



## **DEPARTMENT OF HEALTH**

### **REQUEST FOR PROPOSALS (RFP)**

**SOLICITATION NO. MDH/OPASS 19-17751**

**Issue Date: June 6, 2018**

**MARYLAND DEPARTMENT OF HEALTH  
DEVELOPMENTAL DISABILITIES ADMINISTRATION  
AND OFFICE OF HEALTH SERVICES**

**FINANCIAL MANAGEMENT AND COUNSELING SERVICES**

**NOTICE**

**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: Financial Management and Counseling Services**

**Solicitation No: MDH/OPASS 19-17751**

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:** Services; Financial Management and Counseling Services

**Solicitation Number:** MDH/OPASS 19-17751

**RFP Issue Date:** June 6, 2018

**RFP Issuing Office:** MARYLAND DEPARTMENT OF HEALTH

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Office of Procurement and Support Services  
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**Proposals are to be sent to:** Maryland Department of Health  
Office of Procurement and Support Services  
201 W Preston Street, Room 416  
Baltimore, Maryland 21201  
Attention: Theresa B. Ammons

**Pre-Proposal Conference:** Wednesday, June 20, 2018 at 1:00 PM Local Time  
201 West Preston Street, Conference Room L-4  
Baltimore, MD. 21201

**Proposal Due (Closing) Date and Time:** Wednesday, July 18, 2018 at 2:00 PM Local Time

**MBE Subcontracting Goal:** 20%

**VSBE Subcontracting Goal:** 3%

**Contract Type:** Indefinite quantity COMAR 21.06.03.06a (2) with firm fixed price  
21.06.03.02A (1)

**Contract Duration:** Three (3) Years with Two (2), One (1) Year Renewal Options

**SBR Designation:** No

**Federal Funding:** Yes

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## **SECTION 1 – MINIMUM QUALIFICATIONS**

### **1 Offeror Minimum Qualifications**

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

- 1.1.1 The Offeror must not be on the Health and Human Service (HHS) Office of the Inspector General's List of excluded Participants and Entities (LEIE) or the federal General Services Administration System for Award Management (SAM). An Offeror must provide a letter of self-certification with its Proposal that it is not on the LEIE or SAM lists. Links to the LEIE and SAM lists are as follows: [http://oig.hhs.gov/exclusions/exclusions\\_list.asp](http://oig.hhs.gov/exclusions/exclusions_list.asp); and <https://www.sam.gov/portal/SAM/#%2311%231#1>.

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

### **2.1 Summary Statement**

- 2.1.1 The Maryland Department of Health’s (MDH) Developmental Disabilities Administration (DDA) and the Office of Health Services (OHS) are issuing this Request for Proposals (RFP) to provide the establishment and implementation of a Statewide contract for Financial Management and Counseling Services to include billing and claims, consulting and training for individuals self-directing their services. The most complete general information about the programs that will have Self-Directed Services (SDS) options and therefore require Financial Management Services and Counseling Services can be located here:

<http://dda.health.maryland.gov/Pages/community%20pathways.aspx>

<https://mmcp.health.maryland.gov/longtermcare/Pages/Community-First-Choice.aspx>

- 2.2.2 It is the State’s intention to obtain services, as specified in this RFP, from a Contract between the selected Offeror and the State. The anticipated duration of services to be provided under this Contract is three (3) years with two (2), one (1) year renewal options.
- 2.2.3 The Department intends to make a single award as a result of this RFP. See RFP Section 6 for more Contract award information.
- 2.2.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

### **2.2 Background and Purpose**

- 2.2.1 The Developmental Disabilities Administration (DDA) and the Office of Health Services (OHS), divisions of the Maryland Department of Health (MDH), are issuing this solicitation to obtain a Contractor to provide Financial Management and Counseling Services required for Self-Directed Services (SDS). The Contractor will be designated as an Organized Health Care Delivery System (OHCDS). As an OHCDS, the Contractor may subcontract with Medicaid and Non-Medicaid Providers to support program Participants to receive services approved in their Person-Centered Plan (PCP)/Plan of Service (POS) and budget in the manner which best suits their needs. For clarification of Abbreviations refer to Appendix 1 Abbreviation and Definitions.

Participants will be able to hire, fire, and supervise their chosen Provider(s) as the sole employer. Provider services will be subject to federal and state tax employment withholdings as domestic

workers working for household employers as well as quality assurance measures to protect the Individual's health, safety, welfare and prevent fraud; therefore, the Department is seeking the services of a Contractor that can fulfill two (2) simultaneous and synergistic activities to include the following:

- a. **Financial Management Services:** The Contractor shall provide the following Financial Management Services: (1) managing employment taxes and insurance; (2) managing payroll processing; (3) tracking and reporting of Individual/Participant budget balances and expenditures; (4) processing of invoices for goods and services; and (5) for the Community First Choice (CFC) and Community Personal Assistance Services (CPAS) programs only, the preauthorization of services on the POS.
- b. **Counseling Services:** The Contractor shall provide the following Counseling Services (1) aiding prospective and enrolled Participants to develop a personalized budget based on his or her PCP/POS; (2) offering assistance with recruiting, hiring, managing, and dismissing employees, and (3) training Individuals, their designated representative, authorized representatives, and direct service Workers.

