the Contractor's Proposal, unless substitution is permitted by the Contract Monitor as described in Section 3.10.
  - c. While the core members of the team are expected to devote a large percentage, or even the majority, of their time fulfilling the requirements of the Contract for the duration of the Contract, the members need not be dedicated exclusively to fulfilling this Contract, as long as the Contract deliverables are provided at the level of required quality and within the required timeframe.
    - i. Unless otherwise approved by the Contract Monitor, all team members will devote the amount or percentage of their time as was described in the Contractor's Proposal or the Detailed Work Plan submitted in response to Section 2.3.2.5.1.1.

### **2.3.2.2 Contractor Work Location(s)**

#### **2.3.2.2.1 Department Provided Space**

2.3.2.2.1.1 The Department will provide space at its 201 W. Preston St. Headquarters (the "Headquarters Building") for use to Contractor personnel. A maximum of 3-4 persons including core and non-core members of the team.

2.3.2.2.1.2 While Contractor team members are not required to spend any specific amount of time in this State-provided space, because of the need to both observe all aspects of the operation of the Program, as well as to interview Program staff and possibly other Department personnel, it is expected that working from State-provided space will enhance the Contractor's ability to successfully perform Contract requirements.

- a. This State-provided space will include a desk and chair, telephone with local access, and will be accessible during Normal State Business Hours (see Appendix 1, definition.) This space may also be accessible outside of Normal State Business Hours upon at least 1 Business Day advance request to the Contract Monitor. (The Contract Monitor must, in turn, receive approval from State security personnel for the requested after-hours work schedule.) Contractor personnel may not work in the Headquarters' Building outside of approved hours.
- b. Although space will be provided as described in 2.3.2.2.1, Contractor personnel are not required to work from that space exclusively. They may use the Department space when convenient or work from Contractor or other locales when they prefer.
- c. The Contract Monitor will attempt to obtain parking for Contractor staff within the Headquarters Building when provided with at least two Business Days' notice of a request for parking. However, such "on demand" parking is very limited, and is issued on a first-come-first-served basis by the State Department of General Services. Accordingly, Contractor staff must always be prepared to provide

their own parking or means to get to the Headquarters Building that does not require State-provided parking.

d. Contractor personnel working from State-provided space must exercise appropriate care for Department property and resources, and must abide by all physical and IT security requirements described in Section 3.2.

#### 2.3.2.2.2 Contractor Provided Space

The Contractor may perform work under the Contract from non-State provided space, as it deems most appropriate to accomplish the requirements of the Contract.

2.3.2.2.2.1 If the Contractor uses more personnel to perform the Contract than can be accommodated in State-provided space, as described in Section 2.3.2.2.1.1, it must provide the working space for all personnel in excess of those that can be accommodated in State-provided space.

2.3.2.2.2.2 If there is Contractor provided space within 20 miles of the Headquarters Building, at the discretion of the Contract Monitor meetings that otherwise would be held on State premises may be held at the Contractor location.

#### 2.3.2.3 Access to Department Resources

The Department will provide Contractor personnel with appropriate access to Department information, personnel, contractors, systems, premises and equipment.

2.3.2.3.1 “Appropriate access” will vary time-wise, depending upon whatever length of time is required to reasonably arrange for the presence of specific State personnel or personnel of other State contractors, or to provide requested information. Moreover, there may be occasions when Contractor personnel will have to travel to the location of other State contractors in order to meet their staff or examine their operations.

2.3.2.3.2 Contractor personnel shall safeguard all property, resources, information, etc. provided by the Department, including abiding by the requirements of Sections 3.2.3 concerning maintaining the security of State data information.

#### 2.3.2.4 Time Frames

2.3.2.4.1 All activities that must be performed prior to the submission of a Draft Final Report (see Section 2.3.2.5.2.2), must be performed no later than three months after the Go-Live Date.

2.3.2.4.2 A Draft Final report must be submitted to the Contract Monitor within the timeframe stated in the Contractor’s Proposal, which must be no later than three and a half months after the Go-Live Date

2.3.2.4.3 A Final Report (see Section 2.3.2.5.2.3), must be submitted to the Contract Monitor within the timeframe stated in the Contractor’s Proposal, which must be no later than four months after the Go-Live Date.

2.3.2.4.4 At least some, and preferably all, Contractor personnel who were integrally involved in the preparation of the Final Report must be available to attend meetings with State executive or legislative branch officials to explain the recommendations contained in the Final Report for either two months after the Final Report has been accepted by the Contract Monitor on behalf of the Department, or for up to six months after the Go-Live Date, whichever period of time is longer. (See Section 2.3.2.5.3.3.)

2.3.2.4.5 If the Contractor’s Final Report is not accepted by the Contract Monitor on behalf of the Department within the timeframe listed in 2.3.2.4.3, upon direction of the Contract Monitor the Contractor must continue its efforts to produce an acceptable Final Report until either a Final Report is accepted by the

Contract Monitor, or the Contract Monitor notifies the Contractor in writing to cease additional effort to produce an acceptable Final Report.

- i. The Contractor shall not be entitled to any more compensation than the firm fixed price quoted in its Financial Proposal on the Price Form, regardless if it is required to expend more time and effort to produce an acceptable Final Report than anticipated in its Proposal.
- ii. The Contractor must make appropriate personnel as described in 2.3.2.5.3.3 and 3.4.2.1.3 available to attend meetings for up to two months after acceptance of the Final Report, even if this 2-month period runs more than six months after the Go-Live Date.
- iii. If the Contract Monitor notifies the Contractor at any time to cease additional effort to produce an acceptable Final Report because of the perceived inability or unwillingness of the Contractor to produce a viable Final Report, the Contract Monitor will request the Procurement Officer to declare the Contractor to be in default of the Contract. If the Procurement Officer agrees that the Contractor has defaulted on the Contract, the provisions of Attachment M, clause 17 will apply.

2.3.2.4.6 If the Contractor in its Proposal has committed to provide the Draft Final Report and/or the Final Report in shorter time frames than required in 2.3.2.4.2 and 2.3.2.4.3, it will be required to abide by the timeframe(s) contained in its Proposal. But, even if the Contractor submits the required Reports prior to the timeframes stated in 2.3.2.4.2 and/or 2.3.2.4.3, its personnel as described in 2.3.2.4.4 must remain available to attend meetings until six months after the Go-Live Date.

### **2.3.2.5 Plans, Reports and Meetings**

#### **2.3.2.5.1 Plans**

2.3.2.5.1.1 **Detailed Work Plan** (Work Plan): As required in Section 5.4.2.6, the Contractor will have provided a draft work plan as part of its Technical Proposal. No later than 10 Business Days after Contract Commencement the Contractor is to expand upon and finalize its draft work Plan, detailing how it will complete all requirements of the Contract within the required timeframe, and submit this proposed final Work Plan to the Contract Monitor for comment and/or approval. If the Contract Monitor requires changes in this proposed Work Plan, the Contractor shall make the required changes within five Business Days from notification by the Contract Monitor and return the revised Work Plan to the Contract Monitor for approval.

2.3.2.5.1.1.1 The Work Plan is to Contain:

- a. The identity of all significant Contractor personnel who will work under the Contract, which must include any personnel included in the Contractor's Proposal.
- b. The approach the Contractor will employ to satisfy Contract deliverables and timeframes.
- c. Actual dates or number of days after the Go-Live Date when each significant aspect of Contract compliance will be performed.
- d. The additional personnel, resources etc. that will be deployed by the Contractor in the contingency that its planned efforts prove inadequate to successfully accomplish the High-Level Deliverables contained in 2.3.1.

2.3.2.5.1.1.2 In its Work Plan the Contractor must identify a single individual to act as the Contractor's Contract Manager. This should be the same person identified in the Contractor's Technical Proposal to perform this role (see Section 5.4.2.7, unless the Contract Monitor approves a different person for this activity).

2.3.2.5.1.2 **Corrective Action Plan (CAP):** For issues of actual or perceived failure to meet deliverables timeframes, perceived inadequacy of analysis or errors in understanding current aspects of the operation

of the Program, etc. if the contingency efforts described in Section 2.3.2.5.1.1.1d, are judged by the Contract Monitor to still be inadequate to put work efforts back on track, the Contract Monitor may require a Corrective Action Plan (CAP) in which the Contractor describes how it will augment or otherwise improve its efforts to meet the deliverables requirements. The Contract Monitor may determine the need for a CAP based upon the contents of Contractor monthly reports (see 2.3.2.5.2.1), the failure to meet the timeframes or perform the actions contain in the Detailed Work Plan (see 2.3.2.5.1.1), what is learned through discussions with Contractor personnel and/or observed actions or lack of action by the Contractor.