2.2.2 The SDS program gives Participants and families greater control over the services they receive, how they receive them, and who provides them. At the same time, people who Self-Direct (SD) must be willing to take on the responsibility of managing their services. For services they choose to SD, they have additional responsibility including, but not limited to:

- a. Control of their budget that is determined by their PCP or POS which is a fixed dollar amount for the purchase of services and supports available under the program or waiver;
- b. Selection and arrangement for the services and supported in their PCP or POS;
- c. Accountability for using their budget to more effectively meet needs and more efficiently use public dollars;
- d. Being the employer of record; and
- e. Hiring, training, and firing employees.

2.2.3 The Contractor shall provide Financial Management and Counseling Services to include payroll services on an as needed basis. The DDA and OHS estimates, but do not guarantee, that financial management and payroll services may be needed for approximately 1,655 Participants or guardian/legal representatives participating in SDS. The DDA and OHS anticipate the estimate to grow by 10% annually. FMS assists the Participant or guardian/legal representative to:

- a. Manage and direct the disbursement of funds contained in the Participant-directed budget;
- b. Facilitate the employment of staff by the Participant or authorized representative, by performing as the Participant's agent such employer responsibilities as verifying Provider qualifications, processing payroll, withholding Federal, State, and local tax, making tax payments to appropriate tax authorities; and

- c. Perform fiscal accounting and make expenditure reports to the Participant or authorized representative and State authorities.

## 2.3 Scope of Work - Requirements

### 2.3.1 General Operations

The Contractor will verify Provider qualifications, execute and hold Provider agreements, and keep records available for inspection by the Department. When a Participant, authorized representative, or Guardian /Legal Representative chooses to participate in SDS, the Contractor shall assist the Participants with counseling and financial management services. The Contractor shall develop and implement separate Financial Management Services and Counseling Services Divisions to carry out the tasks in this RFP. The Contractor must perform all FMS tasks directly and shall not delegate any of the Financial Management Services (FMS) tasks to a reporting agent or other third-party. The Contractor may subcontract Counseling Services and other logistical services to other entities upon approval from the Contract Monitors. Other entities not initially identified in the Contractor's Technical Proposal upon approval will also need to be approved by the Contract Monitor.

2.3.1.1 The Contractor shall meet with the Contract Monitors for a Project Launch/Orientation meeting at MDH in Baltimore, Maryland within ten (10) business days of award of the Contract. At a minimum, the Contractor shall be represented at the project launch meeting by their Project Manager responsible for the financial services and the Counseling Services Manager responsible for Counseling Services, under this Contract.

2.3.1.2 The Contractor shall provide the following for Financial Management Services as well as Counseling Services:

- a. Provide materials to the Individual/Participant (or Representative) employers in an alternate format as requested. The Contractor must contract with a telephone interpreter service and provide in-person sign language interpreter services upon request by the Individual/Participant or their representative, with advanced notice in compliance with Section 1557 of the Patient Protection and the Affordable Care Act;
- b. Provide written notice to Individual/Participant (or representative) employers receiving services of changes related to member rights, advance directives, grievances, reconsideration or State fair hearings at least twenty (20) business days in advance of the intended effective date.;
- c. Maintain internet e-mail capability. The Contractor must provide access to its internet e-mail address to Individual/Participant (or Representative) employers and must respond to inquiries within one (1) Business Day;

- d. Review all informational materials intended for distribution throughout the Contract and implementation period and obtain the Contract Monitors approval at least thirty (30) Business Days prior to the use of the materials; and

### **2.3.2. Financial Management and Counseling Services Contractor Preferred Requirements**

- 2.3.2.1 At least three (3) years' experience within the last ten (10) years providing Financial Management Services (FMS) for large scale projects for at least two (2) public entities and have operated under various State and Federal laws and regulations. Offerors with this experience will be evaluated more highly than those without this experience.
- 2.3.2.2 At least one (1) year of experience within the past five (5) years utilizing an electronic tracking and reporting system to provide Financial Management Services. Offerors with this experience will be evaluated more highly than those without this experience.
- 2.3.2.3 At least one (1) year experience within the past five (5) years providing Counseling Services to the people it serves . Offerors with this experience will be evaluated more highly than those without this experience.
- 2.3.2.4 Have provided, in accordance with Generally Accepted Accounting Principles (GAAP), Financial Management Services to recipients and their families of at least one (1) self-directed benefits program for at least two (2) years. Offerors with this experience will be evaluated more highly than those without this experience.

### **2.3.3 Financial Management Services**

#### **2.3.3.1 Location**

The Contractor shall maintain a local office in the State of Maryland for access of self-directed and Counseling Services.

#### **2.3.3.2 Employer Agent**

The Contractor shall become an enrolled Maryland Medicaid Provider by the Go-Live Date. The Contractor shall act as the Employer Agent by performing the following duties:

- a. Demonstrate that it has a separate Federal Employer Identification Number (FEIN) specifically to file IRS Form 2678 and certain federal employment tax forms and to make federal payments on Participant's behalf.
  - This FEIN must only be used for processing wages and federal forms and taxes for the Participants it represents as an agent and not for processing

- wages and related federal forms and taxes for employees of parent organization or sub-entities.
  - This FEIN must be obtained in addition to the selected Contractor's organization corporate FEIN.
- b. Submit direct invoices to both DDA and OHS Contract Monitors for administrative billing, as necessary.
- c. Investigate and resolve denied billing claims as per programs guidance. Disputes related to administrative claims shall be resolved in accordance with Maryland State Finance and Procurement Code Annotated 15-216 through 15-221.1 and Maryland Commercial Law Code 12-511.
- d. Ensure that each new Individual/Participant has appointed the Contractor as their Fiscal Intermediary by completing the Employer Appointment of Agent form, IRS Form 2678.
- e. Prepare and submit a signed IRS Form 2678 for each Participant it represents and maintain documentation (copy of IRS 2678, Request for Approval Letter, and IRS Notification of Contractor's Approval) on file in the Contractor's office which shall be made available to the Contract Monitors upon request.
- f. Obtain approval from the IRS to become the Participant's Fiscal Intermediary, as described in above.
- g. Obtain a FEIN for each Participant it represents and assist current and prospective Individuals/Participants in completing and in submitting the necessary forms to secure a FEIN and establish themselves as the employer of record with the State and federal government.
- h. Maintain copies of the Participants' FEIN, IRS FEIN notification (e.g. IRS Form CP 575 or 147c letter, if applicable), and Form SS-4 in the Participant's file.
- i. Revoke the IRS Form 2678 for each Participant it no longer represents in accordance with IRS requirements and maintain documentation in each Participant's file.
- j. Obtain written agent authorization from the IRS to be the agent for each Individual/Participant (or legal representative) Employer it represents through the receipt of an approval letter from the IRS in response the filed Form 2678, for each Participant/authorized representative-employer. The Contractor must maintain a copy of the IRS approval letter, in each participant/authorized legal representative's file.
- k. File a signed IRS Form 8821 for each Participant it represents and maintain copies of the Form in each Participant's file.
- l. Renew IRS Form 8821 for each applicable Participant at the appropriate time and maintain copies of the renewals in each Participant's file.
- m. Revoke the IRS Form 8821 when it no longer represents the Participant and maintain documentation in each Participant's file.
- n. File the IRS Form 8822-B if the participant/employer needs to change their employer address or assign a new responsible party.

- o. Submit all required reports, withholding and payment actions in accordance with federal and State tax laws and regulations. The Contractor will be responsible for all late payments, penalties, and/or interest.
- p. Report an Individual's/Participant's employees' income annually to the IRS with distribution of all appropriate copies to the appropriate Individuals/Participants.
- q. Provide written information to an Individual's/Participant's employees concerning the Federal Earned Income Credit (EIC) according to Federal requirements.
- r. Make authorized payments on behalf of the Individual/Participant in accordance with the Participant's authorized individual budget, services (i.e., Support Broker and other authorized Medicaid/Waiver services), and units as specified in their PCP or POS.
- s. Verify expenditures are authorized in the PCP/POS budget *before* making any payment.
- t. Generate reports for Individuals/Participants and Department showing expenditures and Individual/Participant budget information.
- u. Manage all employer tax and insurance responsibilities using federal and state regulations governing domestic workers; assist the Individual/Participant and/or representative in developing and updating their independent service agreements.
- v. Consult with IRS personnel to resolve any questions about IRS procedures or requirements pertaining to the reporting of household employees.
- w. Establish and maintain a continuing operations plan that will allow the service to maintain operations in the event of an emergency and shall be approved by the Contract Monitors.
- x. Provide services to an Individual/Participant authorized by the Department.
- y. Provide Participants with Participant/representative employer orientation and initial and remedial training in accordance with the philosophy of the self-direction on an on-going basis and/or as needed.
- z. Receive referrals solely from the Department of the Participants who are approved for Self-Directed Services and wishing to employ their own staff. For each Participant, the Department shall also notify the selected Contractor of the budget authorized by MDH for the Participant. The Department shall notify the Contractor of any updates to such information (e.g. increase/decrease to the authorized budget, termination of services, etc.) throughout the effective period of the Contract.
- aa. Document and report the relationship between the participant, Support Broker (if applicable), and any paid provider in the following categories:
- bb. Withhold, file and pay applicable federal, state and local income taxes, employment and unemployment taxes, and worker's compensation.
- cc. Pay workers for authorized services rendered within authorized timeframes according to the Participants' PCP/POS and approved budget.
- dd. Develop and implement procedures to facilitate the resolutions of any disputes regarding payment to workers for services rendered.