2.3.2.5.1.2.1 This CAP is due to the Contract Monitor within five Business Days from the date the Contract Monitor directs the CAP to be done.

2.3.2.5.1.2.2 The Contractor shall make any revisions to its CAP required by the Contract Monitor and within three Business Days return the CAP for approval by the Contract Monitor.

2.3.2.5.2.5.3 If in the opinion of the Contract Monitor any staff is not properly/timely completing Contract work activities for any reason, including if the staff is judged by the Contract Monitor to be devoting too many hours working on activities other than under this Contract, the Contract Monitor can direct the Contractor to add one or more additional staff to the Contract until all required work under the Contract is being timely and properly prepared. Alternatively, in accordance with Section 3.10.4.4, the Contract Monitor may direct the Contractor to replace the non-performing staff with a substitute with equivalent qualifications and capability.

## **2.3.2.5.2 Reports**

2.3.2.5.2.1 Monthly Report: On a monthly basis, the Contractor is to provide a report of its activities to the Contract Monitor.

- a. This report is due to the Contract Monitor no later than three Business Days after the end of each 30-day period of the Contract, starting from Contract Commencement (See Appendix 1, definition.)
- b. The Contract Monitor will in-turn provide this report to the Department Secretary, the Deputy Secretary for Medicaid, once hired, and other members of the Secretary's leadership team. Accordingly, the Contract Monitor will review this monthly report for completeness, accuracy, presentation (proper spelling, punctuation, formatting, etc.), and progress in meeting deliverables timeframes.
- c. For issues of presentation, completeness and accuracy the Contractor shall make any changes to its monthly report and return the revised report to the Contract Monitor within two Business Days of receiving comments from the Contract Monitor.
- d. For more substantive issues than just presentation, the Contractor shall make any changes to its monthly report and return the revised report to the Contract Monitor within four Business Days of receiving comments from the Contract Monitor.

2.3.2.5.2.2 Draft Final Report: Within the timeframe identified in its Proposal and Detailed Work Plan, but no more than three and a half months after the Go-Live Date, the Contractor shall provide the Contract Monitor with a Draft Report in Microsoft Word covering all deliverables required under the Contract.

- a. The Draft Report shall be provided electronically and also in one printed-out, or "hard copy."
- b. Within three Business Days, the Contractor must make any changes in the Draft Report required by the Contract Monitor and return the revised draft to the Contract Monitor;
- c. Whereas, the Contract Monitor may not require the Contractor to change any recommendation, the Contract Monitor may request more details or substantiation for any recommendation.
- d. Based upon comments from the Contract Monitor, the Contractor may agree to change one or more of its recommendations.

- e. The Contractor may be required to meet with the Secretary and/or others to discuss/defend its recommendations.
- f. If the Contract Monitor does not believe the Contractor has devoted adequate effort to properly fulfill the High-Level Deliverables (see Section 2.3.1) that are to be the focus of the Draft Final Report, including if directed to take this position by the Department Secretary or Deputy Secretary for Medicaid, at the option of the Contract Monitor:
  - a. The Contractor may be directed to prepare a Corrective Action Plan as described in 2.3.2.5.1.2
  - b. The Contractor may be afforded more time to either revise its Draft Final Report or further defend the appropriateness of its recommendations; or
  - c. The Procurement Officer may terminate the Contract for default in accordance with Attachment M, clause 17.

2.3.2.5.2.3 **Final Report:** Within three Business Days of when the Draft Final Report has been accepted by the Contract Monitor, the Contractor shall re-submit this accepted draft to the Contract Monitor as its Final Report, both electronically as described in 2.3.2.5.2.2.2, and in five printed copies. The Contract Monitor will provide this Final Report to the Department Secretary, Deputy Secretary for Medicaid and the Secretary's leadership team.

- a. Regardless of whether the Contractor met with the Secretary and or other high-level Department officials concerning the Draft Final Report, as described in Section 2.3.2.5.3.2, the Contractor will be required to meet with the Secretary and others to present (discuss, defend etc.), its recommendations in the Final Report. In addition, the Contractor may also be directed to make minor changes to the Report or to provide further justification for any recommendation.
- b. Again, whereas the Contractor will not be directed to change any recommendation, based upon the presentation with the Secretary and others described in 2.3.2.5.3.2, it may decide to change/revise a recommendation and re-submit the Final Report.
- c. The Contractor shall submit a clean Final Report that includes any needed corrections, revisions, etc., and is suitable for distribution to whatever officials, personnel and/or entities deemed appropriate by the Department Secretary, no later than four months after the Go-Live Date, unless the Contract Monitor approves a later timeframe based upon the magnitude of required revisions. This clean Final Report shall be formally "accepted" in writing by the Contract Monitor. The Contractor's firm fixed price to deliver this Final Report will only become payable once "acceptance" has occurred. (See Section 3.4.2.1.)
- d. As described in Sections 2.1.3 and 2.3.2.4.5, if the Final Report is accepted by the Contract Monitor more than four months after the Go-Live Date, the Contractor must still be available for follow-up meetings for two months after acceptance of the Final Report.

2.3.2.5.3 **Meetings:**

2.3.2.5.3.1 Appropriate Contractor personnel may be required to meet with the Contract Monitor, Department Secretary, Deputy Secretary for Medicaid, members of the Secretary's leadership team or other personnel designated by the Contract Monitor to discuss any or all of:

- a. Finalization of the Detailed Work Plan;
- b. Perceived issues of Contractor non-performance under the Contract;
- c. Monthly reports;
- d. Corrective Action Plans;
- e. The Draft Final Report;
- f. Preparation for any meeting described in Section 2.3.2.5.3.3.

2.3.2.5.3.1.1 At the determination of the Contract Monitor, any such meeting may be conducted by teleconference or held in person. In-person meetings will be held in the Headquarters Building.

2.3.2.5.3.1.2 The Contractor may invoice for Labor Hours (see Section 3.4.2.1.3), for all approved Contractor personnel who attend meetings identified under 2.3.2.5.3.1.f.

2.3.2.5.3.1.3 The Contractor may not invoice for Labor Hours for attendance by its staff at any meeting described in Section 2.3.2.5.3.1.a-e, or for the presentation described in Section 2.3.2.5.3.2.

2.3.2.5.3.2 The Contractor must attend a half-day (approximately three hours) session with the Secretary and selected leaders from MDH and other State agencies for an Oral Presentation of the Final Report. This half day session should feature appropriate visual and graphic summaries of the Final Report that enhance its understandability, particularly for non-Department officials for whom this presentation will likely be their first introduction to the Final Report contents.

- a. This session will be scheduled with at least five calendar days' notice to the Contractor and will occur either at MDH Headquarters or other site in the Baltimore area.
- b. This half day session must be presented by at least two, and preferably all, of the members of the senior team that prepared it. The names of the actual Contractor presenters must be provided to and approved by the Contract Monitor at least two Business Days prior to the session.
- c. The Contractor presenters should be prepared to accept and answer multiple questions from State attendees on any or all aspects of the presentation.
- d. Based upon this session, the Contractor may be required to make minor revisions either to the Final Report itself, or to its manner of presentation if additional meetings are required as described in 2.3.2.5.3.3, below.

2.3.2.5.3.3 After Acceptance of the Final Report, and until the later of six months from the Go-Live Date or two months after Acceptance, the Contractor may be requested to appear in meetings with State officials, including, but not limited to, the Governor and/or his staff, the Secretary of Budget and Management, and individual legislators and/or legislative committees. If held, these meetings would typically occur in Annapolis or Baltimore. The Contractor will be given, at least, three Business Days' notice of such meetings.

2.3.2.5.3.2.1 The Contractor may invoice for Labor Hours (see Section 3.4.2.1.3), for all approved Contractor personnel who attend meetings held as described under this Section 2.3.2.5.3.3.