- ee. Train Participants in managing and monitoring payments to workers, and in identifying and training new workers.
- ff. Assist Participants in exercising employer and budget authority to include: ensuring that Participants and their authorized representatives understand billing and documentation responsibilities; process payroll and perform related duties (e.g. withhold and file federal, state, local or unemployment taxes); facilitate purchases of worker's compensation or other forms of insurance for the Participant; collect and process employee benefits; issue payroll checks; process invoices and make payment for approved Participant directed-goods and services; track and monitor Participant budget expenditures; and identify expenditures that are over or under the budget.
- gg. Assist Participants in the management of public funds (i.e. Medicaid, State, Social Security) to include receiving, disbursing and tracking the public funds in accordance with Federal and State requirements. The Department may at any time, and at its discretion, audit the utilization reports inclusive of claims and expenditure information.
- hh. After the Contractor's receipt of the Participant's referral, assist the Participant in completing their enrollment packets. The Department is not responsible for assisting in the completion of the enrollment packets or reviewing/approving the completed enrollment packets. Once the selected Contractor has obtained completed enrollment packets from the Participants, the selected Contractor shall begin providing Financial Management Services for the Participant.
- ii. Manage the access to the Health Risk Screening Tool (HRST) database containing the Participant Health Information of the Participant in SDS. The selected Contractor will serve as the gatekeeper for the FMS agency to allow access for their staff to monitor the HRST status and payment if indicated.

#### 2.3.3.3 Federal, State and Local Regulations

The Contractor shall abide by all federal, State and local regulations. The U.S. Department of Labor rules prohibit the Workers from being treated as independent selected vendors and require all Workers be treated as employees. The participant, authorized representative, or guardian/legal representative who wants to SD their services become the common law employer of records for the Workers they hire. The Contractor shall manage all employer tax and insurance responsibilities using federal, State and local regulations governing domestic workers by:

- a. Assisting the Participant and/or representative in developing and updating service agreements.
- b. Assisting Participants who choose to SD their services with a Counseling and Financial Management Services provided by the Coordinator of Community Services (CCS).

- c. Ensuring compliance with federal, State and local tax, federal, state and local labor, and State workers' compensation insurance laws including updating forms and procedures as necessary.
- d. Cooperate with appeal hearings in response to any appeal filed by a Participant regarding any action taken by MDH, its representatives or federal officials.
- e. Provide additional information upon request from the local, State or federal representatives. Information requests may stem from, but not be limited to, unusual or unexpected circumstances related to an enrolled Individual/Participant.
- f. Participate in required weekly calls with the State and be present for stakeholder meetings (in person or by phone), when invited.

#### 2.3.3.4 Customer Service System

The Contractor shall establish prior to Go-Live and operate through the duration of the contract a customer service system that effectively serves Participants, representative-employers, qualified direct care Workers of the Participants, directed goods and services and traditional case managers (Coordinators of Community Services and Supports Planners) as applicable, and Support Brokers in an efficient manner.

The system shall include a toll-free number to be given to the Participants in the Enrollment Packets, see Section 2.3.2.7 as well as be available to Participants for Counseling Services in Section 2.3.3.

- a. All communications must be compliant with the American with Disabilities Act, including Section 508 compliance, accessibility and access to alternate formats.
- b. Provide materials and directions to assist Applicants and Individuals/Participants to understand the financial documents and forms required for participation in the Program at a 5<sup>th</sup> grade or lower reading level and 12 point or greater font. The material(s) may be used by counselors, the Contract Monitors or designee, Department staff, and any entity authorized by the MDH to assist Applicants and Individuals/Participants.
- c. Must coordinate and communicate with the Support Broker and traditional case management/ CCS in all possible methods of communication such as email, phone, face-to- face meetings, webinars, etc. based on the Participants need or request.
- d. The Contractor shall, throughout the effective period of the Contract, provide technical assistance to the Department, the Participants and the Participant's authorized representative(s) and employees, Coordinator of Community Services/Support Planner and Support Brokers regarding the Participant accounts, the forms, and documents necessary to set up such accounts, and submission and approval of timesheets. Technical assistance may be provided via email, phone, face-to-face meetings, webinars, etc. based on the need or request.



- e. The Contractor shall respond to all requests as indicated in Section 2.3.3.4 for assistance by the end of the next Business Day and shall track requests to ensure timely responses. Upon request by the Contract Monitors, the Contractor shall submit a tracking report. The report will have the following:
  - 1) Name of Participant;
  - 2) Date of request for assistance
  - 3) Assistance requested; and
  - 4) Contractor's response.
- f. The Contractor shall provide a customer service system that includes:
  - 1) A telephone system with initial call answering within 4 rings by a live operator or automated answering or interactive voice response system. If a live operator is not used for the initial call, answer within 3 minutes. A live operator must be available during Normal State Business Hours
  - 2) Customer service training to Contractor's employees; the Department shall determine the sufficiency of the Contractor's customer service training periodically throughout the term of the Contract.
  - 3) Sufficient training to all Individuals, Participants and their delegated Representatives at enrollment and as necessary, to ensure the Individual/Participant/Representative knows how to use the Financial Management Service. The Contract Monitors shall determine the efficiency of the training by the feedback from the Individuals, Participants and the representatives' use of the Financial Management System.
  - 4) 1-800 telephone number;
  - 5) Fax transmission capability;
  - 6) Internet/e-mail communication with Individuals/Participants;
  - 7) Establish a website that provides access for Individuals/Participants and their staff/workers to web-based information regarding account status, budget balances, and payment history that is up-to-date within one (1) business day;
  - 8) Access to translation and interpretation services in accordance with the Department's Limited English Proficiency policy (See 2.3.3.3.a);
  - 9) Provision of materials in alternate formats (e.g., large print, use of telecommunication devices for hearing and speech impaired, languages other than English);
  - 10) Receiving, returning and tracking calls from Individuals/Participants, their representatives, and their staff/workers both during Normal State Business Hours and after hours; and
  - 11) A method for receiving, responding to and tracking complaints from Individuals/Participants, Representatives, and workers within the established time. Upon request by the Department, the Contractor shall submit a complaint tracking report. The report will have the following:
    - a) Name of Participant
    - b) Program

- c) Date of complaint
  - d) Nature of the complaint; and
  - e) Contractor response and response date.
- 12) The Contractor shall notify the Contract Monitors in writing a minimum of twenty (20) Business Days prior to making change(s) to the customer service system which may affect the ability of the Program, Individuals/Participants, or employees to contact the Contractor. The notification shall include:
- a) How the Contractor will ensure that there will be no interruption in its ability to be contacted;
  - b) And that there shall be no additional time or cost incurred by the Contract Monitors, employees, Individuals/Participants or representatives.
- If the Contract Monitors are not satisfied with the Contractor's explanation to ensure constant access that is equivalent to the access in place prior to the proposed change, the Contractor may not implement the change unless and until the Contract Monitors provide written approval of the proposed change(s) and of the means to ameliorate any impact of the change.

#### 2.3.3.5 Purchasing

Referred Participants will have the ability to make approved purchases of items and services detailed in their PCP/POS. The Contractor shall ensure that the process of conducting Transactions complies with Departmental regulation and policy. The Contractor shall also:

- a. Maintain the Individual's/Participant's PCP/POS and budget in a centralized repository.
- b. Maintain documented policies, procedures, and internal controls that address maintenance of historical documents, version control, and change verifications/approvals and shall be approved by the Contract Monitors.
- c. Prior to making transactions, verify that:
  - 1.) Participant is eligible under the Program using the PCIS2, LTSS Maryland or otherwise confirming with the Department;
  - 2.) and that the charges for the service or item are Usual, Reasonable and Customary.
- d. Utilize a financial system that is approved by the Contract Monitors to assure compliance with GAAP:
  - 1.) Track Medicaid funds budgeted, received, disbursed, and remaining on an individual and aggregate basis;
  - 2.) Provide reimbursement to employees and Vendors;

- 3.) Disburse payment for transactions within forty-eight (48) hours when requested to secure housing or maintain Individual/Participant health and safety in the community;
- 4.) Disburse payments for all other transactions within 10 business days;
- 5.) Provide balance and payment information to Individuals/Participants via the Contractor's customer service system.
- e. Directly purchase Vendor products or services approved on the PCP/POS and authorized by the counselor, Participant, Support Broker or authorized representative and provide invoices within 3 business days for the purchases to the Department. Examples of these purchases include but are not limited to assistive technology, Items that Substitute for Human Assistance, Transition Services, Personal Emergency Response Systems (PERS), and environmental modifications.
- f. Utilize a software budget and planning tool to track SDS including staffing costs, Items that Substitute for Human Assistance, and Transition Services for Participants. The Contract Monitors or their designees will give feedback on the tool and also provide final approval. The tool must be approved by the Contract Monitors or their designees no fewer than five (5) Business Days prior to the Contract Go-Live Date.
- g. Submit a monthly report to the Contract Monitors and their designees, if applicable, Participants, and Support Planner/Coordinator of Community Services, and Support Brokers detailing by Program:
  - 1.) all payments made on behalf of Individuals/Participants, broken down by dollar amount;
  - 2.) the item(s) or service(s) purchased;
  - 3.) the date of purchase(s);
  - 4.) the payment method(s);
  - 5.) and the Vendor(s) to whom payment was made.

The report format and content must be approved by the Contract Monitors or their designees no fewer than five (5) Business Days prior to the Contract-Go-Live date.
- h. Keep records of Vendor transactions and provide them to the Department upon request.
- i. Participate in audits and/or reviews of payments conducted by the Contractor Monitors. The Contractor shall be financially liable for any Transactions found to be unallowable including, but not limited to:
- j. Items purchased that are expressly prohibited;
- k. Items not on an approved PCP or POS;
- l. Items purchased for an ineligible Individual/Participant;
- m. Items that are missing receipts; or
- n. Payments to ineligible employees.