## **SECTION 3 – CONTRACTOR REQUIREMENTS: GENERAL REQUIREMENTS**

### **3.1 Insurance Requirements**

- 3.1.1 The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 3.1.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance and cyber liability insurance, each with minimum limits of \$5,000,000 per claim and annual aggregate.
- 3.1.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.1.4 The Contractor shall maintain Crime Insurance to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a single loss retention not to exceed \$10,000. This Crime Insurance policy must be endorsed to cover Third Party Fidelity, with the State of Maryland and the Department added as a Loss Payee.
- 3.1.5 Within five (5) Business Days of recommendation for Contract award, and before any work begins, the Contractor shall provide the Procurement Officer with current certificates of insurance, and update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor’s current certificate of insurance shall contain at minimum the following:
- a. Workers’ Compensation – The Contractor shall maintain such insurance as necessary and/or required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act.
  - b. Commercial General Liability as required in Section 3.1.1.
  - c. Errors and Omissions/Professional Liability as required in Section 3.1.2.
  - d. Automobile and/or Commercial Truck Insurance as required in Section 3.1.3.
  - e. Crime Insurance as required in Section 3.1.4.
- 3.1.6 The State of Maryland shall be listed as an additional insured on any Commercial General Liability, Auto Liability, Professional/Cyber Liability, and excess liability or umbrella policies with the exception of Workers’ Compensation Insurance, which is currently handled by the Chesapeake Employer’s Insurance Company (formerly Injured Workers’ Insurance Fund). This means the faces of the certificates of insurance for these policies must state, “The State of Maryland is an Additional Insured.” All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 30 days’ advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and provide such policies.

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

## **3.2 Security Requirements**

### **3.2.1 Employee Identification**

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

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

### **3.2.2 Criminal Background Check**

The Contractor shall obtain from all Contractor and subcontractor personnel assigned to work on the Contract who will have access to Sensitive Data (see RFP Section 3.2.3 (1)), or who will be working on-site on Department premises, a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and provide the Contract Monitor with completed checks on the above-described personnel assigned to work under the Contract prior to assignment. At a minimum, these background checks must include all convictions and probation before judgment (PBJ) dispositions. The Contractor may not assign an individual whose background check reflects any criminal activity to work under this Contract unless prior written approval is obtained from the Contract Monitor.

### **3.2.3 Information Technology**

For purposes of this solicitation and the resulting Contract:

- (1) "Sensitive Data" means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes information about an individual that (1) can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of "personal information" under Md. Code Ann., General Provisions § 14-3501(d); or (4) falls within the definition of "personal information" under Md. Code Ann., St. Govt. § 10-1301(c).
- (2) "Relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.

- (3) The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of this solicitation and resulting Contract.
- (4) The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>. The State IT Security Policy may be revised from time to time. The Contractor and all subcontractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online on this website.

### 3.2.3.1 Information Security Requirements

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

- (1) Establish separate production, test, and training environments for systems supporting the services provided under this Contract and ensure that production data is not replicated in the test and/or training environment unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements.
- (2) Apply hardware and software hardening procedures as recommended by the manufacturer to reduce the Contractor/subcontractor's systems' surface of vulnerability. The purpose of system hardening procedures is to eliminate as many security risks as possible. These procedures may include but are not limited to removal of unnecessary software, disabling or removing of unnecessary services, removal of unnecessary usernames or logins, and deactivation of unneeded features in the Contractor/subcontractor's system configuration files.
- (3) Establish policies and procedures to implement and maintain mechanisms for regular internal vulnerability testing of operating system, application, and network devices supporting the services provided under this Contract. Such testing is intended to identify outdated software versions; missing software patches; and device or software misconfigurations; and validate compliance with or deviations from the Contractor's and/or subcontractor's security policy. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- (4) Where website hosting or Internet access is the service provided or part of the service provided, the Contractor and any relevant subcontractor(s) shall conduct regular external vulnerability testing. External vulnerability testing is an assessment designed to examine the Contractor's and subcontractor's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the system's security and/or integrity

- and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- (5) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract, automatically updated, and configured to actively scan and detect threats to the system for remediation.
  - (6) Enforce strong user authentication and password control measures over the Contractor/subcontractor's systems supporting the services provided under this Contract to minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
  - (7) Ensure State data under this service is not processed, transferred, or stored outside of the United States.
  - (8) Ensure that State data is not comingled with the Contractor's and subcontractor's other clients' data through the proper application of data compartmentalization security measures. This includes but is not limited to classifying data elements and controlling access to those elements based on the classification and the user's access or security level.
  - (9) Apply data encryption to protect State data, especially Sensitive Data, from improper disclosure or alteration. Data encryption should be applied to State data in transit over networks and, where possible, State data at rest within the system, as well as to State data when archived for backup purposes. Encryption algorithms which are utilized for this purpose must comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2:  
<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>
  - (10) Enable appropriate logging parameters on systems supporting services provided under this Contract to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information security standards including the current State of Maryland Department of Information Security Policy:  
<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
  - (11) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under this Contract.
  - (12) Ensure system and network environments are separated by properly configured and updated firewalls to preserve the protection and isolation of Sensitive Data from unauthorized access as well as the separation of production and non-production environments.
  - (13) Restrict network connections between trusted and untrusted networks by physically and/or logically isolating systems supporting the services being provided under the Contract from unsolicited and unauthenticated network traffic.
  - (14) Review at regular intervals the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
  - (15) Ensure that the Contractor's and any subcontractor's personnel shall not connect any of their own equipment to a State LAN/WAN without prior written approval by the State. The

Contractor/subcontractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor/subcontractor-owned equipment to a State LAN/WAN.

### 3.2.3.2 Contingency / Disaster Recovery Plans

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

### 3.2.3.3 Incident Response Requirement

- (1) The Contractor shall notify the Contract Monitor when any Contractor and/or subcontractor system that may access, process, or store State data or work product is subject to unintended access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.
- (2) The Contractor shall notify the Contract Monitor within two (2) Business Days of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Monitor and Procurement Officer.
- (3) The Contractor shall notify the Contract Monitor within two (2) Business Days if there is a threat to the Contractor's and/or subcontractor's systems as it pertains to the use, disclosure, and security of the Department's Sensitive Data.
- (4) If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Contract Monitor within two (2) Business Days after the Contractor's discovery of such use or disclosure and, thereafter, all information the State requests concerning such unauthorized use or disclosure.
- (5) The Contractor, within two (2) Business Days of discovery, shall report to the Contract Monitor any improper or non-authorized use or disclosure of Sensitive Data. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. The Contractor's report shall identify:
  - a. The nature of the unauthorized use or disclosure;
  - b. The Sensitive Data used or disclosed;

- c. Who made the unauthorized use or received the unauthorized disclosure;
  - d. What the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
  - e. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- (6) The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and indemnify, hold harmless, and defend the State and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.
- (7) This Section 3.2.3.3 shall survive expiration or termination of the Contract.

### **3.3 Problem Escalation Procedure**

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

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

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

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

## **3.4 Contract Type and Invoicing**

### 3.4.1 Contract Type.

The Contract Type for this RFP shall be a Combination Contract with Firm Fixed price (see 21.06.03.02 A (1) and Labor hours (see 21.06.03.05), components, as identified in the Key Information Summary Sheet. (See Appendix 1 Definition.)

3.4.1.1 All work under this Contract not covered under Sections 3.4.1.2 and 3.4.2.1.3, is to be performed for the firm fixed price entered on the Price Form (Attachment B).

3.4.1.2 If the Contract Monitor requires Contractor personnel to attend any meetings subsequent to acceptance of the Final Report, as described in Section 2.3.2.5.3.3, attendance at such meetings may be invoiced on a Labor Hours basis, as more fully described in Section 3.4.2.1.3.

### 3.4.2 Invoicing

#### 3.4.2.1 General

3.4.2.1.1 All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor at the frequency or schedule described in 3.4.2.2. All invoices shall include the following information and shall conform with the requirements of Section 3.4.2.1.3.

- (1) Contractor name and address;
- (2) Remittance address;
- (3) Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- (4) Invoice period (i.e. time period during which services covered by invoice were performed);
- (5) Invoice date;
- (6) Invoice number;
- (7) State assigned Contract number;
- (8) State assigned (Blanket) Purchase Order number(s);
- (9) Goods or services provided (also see Section 3.4.2.1.3); and
- (10) Amount due.

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

3.4.2.1.2 The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Also see the "Living Wage" provision of the Contract, if applicable, which allows for withholding of payment under certain circumstances. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.