#### 2.3.3.6 Payroll

For each employee processed for payroll, the Contractor shall withhold, file, and pay applicable federal, state and local income taxes, employment and unemployment taxes,

and worker's compensation as well as maintain documentation in its files of all forms listed in this section and perform the following duties, including:

- a. Collect and process IRS Form W-4, for the Individual/Participant's employee.
- b. Assist Individuals/Participants in verifying the employee's citizenship and alien status by collecting a completed US Citizenship and Immigration Services (US CIS) Form I-9.
- c. Secure background checks, as required for each program for all current and prospective employees and Support Broker of an eligible Individual/Participant (or Applicant) under the Contractor's Agency Authorization number in order to maintain records and receive updates regarding employee background status.
- d. Verify and document employee qualifications if requested by the Applicant, Individual/Participant, counselor, or the Contract Monitors or their designee.
- e. Prohibit prospective employees from being hired if they have a conviction which prevents employment in a health-care setting, or if they do not meet the training requirements established by the State.
- f. In compliance with the United States Department Health and Human Services Office of the Inspector General, prohibit employees from being hired if on the List of Excluded Individuals and Entities (LEIE <http://oig.hhs.gov/exclusions/background.asp>).
- g. Verify each employee's Social Security Number.
- h. Verify each employee's State of residence.
- i. Ensure employees are paid in compliance with federal and State Department of Labor wage and hour rules for regular pay.
- j. Report new hires per Maryland State Directory of New Hire and Federal requirements. Maryland Directory of New Hire can be found at <https://newhire-reporting.com/md-newhire/default.aspx> **the website also has information on the Federal requirements.**
- k. Develop and/or utilize a system for monitoring the delivery of employee services, collecting information about the corresponding employee's billing of claims and presenting the timesheets to Individuals/Participants or their representative for their signature representing approval. A demonstration, sample or detailed description of how the monitoring process will be carried out shall be included with the response to this RFP.
- l. Pay the Individual's/Participant's employees in full for net wages earned for services rendered, not to exceed the authorized duration or allotment of services approved on the PCP/POS and budget.
- m. Pay employees within the time period required by the State of Maryland (<https://www.dllr.state.md.us/labor/wagepay/>) and maintain documentation in each employee's file.
- n. Develop and implement a system for notifying Individual/Participant (or representative) employers and the Contract Monitors in a timely manner in the event a payroll is processed and will be distributed over five (5) business days late.
- o. Process employee's direct deposit and maintain documentation in the employee's file.

- p. Prepare, file, and distribute IRS Forms W-2 for employees per IRS instructions for agents, for electronic filing when processing 250 or more IRS Forms W-2 and maintain documentation in the employee's file.
- q. Meet the requirements of MMIS for transactions, confidentiality, and security through the duration of the Contract.
- r. Utilize a database for tracking, reporting, and responding to occurrences of timesheet overbilling and timesheets that cannot be paid due to missing or erroneous information.
- s. Determine if any employees are exempt from paying into FICA, FUTA, and SUTA, and process them accordingly;
- t. Withhold FICA and federal income tax withholding for all Individuals/Participants it represents and their employees per payroll period.
- u. File FICA and federal income tax withholdings using an IRS Form 941 quarterly and in the aggregate with its separate FEIN for all Individuals/Participants and employees it represents.
- v. Deposit FICA and federal income tax withholdings in the aggregate for all Individuals/Participants it represents using the Contractor's separate FEIN, in accordance with IRS depositing rules.
- w. Withhold Federal Unemployment Tax (FUTA) for all Individuals/Participants it represents per payroll period.
- x. File FUTA using an IRS Form 940 annually in the aggregate using the Contractor's separate FEIN for all Individuals/Participants it represents.
- y. Deposit FUTA in the aggregate using the Contractor's separate FEIN quarterly for all represented Individuals/Participants and maintain documentation in its files.
- z. Manage Federal Advanced Earned Income Credit (EIC) for each eligible employee and maintain documentation in its files.
- aa. File and deposit Out-of-State income tax withholdings, as required by the State or requested by the employee, for employees who reside outside of Maryland.
- bb. Manage the application of all garnishments, levies and liens on employee payroll checks.
- cc. Process information requests from federal and state agencies and other qualified entities and maintain documentation and correspondence in the employee's file.
- dd. Establish a payment processing system that includes the endorsement of all checks by two (2) employees of the Fiscal Intermediary.
- ee. Establish a payment processing system that assures that staff members responsible for endorsements do not handle deposits.

#### 2.3.3.7 Enrollment Packets

##### a. **Referral Process – for both Financial and Counseling Services**

- 1.) Referrals from the DDA will be made through the DDA Regional

Offices. Referrals may be made through electronic mail, facsimile or other mail delivery service. Future referrals may also be via an alert in the LTSSMaryland system.

- 2.) Referrals from the OHS will be made via an alert in the LTSSMaryland system. Referrals may also be made by OHS through electronic mail, facsimile or other mail delivery service.

- b. The Contractor shall develop and provide Enrollment Packets and submit to the Contract Monitor for approval at least 20 business days prior to the Go-live date. The Enrollment Packets will be provided by the Contractor to new or incoming Individuals/Participants within two (2) Business Days of receiving the Individual/Participant referral for the SD program. The Enrollment Packet shall include:

- 1.) A brochure containing information about the Contractor's Fiscal Management and Counseling Services.
- 2.) Hours of operation.
- 3.) Toll-free number.
- 4.) Key Contractor staff and contact information.
- 5.) Web address.
- 6.) Mailing address.
- 7.) An Individual/Participant contact information form, including emergency Contact information to be filled out by the Individual/Participant.
- 8.) Federal and State forms that the Individual/Participant must complete, including:
  - A. IRS Form SS-4, 2678, and 8821;
  - B. Service agreement forms;
  - C. Other applicable consent and agreement forms;
  - D. Worker's Compensation Insurance Coverage (e.g. description of coverage, how to file claims);
  - E. Payment schedule;
  - F. Timesheet submittal information;
  - G. Rate sheet; and
  - H. Instruction and Sample Payroll Report.

- c. The forms (identified in (8) above) shall be partially populated in advance where appropriate in order to assist Participants in their accurate completion.
- d. Offer an online option via a program-specific web portal as referenced in Section 2.3.3.7. Printable paper versions of all documents, as well as a form to request hard copies, shall be made available. The ideal response to this section will include a sample or detailed description of how this material will be distributed and/or accessed. A sample may be included in hardcopy or in an alternate format (e.g. links to an existing setup for another similar program managed by the Contractor) with the response to this RFP.

- e. The Contractor shall complete the Participant enrollment within five (5) business days after receiving notice from the Contract Monitors or their designee that the Participant is approved to participate in self-directed services. The Contractor shall notify the Individual/Participant if any paperwork is missing or incomplete. If the Individual/Participant is required to submit additional/corrected information, the Contractor must process this information within two (2) Business Days from the date of receipt of the new paperwork. Ideally, the new information should be processed immediately upon receipt. The Contractor must report to the Contract Monitors any Participant enrollment taking more than five (5) business days and shall specify the reason why the enrollment is taking longer than five (5) business days.

## **2.3.4 Counseling Services**

- 2.3.4.1 The Contractor shall develop an Incoming Employer Implementation Plan (IEIP) within twenty (20) Business Days from the Go-Live Date to be approved by the Contract Monitor. The IEIP is for collecting information on, and following-up with, Individuals/Participants (or their representatives) who are enrolled in the DDA Waivers, CFC or CPAS, those enrolled in Medicaid but not in one of the programs, and those who are not yet enrolled in Medicaid but who have expressed an interest in Self-Directed Services. For CPAS and CFC Applicants and Participants who self-direct, the Contractor's Counseling Division shall assist the Applicant or Participant with submitting their CPAS or CFC Plan of Service (POS) to the Contractor's FMS Division for the purposes of review and preauthorization.
- 2.3.4.2 The IEIP must be submitted by the contractor to the DDA and OHS Contract Monitors for approval within twenty (20) Business Days from the Go-Live Date. The Contractor shall implement all decisions and revisions made by the Contract Monitors within five (5) Business Days.
- 2.3.4.3 Within forty (40) Business Days of the project launch meeting, the Contractor shall contact each Program Individual/Participant, identify itself as the new Program Contractor and explain that it will become the Program Individual's/Participant's new FMS and Counseling Service Provider. During this period, it shall be the Contractor's responsibility to provide for the following:
  - a. Assign and identify a counselor to each Program Individual/Participant;
  - b. The Contractor's FMS Division shall distribute for signature to each Program Individual/Participant an IRS form 2678, Employer Appointment of Agent form, which designates the Contractor as the new fiscal agent for the Program Individual/Participant and file the completed IRS form 2678 with the IRS for each Program Individual/Participant;
  - c. Provide each Individual/Participant with the telephone number at which they may contact the Contractor to answer questions; and

- d. Have at least one (1) staff member available during the Contract start-up period to receive phone calls should Individual/Participants call the Contractor before the program is formally transferred, to redirect the caller to the incumbent contractor or appropriate authority for service.

2.3.4.4 Provide the Individuals/Participants with employer orientation and training in accordance with the philosophy of SD upon referral from the Department. The Contractor's Counseling Division shall develop and provide an Individual/Participant (or their representative) employer orientation and skills training, subject to the Contract Monitor's approval, in a manner consistent with Participant SD, decision-making and managerial authority.

- a. Counselors shall orient and train Individuals/Participants (or their representative) in the operation of the Program face-to-face at the Participant's residence (or a location mutually agreed to between the Contractor and the Individual). The Counselor shall explain all aspects of the program including, but not be limited to budget management, the role of the Contractor and training that includes the management of their individualized budget.
- b. The Contractor will provide instructions and training to a prospective Individual/Participant on what he or she needs to do to set up services and ensure payment for approved services and supports, beginning with the development of an individualized PCP/POS (with the Counseling Division).
- c. Results of each training session shall be electronically stored.