3.4.2.1.3 Labor Hours billing shall be as follows:

- a. Each Contractor staff approved in advance by the Contract Monitor to attend Post Final Report meetings described in 2.3.2.5.3.1.f and 2.3.2.5.3.3, may invoice a guaranteed duration of 60 minutes.
- b. After the initial 60 minutes guaranteed billing period, the Contractor shall invoice in fourth of an hour (15 minute) increments, rounded either up or down to the nearest one fourth hour. E.g., the invoice for staff that works 37 minutes shall be rounded down to 30 minutes, while staff working 38 minutes shall be rounded up to 45 minutes. (Since any minutes from 1 to 7 worked by staff beyond a whole 15-minute increment period are less than half way through the next whole 15-minute increment period, all such times are rounded down to the preceding whole 15-minute increment; conversely, since 8 to 14 minutes worked by staff beyond a whole 15-minute increment period are more than half way through the next whole 15-minute increment period, all such times are rounded up to the next whole 15-minute increment period.)
- c. Labor hours may be billed for attendance at meetings described in 2.3.2.5.3.1.f and 2.3.2.5.3.3, including any time spent waiting beyond the start time communicated by the Contract Monitor.
- d. Labor Hours may also be invoiced for up to 60 minutes of preparation time per approved attendee per meeting. The 60 minutes of guaranteed billing time described in 3.4.2.1.3 a, does not apply to preparation time. Preparation time shall be the actual time devoted to preparation, billed in tenth of hour increments, rounded to the nearest tenth of an hour.
- e. If the Contractor believes that more than 60 minutes of total preparation time among all its attendees will be required for a particular meeting, it may provide the Contract Monitor with the rationale for needing this duration of time and request advanced written approval of the Contract Monitor to bill in excess of 60 minutes of preparation time. If such a request is approved by the Contract Monitor, the Contractor may invoice for all its approved preparation time as described in 3.4.2.1.3.d.
- f. The Contractor **may not** invoice for mileage or travel time for any staff attending a meeting described in 3.4.2.1.3.d. No reimbursement will be paid by the Department for meals, overnight stays, parking, taxi rides, printing, the efforts of clerical or support staff, or any other expense in any way related to the Contractor's professional staff attending any meeting described in 3.4.2.1.3.d. (See the Attachment B-1, Item I Caution.)
- g. Any Labor Hours invoice must contain:
  - i. The date, time, location, duration and purpose of each meeting
  - ii. The identity of some or all of the State attendees at the meeting
  - iii. The name of each Contractor attendee
  - iv. A copy of the written approval by the Contract Monitor for each billable Contractor attendee
  - v. Signed statements from each approved Contractor attendee attesting to their attendance at the meeting at issue in complete conformance with all other information required in this Section.
- h. Any billable preparation time per meeting, as described in described in 3.4.2.1.3.c, d and e, including a description or actual copy of what was prepared for the meeting, and the same type of signed statement as described in described in 3.4.2.1.3.g. v.

### 3.4.2.2 Invoice Submission Frequency/Schedule

3.4.2.2.1 The Contractor may invoice 5% of its firm fixed price for completing this project as quoted on the Price Form, Attachment B monthly for up to three months after the Go-Live Date, provided each respective monthly report as described in Section 2.3.2.5.2.1 demonstrates conscientious effort being made



to accomplish the requirements of the Contract. i.e., a maximum of 15% of the Contract price may be invoiced before the acceptance by the Contract Monitor of the Draft Final Report described in 2.3.2.5.2.2.

3.4.2.2.2 If in the opinion of the Contract Monitor one or more monthly reports do not evidence conscientious effort to accomplish the requirements of the Contract, the corresponding 5% of the Contract price will be rolled forward to the next billing activity and is payable in addition to the price otherwise due for that next deliverable.

- a. For example, if in the judgment of the Contract Monitor the first monthly invoice does not evidence sufficient work effort, the 5% of the bill payable for the first monthly invoice will not be paid; instead it will be rolled-over to potentially be payable with the 2<sup>nd</sup> monthly invoice. A total of 10% of the firm fixed price will thus be potentially payable for the 2<sup>nd</sup> monthly invoice.
- b. If sufficient progress is still not evidenced in this 2<sup>nd</sup> monthly period, the 5% payable amounts from both months one and two can be rolled-over to become potentially payable in billing period three, for a total of 15% potentially payable at this time. Similarly, if sufficient progress is not demonstrated in the 3<sup>rd</sup> billing period the 15% total billable amount from the first three billing periods may be rolled-over to be added to the amount payable for the draft final report.
- c. However, if the Contract Monitor determines that the Contractor is not making satisfactory progress by the end of the 2<sup>nd</sup> (or even the end of the first) billing period, in accordance with clause 17 of Attachment M (the Contract), the Procurement Officer may terminate the Contract for Default, in which case the Contractor may receive little or no payment for its efforts under this Contract.

3.4.2.2.3 The Contractor may invoice 30% of its firm fixed price upon acceptance by the Contract Monitor of its Draft Final Report. This means that cumulatively with the 5% payable for each of the three monthly reports, a maximum of 45% of the firm fixed price may have been invoiced by the time of acceptance of the Draft Final Report.

3.4.2.2.4 Upon acceptance of the Final Report by the Contract Monitor, the Contractor may invoice 50% of its firm fixed price from the Price Form. With the acceptance of the Final Report, 95% of the firm fixed price may have been invoiced.

3.4.2.2.5 Because of the possibility as described in Section 2.3.2.5.3, that Contractor staff may be required to appear at meetings to answer questions about, or otherwise explain or defend the recommendations in its Final Report, 5% of its firm fixed price will be retained until the later of six months after the Go-Live Date or two months after acceptance of the Final Report, to help assure that appropriate staff of the Contractor will attend any and all meetings the Contractor is directed to attend. This 5% amount will be retained despite the fact that attendance at such meeting is billable on a Labor Hours basis, as described in Section 3.4.2.1.3.

- a. Provided that appropriate Contractor staff have attended all post-Final Report acceptance meetings, or if no such meetings were held, as of the last day of the Contract the Contractor may invoice for this 5% retainage.
- b. If the Contractor was requested to have appropriate staff attend post-Final Report meetings, but the Contractor failed to do so, some or all of the 5% may be converted to a liquidated damage, as described in Section 3.8, and not paid.

3.4.2.2.6 At the end of five and six months after the Go-Live Date, or one and two months after acceptance of the Final Report, the Contractor may submit Labor Hours invoices for attendance at any post-Final Report meetings, as described in Section 2.3.2.5.3 and 3.4.2.1.3.

3.4.2.2.7 All invoices under this Contract must be submitted to the Contract Monitor no later than 45 days after the end of the Contract. (Seven months and 15 days after the Go-Live Date or three months and 15 days after acceptance of the Final Report.)

3.4.2.2.8. As stated in the Start-up Period definition (see Appendix 1), the Contractor may not invoice for any activities it performs prior to the Go-Live Date.

### 3.5 SOC 2 Type 2 Audit Report

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

### 3.6 MBE Reports

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

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

### 3.7 VSBE Reports

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

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

### 3.8 Liquidated Damages

#### 3.8.1 MBE Liquidated Damages

Not Applicable because there is no MBE goal for this RFP.

#### 3.8.2 Liquidated Damages (Service Level Agreements, Etc.), other than MBE

As described in Section 3.4.2.2.5, Liquidated Damages (LD) may be assessed if the Contractor fails to have appropriate staff attend post-Final Report meetings. 1% of the firm fixed price will be deducted as a liquidated damage, and not as a penalty, for each such meeting at which the Contractor fails to provide appropriate attendance, up to five such meetings, or a maximum of 5% LD if there is a lack of appropriate attendance at 5 or more such meetings. The assessment of LD is based upon the premise that the recommendations of the Contractor are intended to reduce the costs of the Medicaid Program, improve the delivery of services, or both. To the degree that meetings with the Governor and/or his staff, legislators, etc. may be needed to help gain acceptance of the recommendations, the lack of appropriate participation at any such meeting may contribute to some or all recommendations not being accepted, funded, etc., which would diminish, or even negate the time and effort spent by both the Contractor and Department personnel to develop and approve the recommendations.

Given the magnitude of expenditures for the Medicaid Program and its impact on the lives of more than 1 million Maryland citizens, the final recommendations of the Contractor likely will have a major impact on the Program; accordingly, it is believed that 1% of the firm fixed price is a reasonable LD if the Contractor fails to send appropriate representation to a given post-Final Report meeting, - up to a maximum LD of 5% of the firm-fixed price if five or more meetings are not attended by appropriate Contractor staff - hence undermining the credibility of the Contractor's recommendations.

### **3.9 End of Contract Transition**

Although it is not expected that there will be any follow-up or successor contract after this one, the Contractor needs to ensure that any and all work products, supporting documents, data, calculations, etc. have been turned over to the Contract Monitor as of the last day of the Contract, and that all invoicing has been submitted within 45 days after the Contract end date. (See Section 3.4.2.2.7.)

### **3.10 Substitution of Personnel**

**3.10.1 Continuous Performance of Key Personnel.** Unless substitution is approved per paragraphs 3.10.2-3.10.4 of this section, Key Personnel shall be the same personnel proposed in the Contractor's Technical Proposal, which will be incorporated into the Contract by reference. Such identified Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under this Contract, as described in the RFP or the Contractor's Technical Proposal, without the prior written approval of the Contract Monitor.

If the Contract is task order based, the provisions of this section apply to Key Personnel identified in each task order proposal and agreement.

**3.10.2 Definitions.** For the purposes of this section, the following definitions apply:

**Extraordinary Personal Circumstance** – Any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual's home that causes a major disruption in the individual's normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

**Incapacitating** – Any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual’s position in the RFP or the Contractor’s Technical Proposal.

**Sudden** – When the Contractor has less than thirty (30) days’ prior notice of a circumstance beyond its control that will require the replacement of any Key Personnel working under the Contract.

3.10.3 **Key Personnel General Substitution Provisions.** The following provisions apply to all of the circumstances of staff substitution described in paragraph 3.10.4 of this section.

1. The Contractor shall demonstrate to the Contract Monitor’s satisfaction that the proposed substitute Key Personnel have qualifications at least equal to those of the Key Personnel for whom the replacement is requested.
2. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
  - A detailed explanation of the reason(s) for the substitution request;
  - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
  - The official resume of the current personnel for comparison purposes; and
  - Any evidence of any required credentials.
3. The Contract Monitor may request additional information concerning the proposed substitution. In addition, the Contract Monitor and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a requested Key Personnel replacement.

#### 3.10.4 **Replacement Circumstances**

3.10.4.1 **Voluntary Key Personnel Replacement.** To voluntarily replace any Key Personnel, the Contractor shall submit substitution request as described in paragraph 3.10.3 of this section to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph 3.10.4 (2) of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

3.10.4.2 **Key Personnel Replacement Due to Vacancy.** The Contractor shall replace Key Personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section 3.10.4.1 of this section.).

Under any of the circumstances set forth in this paragraph 3.10.4.2, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph 3.10.3 of this section within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.

**3.10.4.3 Key Personnel Replacement Due to an Indeterminate Absence.** If any Key Personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information or items to the Contract Monitor as required under paragraph 3.10.3 of this section.

However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor, at the option and sole discretion of the Contract Monitor, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

**3.10.4.4 Directed Personnel Replacement.**

3.10.4.4.1 The Contract Monitor may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 3.10.4.4.2. If after such remediation the Contract Monitor determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Monitor can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with paragraph 3.10.3 of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

3.10.4.4.2 If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.

Should performance issues persist despite the approved Remediation Plan, the Contract Monitor will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Key Personnel at issue.

Replacement or substitution of personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

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## **SECTION 4 – PROCUREMENT INSTRUCTIONS**

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

A Pre-Proposal Conference (the Conference) will be held at the date, time, and location indicated on the RFP Key Information Summary Sheet (see Appendix 1, Definition).

All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

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

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

### **4.2 eMaryland Marketplace**

Each Offeror is requested to indicate its eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter- see Section 5.4.2.3) submitted at the time of its Proposal submission to this RFP.

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

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

### **4.3 Questions**

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the Procurement Officer's e-mail address indicated on the RFP Key Information Summary Sheet (see Appendix 1, Definition). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

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

#### **4.4 Procurement Method**

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

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

Proposals, in the number and form set forth in RFP Section 5.2 “Proposals” must be received by the Procurement Officer at the Procurement Officer’s address no later than the Proposal Due date and time indicated on the RFP Key Information Summary Sheet (see Appendix 1, Definition) in order to be considered.

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

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

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

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

#### **4.6 Multiple or Alternate Proposals**

Multiple and/or alternate Proposals will not be accepted.

#### **4.7 Economy of Preparation**

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



## **4.8 Public Information Act Notice**

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

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

## **4.9 Award Basis**

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

## **4.10 Oral Presentation**

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

## **4.11 Duration of Proposal**

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers (see Section 6.5.2.5) if requested. This period may be extended at the Procurement Officer’s request only with the Offeror’s written agreement.

## **4.12 Revisions to the RFP**

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

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter (see Section 5.4.2.3) accompanying the Offeror’s Technical Proposal. Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the

addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum.

#### **4.13 Cancellations**

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

In the event a government entity proposes and receives the recommendation for award for the Contract resulting from this RFP, the procurement may be cancelled and the award processed as a Memorandum of Understanding (MOU) or Inter-Agency Agreement (IA) in accordance with COMAR 21.01.03.01.A(4).

#### **4.14 Incurred Expenses**

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

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

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

#### **4.16 Offeror Responsibilities**

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see Section 4.26 "Minority Business Enterprise Goals" and Section 4.27 "Veteran-Owned Small Business Enterprise Goal").

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

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

is directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

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

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

#### **4.18 Proposal Affidavit**

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

#### **4.19 Contract Affidavit**

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

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

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

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

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

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress>.

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

## 4.22 False Statements

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

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

## 4.23 Payments by Electronic Funds Transfer

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

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

## 4.24 Prompt Payment Policy

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

Additional information is available on GOMA's website at:

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

## 4.25 Electronic Procurements Authorized

- 4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.

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

## 4.26 Minority Business Enterprise Goals

There is no MBE subcontractor participation goal for this procurement.

## 4.27 Veteran-Owned Small Business Enterprise Goal

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

## 4.28 Living Wage Requirements

- 4.28.1 Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 18-101 *et al.* The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a Contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. *See* COMAR 21.11.10.05.
- 4.28.2 If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. See the “Living Wage” clause in the Contract (**Attachment M**).
- 4.28.3 Additional information regarding the State’s living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If an Offeror fails to complete and submit the required documentation, the State may determine the Offeror to be not responsible under State law.
- 4.28.4 Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George’s, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.
- 4.28.5 The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
- (1) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.

- (2) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- (3) If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 1 Contract.

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

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

## **4.29 Federal Funding Acknowledgement**

- 4.29.1 There are programmatic conditions that apply to this Contract due to federal funding. (See **Attachment G**).
- 4.29.2 The total amount of federal funds allocated for the Medicaid Program is more than \$5 Billion in Maryland State fiscal year 2018. This represents about 50% of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 4.29.3 This Contract contains federal funds. The source of these federal funds is Medicaid. The CFDA number is: 93.778. The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment G**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment G** and Offerors are to complete and submit these Attachments with their Proposals as instructed in the Attachments. Acceptance of this agreement indicates the Offeror's intent to comply with all conditions, which are part of this Contract.

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

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

## **4.31 Non-Disclosure Agreement**

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

## **4.32 HIPAA - Business Associate Agreement**

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

#### **4.33 Nonvisual Access**

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

#### **4.34 Mercury and Products That Contain Mercury**

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

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

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

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

This solicitation does not require a DHS Hiring Agreement.

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

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

#### **4.38 Extension of Contract to Other Governments and/or Maryland Non-Profit Organizations**

This Contract that result from this solicitation is not extended for use by any other government or by Maryland Non-Profit Organizations.

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## **SECTION 5 – PROPOSAL FORMAT**

### **5.1 Two Part Submission**

Offerors shall submit Proposals in separate volumes:

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

### **5.2 Proposals**

5.2.1 Volume I – Technical Proposal, and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, email address, and telephone number of a contact person for the Offeror be included on the outside of the packaging for each volume. Each Volume shall contain an unbound original, so identified, and five (5) copies. Unless the resulting package will be too unwieldy, the Department’s preference is for the two (2) sealed Volumes to be submitted together in a single package including a label bearing:

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

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

5.2.2 An electronic version (on Compact Disk/CD, Digital Versatile Disc/DVD, or Universal Serial Bus/USB Flash/Thumb Drive) of Volume I - Technical Proposal in Microsoft Word format must be enclosed with the original Volume I - Technical Proposal submission. An electronic version (on CD, DVD, or USB Flash Drive) of Volume II - Financial Proposal in Microsoft Word or Microsoft Excel format must be enclosed with the original Volume II - Financial Proposal submission. Each CD/DVD/USB Flash Drive must be labeled on the outside with the RFP title and number, name of the Offeror, and volume number. Each CD/DVD/USB Flash Drive must be packaged with the original copy of the appropriate Proposal (Technical or Financial). In the event of any discrepancy between the hard copy and electronic versions of an Offeror’s Proposal, the State shall determine the controlling version in accordance with the State’s interests.

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

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

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

## 5.3 Delivery

Offerors may either mail or hand-deliver Proposals.

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

## 5.4 Volume I – Technical Proposal

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

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

confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

**5.4.2.3 Transmittal Letter (Submit under TAB B).** A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. The Transmittal Letter should include the following:

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

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

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

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

**5.4.2.5 Minimum Qualifications Documentation (If applicable, Submit under TAB D).** The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP Section 1, "Minimum Qualifications." (If customer references are required in Section 1, those references shall be submitted under this Tab D and shall contain the information described in Section 5.4.2.9.)

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

5.4.2.6.1 The Offeror shall address each Scope of Work requirement (RFP Section 2) in its Technical Proposal and describe how its proposed services, including the services of any

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

5.4.2.6.2 The Offeror shall give a definitive **section-by-section** description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required services as outlined in RFP Section 2, Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.

5.4.2.6.3 The Offeror shall identify the location(s) from which it proposes to provide the services.

- a. Where the various aspects of the project will be completed.
- b. The extent to which staff will work from the Department provided space.
- c. Whether the Offeror will have any location within 20 miles of the Headquarters Building from which it will perform work

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

5.4.2.6.5 Specifically, either as part of its section -by-section (see 5.4.2.6.2) description or as a separate TAB E component focused solely on the following items, the Offeror shall ensure it responds to/addresses/confirmes/describes, etc., each of the following:

- a. The planned intensity of its work efforts. i.e., whether it intends to work intensely over a relatively short portion of the available time to complete the report, sporadically over the entire permitted time frame, etc.
- b. Affirm that it can submit a Draft Final Report no more than 3 ½ months after the Go-Live Date and a Final Report no more than 2 weeks thereafter, or no more than 4 months after the Go-Live Date and submit a draft project work plan showing when it commits to complete these reports.
- c. Affirm that it will properly prepare monthly reports and, if requested, have appropriate personnel attend meetings concerning those reports, either in-person or telephonically.
- d. Affirm that it will attend any post Final Report meetings, typically in the Annapolis or Baltimore area.
- e. Confirm that the draft work plan submitted as part of its proposal will be updated and finalized no more than 30 days after Contract Commencement.

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

5.4.2.7.1 The Offeror shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the draft Work Plan required in Section 5.4.2.6.2.

a. Previous experience in engaging at the top level of other state Medicaid programs for advisory services on strategy and a roadmap should be demonstrated and emphasized.

b. The Offeror shall identify and include individual resumes for the proposed members of the Senior Team, who are expected to perform the bulk of the work under the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation.

c. All the members of the Senior Team are considered Key Personnel (see Section 3.10). Key Personnel may also include other staff of the Offeror besides the members of the Senior Team, and/or staff or principals of any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. As required by Section 3.10, Key Personnel must perform for the duration of the Contract. Accordingly, the Offeror must specifically commit in its proposal that all Key Personnel will work under the Contract for its full duration.

d. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.

5.4.2.7.2 The Offeror must identify a Contract Manager who will be the primary point of contact between the Contractor and the Contract Monitor. The Proposal should explain why this person was selected to be the Contract Manager, the qualifications and authority of this person and where he/she is placed in the Offeror's Organization Chart/Chain of Command. If this proposed Contract Manager is not part of the Senior Team, the individual's current resume must be provided in the Proposal.

5.4.2.7.3 The Offeror shall provide an Organizational Chart outlining personnel and their related duties.

5.4.2.7.4 The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. State if any of the proposed members of the Senior Team will have duties besides working on this Contract. Also state if it is expected that any person working under the Contract will devote more than 40 hours in any week of the Contract, either to the Contract exclusively, or to the Contract in addition to other duties. For any personnel that will perform duties in addition to working under the Contract, state which duty(ies) is/are the individual's priority responsibility(ies).

5.4.2.7.5 Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

5.4.2.8 **Offeror Qualifications and Capabilities (Submit under TAB G).** The Offeror shall include information on past experience with similar projects and/or services. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

- (1) The number of years the Offeror has provided the similar services;
- (2) The number of clients/customers and geographic locations that the Offeror currently serves;
- (3) The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- (4) The Offeror's process for resolving billing errors; and

- (5) An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

**5.4.2.9 References (Submit under TAB H).** At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. References used to meet any Minimum Qualifications (see RFP Section 1) may be used to meet this request. References provided under Tab D in accordance with Section 5.4.2.5 should not be repeated in Tab H. Instead, mention in Tab H that references used to meet Minimum Qualifications were provided in Tab D.

Each reference shall be from a client for whom the Offeror has provided services within the past five (5) years and shall include the following information:

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

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

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

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

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

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

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

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

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

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

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

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

If an Offeror responds to this TAB with a generic statement such as, "See 10K" or "See SEC filing":

- The referenced document must be included in the Technical Proposal;
- The location within the document where the requested information can be found should be specifically noted;
- The information contained in the indicated section should be responsive to the information requested under this TAB. A generic statement in the document to the effect that there often are what might be called nuisance lawsuits filed against the Offeror will only be sufficient if it is a true statement. i.e., the Offeror is asserting that in its opinion no lawsuit filed against it is noteworthy.

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

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

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

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

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

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

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

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

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



Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

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

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

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

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

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

## 5.5 Volume II – Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 5.2 "Proposals," the Offeror shall submit an original unbound copy, five (5) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

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## **SECTION 6 – EVALUATION AND SELECTION PROCESS**

### **6.1 Evaluation Committee**

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

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

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

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

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

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

### **6.4 Reciprocal Preference**

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

- (1) The Maryland resident business is a responsible Offeror;
- (2) The most advantageous offer is from a responsible Offeror whose principal office or principal operations through which it would provide the services required under this RFP is in another state;
- (3) The other state gives a preference to its resident businesses through law, policy, or practice; and

- (4) The Maryland resident preference does not conflict with a federal law or grant affecting the procurement Contract.

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

## **6.5 Selection Procedures**

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

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

### **6.5.2 Selection Process Sequence**

- 6.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and properly completed, if there is an MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and Subcontractor Participation Schedule (**Attachment E-1**) is included and is properly completed, if there is a VSBE goal. Finally, a determination is made that all Minimum Qualifications, if any (See RFP Section 1), have been satisfied.
- 6.5.2.2 Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and Offeror's ability to perform the services, as well as facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.
- 6.5.2.3 Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.
- 6.5.2.4 The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.

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

6.5.3 **Award Determination.** Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical and financial factors will receive equal weight.

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

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

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

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## **RFP ATTACHMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ATTACHMENT M – Contract**

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

**ATTACHMENT N – Contract Affidavit**

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

**ATTACHMENT O – Department of Human Services (DHS) Hiring Agreement**

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

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

**Solicitation Number MDH/OPASS 18-17900  
Medicaid Program Business Process Consulting Diagnostic Services and  
Roadmap for Change**

A Pre-Proposal Conference will be held at the date, time, and location indicated in the RFP Key Information Summary Sheet (see Appendix 1, Definition).

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 Coordinator. The Procurement Coordinator’s contact information is provided in the RFP Key Information Summary Sheet.

Please indicate:

Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

No, we will not be in attendance.

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

\_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Name of Firm (please print)

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

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

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

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

**CAUTION:** In particular, Offerors should ensure that the Labor Hours rate they quote as Price B on the Price Form is sufficient to accommodate any ancillary expense of attending post final report meetings (see Section 2.3.2.5.3.3) since, as described in section 3.4.2.1.3 f, no payment will be made for such ancillary expenses.



- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.
- K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

## ATTACHMENT C – PROPOSAL AFFIDAVIT

### A. AUTHORITY

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

### B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

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

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

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

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

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

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

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

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

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

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

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

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

- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
- (a) §7201, Attempt to Evade or Defeat Tax;
  - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
  - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
  - (d) §7206, Fraud and False Statements, or
  - (e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
    - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
    - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
    - (ii) Not overturned on judicial review; or

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

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**E. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

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**G. SUBCONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

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

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

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

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

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

**I. CERTIFICATION OF TAX PAYMENT**

I FURTHER AFFIRM THAT:

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

**J. CONTINGENT FEES**

I FURTHER AFFIRM THAT:

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

**K. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

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

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

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

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

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

I FURTHER AFFIRM THAT:

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

**M. I FURTHER AFFIRM THAT:**

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

**N. ACKNOWLEDGEMENT**

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Proposal shall be construed to supersede, amend, modify or waive, on behalf of the

State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

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

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

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

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

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

**ATTACHMENTS D – MINORITY BUSINESS ENTERPRISE FORMS**

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

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

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



**Living Wage Requirements for Service Contracts**

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

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

**Maryland Living Wage Requirements Affidavit of Agreement**

**(Submit with Proposal)**

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

Name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**If the Contract Is Exempt from the Living Wage Law**

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland’s Living Wage Law for the following reasons (check all that apply):

- Offeror is a nonprofit organization
- Offeror is a public service company
- Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

**If the Contract Is a Living Wage Contract**

A. The Undersigned, being an authorized representative of the above-named Contractor, hereby affirms its commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. \_\_\_\_\_(initial here if applicable) The Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract
- The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: \_\_\_\_\_

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Name (Typed or Printed)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

## ATTACHMENT G- FEDERAL FUNDS ATTACHMENT

### A Summary of Certain Federal Fund Requirements and Restrictions

1. Form and rule enclosed: 18 U.S.C. 1913 and Section 1352 of P.L. 101-121 require that all *prospective* and present sub-grantees (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the form "Certification Against Lobbying." It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF- LLL.
2. Form and instructions enclosed: "Form LLL, Disclosure of Lobbying Activities" must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.
3. Form and summary of Act enclosed: Sub-recipients of federal funds on any level must complete a "Certification Regarding Environmental Tobacco Smoke," required by Public Law 103-227, the Pro-Children Act of 1994. Such law prohibits smoking in any portion of any indoor facility owned or leased or contracted for regular provision of health, day care, early childhood development, education, or library services for children under the age of 18. Such language must be included in the conditions of award (they are included in the certification, which may be part of such conditions.) This does not apply to those solely receiving Medicaid or Medicare, or facilities where WIC coupons are redeemed.
4. In addition, federal law requires that:
  - A) Title 2 of the Code of Federal Regulations (CFR) 200, specifically Subpart D, requires that grantees (both recipients and sub-recipients) which expend a total of \$750,000 in federal assistance shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 and Title 2 CFR 200, Subpart D. All sub-grantee audit reports, performed in compliance with Title 2 CFR 200 shall be forwarded within 30 days of report issuance to the Department Contract Monitor.
  - B) All sub-recipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).
  - C) Recipients of \$10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B).

Section 503 of the Rehabilitation Act of 1973, as amended, requires recipients to take affirmative action to employ and advance in employment qualified disabled people. An affirmative action program must be prepared and maintained by all contractors with 50 or more employees and one or more federal contracts of \$50,000 or more.

This clause must appear in subcontracts of \$10,000 or more:

- 1) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or

mental handicap in all upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- 2) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- 3) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- 4) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- 5) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- 6) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 791 *et seq.*) prohibits discrimination on the basis of handicap in all federally assisted programs and activities. It requires the analysis and making of any changes needed in three general areas of operation- programs, activities, and facilities and employment. It states, among other things, that:

*Grantees that provide health ... services should undertake tasks such as ensuring emergency treatment for the hearing impaired and making certain that persons with impaired sensory or speaking skills are not denied effective notice with regard to benefits, services, and waivers of rights or consents to treatments.*

- D) All sub-recipients comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.
- E) All sub-recipients of federal funds from SAMHSA (Substance Abuse and Mental Health Services Administration) or NIH (National Institute of Health) are prohibited from paying any direct salary at a rate more than Executive Level II of the Federal Executive pay scale, per year. (This includes, but is not limited to, sub-recipients of the Substance Abuse Prevention and Treatment and the Community Mental Health Block Grants and NIH research grants.)
- F) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.

- G) For any education program, as required by Title IX of the Education Amendments of 1972, there may be no discrimination on the basis of sex.
- H) For research projects, a form for Protection of Human Subjects (Assurance/ Certification/ Declaration) should be completed by each level funded, assuring that either: (1) there are no human subjects involved, or (2) an Institutional Review Board (IRB) has given its formal approval before human subjects are involved in research. [This is normally done during the application process rather than after the award is made, as with other assurances and certifications.]
- I) In addition, there are conditions, requirements, and restrictions which apply only to specific sources of federal funding. These should be included in your grant/contract documents when applicable.

**CERTIFICATION REGARDING LOBBYING**  
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

|   |                                   |
|---|-----------------------------------|
| Award No.   | Organizational Entry              |
| Name and Title of Official Signing for Organizational Entry | Telephone No. Of Signing Official |
| Signature of Above Official                                 | Date Signed                       |



**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

|  |   |  |   |
|--|---|--|---|
| <p><b>1. Type of Federal Action:</b></p> <p><input type="checkbox"/> a. Contract<br/> <input type="checkbox"/> b. Grant<br/> <input type="checkbox"/> c. Cooperative Agreement<br/> <input type="checkbox"/> d. Loan<br/> <input type="checkbox"/> e. Loan guarantee<br/> <input type="checkbox"/> f. Loan insurance</p>   | <p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. Bid/offer/application<br/> <input type="checkbox"/> b. Initial award<br/> <input type="checkbox"/> c. Post-award</p>  | <p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. Initial filing<br/> <input type="checkbox"/> b. Material change</p> <p>For Material Change Only:<br/>         Year _____ quarter _____<br/>         Date of last report _____</p> |   |
| <p><b>4. Name and Address of Reporting Entity:</b></p> <p><input type="checkbox"/> Prime    <input type="checkbox"/> Subawardee Tier _____, if known:</p> <p>Congressional District, if known:</p>   | <p><b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b></p> <p>Congressional District, if known:</p>  |  |   |
| <p><b>6. Federal Department/Agency:</b></p>  | <p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable: _____</p>   |  |   |
| <p><b>8. Federal Action Number, if known:</b></p>  | <p><b>9. Award Amount, if known:</b></p> <p>\$ _____</p>  |  |   |
| <p><b>10. a. Name and Address of Lobbying Registrant</b><br/>         (if individual, last name, first name, MI):</p>  |   |  | <p><b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI):</p> |
| <p><b>11. Amount of Payment</b> (check all that apply)</p> <p>\$ _____    <input type="checkbox"/> actual    <input type="checkbox"/> planned</p>  | <p><b>13. Type of Payment</b> (check all that apply)</p> <p><input type="checkbox"/> a. retainer<br/> <input type="checkbox"/> b. one-time<br/> <input type="checkbox"/> c. commission<br/> <input type="checkbox"/> d. contingent fee<br/> <input type="checkbox"/> e. deferred<br/> <input type="checkbox"/> f. other; specify: _____</p> |  |   |
| <p><b>12. Form of Payment</b> (check all that apply)</p> <p><input type="checkbox"/> a. cash<br/> <input type="checkbox"/> b. in-kind; specify: nature _____ value _____</p>   |   |  |   |
| <p><b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b></p> <p>(attach Continuation Sheet(s) SF-LLLA, if necessary)</p>  |   |  |   |
| <p><b>15. Continuation Sheet(s) SF-LLLA attached:</b>                      <input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>   |   |  |   |
| <p>16. Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be</p> | <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>  |  |   |

|   |   |
|---|---|
| subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. | Telephone No.: _____ Date: _____                                      |
| <b>Federal Use Only:</b>  | Authorized for Local<br>Reproduction<br>Standard Form LLL (Rev. 7-97) |

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

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
10. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE**

Public Law 103-227, also known as the Pro-Children Act of 1994, Part C Environmental Tobacco Smoke, requires that smoking not be permitted in any portion of any indoor facility owned, or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children’s services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The law does not apply to children’s services provided in private residences, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole sources of applicable federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this certification, the offeror/contractor (for acquisitions) or applicant/grantee (for grants) certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children’s services and that all sub-recipients shall certify accordingly.

---

Signature of Authorized Certifying Individual

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

**Reference COMAR 21.05.08.08**

A. “Conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. “Person” has the meaning stated in COMAR 21.01.02.01B(64) and includes a Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Proposal is made.

C. The Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail — attach additional sheets if necessary):

E. The Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Offeror shall immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the Procurement Officer of any contrary action to be taken.

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

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Authorized Representative and Affiant)

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

## ATTACHMENT I – NON-DISCLOSURE AGREEMENT

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

### RECITALS

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for **Medicaid Program Business Process Consulting Diagnostic Services and Roadmap for Change Solicitation # MDH/OPASS 18-17900**; and

**WHEREAS**, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively “Contractor’s Personnel”) with access to certain information the State deems confidential (the “Confidential Information”).

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the solicitation and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, “Confidential Information” means (1) any and all information provided by or made available by the State to the Contractor in connection with the Contract and (2) any and all Personally Identifiable Information (PII) (including but not limited to personal information as defined in Md. Ann. Code, General Provisions §4-101(h)) and Protected Health Information (PHI) that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. The Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. The Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT I-1. The Contractor shall update ATTACHMENT I-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. The Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, adopt or establish operating procedures and physical security measures, and take all other measures necessary to protect

the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

5. The Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. The Contractor shall, at its own expense, return to the Department all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract. The Contractor shall complete and submit ATTACHMENT J-2 when returning the Confidential Information to the Department. At such time, the Contractor shall also permanently delete any Confidential Information stored electronically by the Contractor.
7. A breach of this Agreement by the Contractor or the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
  - a. This Agreement shall be governed by the laws of the State of Maryland;
  - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
  - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
  - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
  - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
  - f. The Recitals are not merely prefatory but are an integral part hereof; and
  - g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

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

Contractor: \_\_\_\_\_

STATE OF MARYLAND  
DEPARTMENT OF HEALTH

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

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

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

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

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

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

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

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



**NON-DISCLOSURE AGREEMENT - ATTACHMENT I-1**

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

| <b>Printed Name and Address of Individual/Agent</b> | <b>Employee (E) or Agent (A)</b> | <b>Signature</b> | <b>Date</b> |
|---|----------------------------------|------------------|-------------|
| _____   | _____                            | _____            | _____       |
| _____   | _____                            | _____            | _____       |
| _____   | _____                            | _____            | _____       |
| _____   | _____                            | _____            | _____       |
| _____   | _____                            | _____            | _____       |
| _____   | _____                            | _____            | _____       |
| _____   | _____                            | _____            | _____       |
| _____   | _____                            | _____            | _____       |
| _____   | _____                            | _____            | _____       |
| _____   | _____                            | _____            | _____       |
| _____   | _____                            | _____            | _____       |

**NON-DISCLOSURE AGREEMENT – ATTACHMENT I-2**

**CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and

\_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 20\_\_\_\_ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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

DATE: \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

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

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

**ATTACHMENT J – HIPAA BUSINESS ASSOCIATE AGREEMENT**

This solicitation does not require a HIPAA Business Associate Agreement.

**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**

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

## ATTACHMENT M – CONTRACT

### MEDICAID PROGRAM BUSINESS CONSULTING DIAGNOSTIC SERVICES AND ROADMAP FOR CHANGE

THIS CONTRACT (the “Contract”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the Maryland 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 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract” means this agreement between (Contractor’s name) and the State of Maryland, acting through the Maryland Department of Health
- 1.3 “Contract Monitor” means the following Department employee identified as the Contract Monitor: (Contract Monitor’s name and contact information)
- 1.4 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.5 “Department” means the Maryland Department of Health.
- 1.6 “Financial Proposal” means the Contractor’s Financial Proposal dated (Financial Proposal date).
- 1.7 “Procurement Officer” means the following Department employee identified as the Procurement Officer: (Procurement Officer’s name and contact information)
- 1.8 “RFP” means the Request for Proposals for Medicaid Program Business Process Consulting Diagnostic Services and Roadmap for Change Solicitation #MDH/OPASS 18-17900, and any addenda thereto issued in writing by the State.
- 1.9 “State” means the State of Maryland.
- 1.10 “Technical Proposal” means the Contractor’s Technical Proposal dated (Technical Proposal date).

#### 2. Scope of Contract

- 2.1 The Contractor shall provide deliverables, programs, goods, and services specific to the Contract for (enter title/description of what the Contract is for) awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

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

Exhibit C – The Proposal (Technical and Financial)

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

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

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately (number of years of base term of Contract) years (change to months if necessary) beginning (anticipated Contract start date) and ending on (anticipated end date of base term of Contract).
- 3.2 The State, at its sole option, has the unilateral right to extend the term of the Contract for (number of Option Years) additional successive one-year terms at the prices quoted in the Financial Proposal for Option Years. (Delete this section if there are no Option Years, and change the numbering of the next section to 3.2).
- 3.3 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

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

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract, shall not exceed \$\_\_\_\_\_.
- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for

services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is (Contractor's FEIN or SSN). Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.
- 4.5 Contractor's eMaryland Marketplace vendor ID number is (Contractor's eMM number).

## **5. Rights to Records**

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## **6. Exclusive Use**

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable

of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

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

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

7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

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

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

8.2 This Section 8 shall survive expiration or termination of this Contract.

## **9. Loss of Data**

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

## **10. Indemnification**

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 10.3 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or lawsuit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, lawsuit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 10.6 This Section 10 shall survive termination of this Contract.

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

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 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 or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**17. Termination for Default**

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**

19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**20. Suspension of Work**

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 or before: (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**

- 27.1 By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Proposal.
- 27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

## **28. Subcontracting; Assignment**

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

## **29. Liability**

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

- 29.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
- 29.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 29.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form the Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

## **30. Commercial Nondiscrimination**

- 30.1 As a condition of entering into this Contract, the Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, the Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination. The Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the Contractor under Md. Code Ann., State Finance and Procurement

Article, Title 19, as amended from time to time, the Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

### **31. Prompt Pay Requirements**

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- a. Not process further payments to the contractor until payment to the subcontractor is verified;
  - b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
  - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
  - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - e. Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:
- a. Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
  - b. An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- a. Affect the rights of the contracting parties under any other provision of law;
  - b. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
  - c. Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;

- ii. Inspecting the jobsite; and
- iii. Interviewing subcontractors and workers.

Verification shall include a review of the:

- i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
  - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- b. If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- c. If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
- i. Terminate the contract;
  - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
  - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- d. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

### **32. Living Wage**

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

### **33. Use of Estimated Quantities**

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  
Maryland Department of Health  
Office of Procurement and Support Services  
201 W. Preston Street, Room 416A  
Baltimore, MD 2121

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

**36. Parent Company Guarantee**

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

**37. Miscellaneous**

37.1 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.

37.2 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: (name and title of Department Health)



\_\_\_\_\_

Or designee:

\_\_\_\_\_  
Date

PARENT COMPANY (GUARANTOR)  
(if applicable)

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

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

\_\_\_\_\_  
Date

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

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

APPROVED BY BPW: \_\_\_\_\_  
(Date) (BPW Item #)

**ATTACHMENT N – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

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

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation —  domestic or  foreign;
- (2) Limited Liability Company —  domestic or  foreign;
- (3) Partnership —  domestic or  foreign;
- (4) Statutory Trust —  domestic or  foreign;
- (5)  Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID  
Number: \_\_\_\_\_ Address: \_\_\_\_\_

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID  
Number: \_\_\_\_\_ Address: \_\_\_\_\_

**C. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (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.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
  - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
  - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;
  - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business's policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

## F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Proposal Affidavit dated \_\_\_\_\_, 201\_\_ .

, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

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

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

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

**ATTACHMENT O – DHS HIRING AGREEMENT**

This solicitation does not require a DHS Hiring Agreement.

# APPENDIX 1

## Abbreviations and Definitions

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

1. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
2. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us).
3. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
4. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required.
5. **Contract Monitor** – 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. The Contract Monitor for this RFP is **Tricia Roddy., Director, Planning Administration, Health Care Financing**. However, the Department may change the Contract Monitor at any time by written notice to the Contractor.
6. **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. The Contract Officer for this RFP is identified in the Key Information Summary Sheet.
7. **Contractor** – The selected Offeror that is awarded a Contract by the State.
8. **Department or (MDH)** – (The Maryland Department of Health).
9. **eMM** – eMaryland Marketplace (see RFP Section 4.2).
10. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation.
11. **Key Information Summary Sheet** – A two-page document located near the beginning of the RFP, after the Title Page and before the Table of Contents, that presents a limited amount of essential information about this RFP and the resulting Contract in a straight-forward, concise manner, frequently with references to sections of the RFP that provide a more thorough explanation of the topics.
12. **Key Personnel** – All personnel identified in the solicitation as such, or personnel identified by the Offeror in its Proposal that are essential to the work being performed under the Contract. See RFP Sections 3.10 and 5.4.2.7.

13. **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.
14. **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.
15. **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.
16. **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.
17. **Offeror** – An entity that submits a Proposal in response to this RFP.
18. **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), and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor. The Procurement Officer for this RFP is identified in the Key Information Summary Sheet.
19. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
20. **Request for Proposals (RFP)** – This Request for Proposals issued by the Department, with the Solicitation Number and date of issuance indicated in the RFP Key Information Summary Sheet (see Appendix 1, Definition), including any addenda.
21. **Start-up Period** - The period of time, if any, between Contract Commencement (see Definition) and the Contract Go-Live Date (see Definition). During any Start-up Period the Contractor is to undertake whatever actions are needed to begin the successful performance of the Contract as of the Go-Live Date. Unless special Start-up pricing is requested in Attachment B, the Financial Proposal Form, there will be no payment made to the Contractor for any Start-up activities.
22. **State** – The State of Maryland.
23. **Total Proposal Price** - The Offeror’s total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment B – Financial Proposal Form, and used in the financial evaluation of Proposals (see RFP Section 6.3).
24. **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.