#### **2.3.5 Staffing Requirements – for both Financial and Counseling Services**

The Contractor shall update its organizational chart (including any sub-contractors) as submitted in its Technical Proposal and submit to the DDA and OHS Contract Monitors at least ten (10) business days prior to Go-Live Date of the Contract. All Contractor and subcontractor staff must be at least eighteen (18) years of age and US citizens or documented immigrants. Additionally, the Contractor:

- 2.3.5.1 Must have management and staff who are knowledgeable and have experience in providing for and serving Participants with developmental disabilities and their representatives as the common law employer (performing services for an employer who has the right to control and direct the results of the work and the way in which it is done).
- 2.3.5.2 Shall have at least one (1) staff member with a bachelor's degree in accounting and four (4) years of applicable experience or a master's degree in accounting and two (2) years of applicable experience. It is preferred that the accountant have at least twenty-four (24) months of experience with Medicaid information systems.



2.3.5.3 Shall have at least one (1) system analyst with a bachelor's degree in Computer Science or a related field with a minimum of four (4) years of experience with various database management systems, programming languages and with auditing system edits and data integration procedures. A Master's Degree in Computer Science or a related field is preferred with at least twenty-four (24) months of experience with Medicaid information systems.

2.3.5.4 Must verify staff qualifications.

2.3.5.5 Provide the names of four (4) employees authorized to issue checks on behalf of the Fiscal Intermediary. The Contractor shall provide the Contract Monitor verbal or written notification of when any of the aforementioned names are internally changed.

2.3.5.6 Maintain an adequate administrative organizational structure and support staff sufficient to perform its contractual responsibilities. One staff member may fulfill multiple roles described below. This structure or a suitable alternative proposal that shall be approved by the Contract Monitor shall include:

- a. **Project Director - (Key Personnel)** - shall have authority to manage all operations of the FMS and Counseling Divisions. The Project Director shall be available to the Contract Monitors by telephone during Normal State Business Hours. The Contractor must provide an administrative telephone number that will enable the Contract Monitors to reach the Project Director directly.
- b. **Project Manager for FMS Services Division - (Key Personnel)** - shall have experience managing FMS operations.
- c. **Account Manager for FMS Services - (Key Personnel)** - shall have experience with accounts, financial quality control, and managing public funds.
- d. **Payroll & Invoice Manager - (Key Personnel)** - shall have experience processing timesheets, payroll, maintaining bank accounts, acting as a billing agent, paying invoices for provider services as well as Self-Directed goods and services.
- e. **Pre Authorization Manager - (Key Personnel)** - shall have experience reviewing Person-Centered Plans, consulting with community & health professionals if necessary, comparing requested services to budgets and issuing pre-authorizations, clarifications or denials of services.
- f. **Customer Service Manager - (Key Personnel)** - shall have experience with call center/customer service operations and working with aged and/or disabled individuals.
- g. **Project Manager for Counseling Services Division - (Key Personnel)** - shall have experience managing counseling operations, public services, social services, and Self-Direction.
- h. **Enrollment Manager - (Key Personnel)** - shall have experience managing the enrollment and disenrollment of individuals, developing supporting materials for enrollment, and skills training for individuals/participant and/or representatives.

## 2.3.6 Training

- 2.3.6.1 When a new Individual/Participant begins participating in the SDS program, the Contractor shall provide training to the Individual regarding completion of the required forms and submission and approval of timesheets prior to the first timesheet submission. The Contractor shall, make training available at a location mutually agreed to between the Contractor and the Individual.
- 2.3.6.2 The primary trainer representing the Contractor will work with the Contract Monitors to develop and finalize the training program in preparation for full staff training and should be finalized and approved by the Contract Monitors ten (10) business days prior to the Go-Live date. The training program upon approval of the Contract Monitors will be objective-based. Trained counselors are expected to assess an Individual's/Participants (or their representative's) knowledge of each session's learning objective. Prior to the counselor establishing a date the PCP/POS may begin for a Participant, each counselor will evaluate the Participant's understanding of each objective and be prepared to formally attest to his or her full understanding of the requirements necessary to perform the role of an employer and abide by programmatic requirements. Results of each training session must be electronically stored. Once finalized, the training program may be modified if approved by the Contract Monitors. Contractor shall also be available by telephone to answer questions and provide additional training to Participants.
- 2.3.6.3 As of the Go-Live Date, all Contractor and Subcontractor staff are required to have completed the standard Policy on Reportable Incidents (PORII) training as well as informing the Participants, guardians/legal representative and Support Brokers of the PORII process. DDA provides PORII training to its' Licensed Providers on an ongoing basis via the DDA training calendar on the [DDA's website](https://dda.health.maryland.gov/Pages/home.aspx), at <https://dda.health.maryland.gov/Pages/home.aspx>.
- 2.3.6.4 The Contractor shall develop and distribute a Participant Employer Handbook to all Individuals/Participants (or representatives). The Contractor shall update this handbook as needed. The handbook and any updates must be approved by the Contract Monitors within thirty-five (35) business days of the Contract Commencement. Any requested revisions or updates shall be approved by the Contract Monitors prior to distribution and use with the Programs. The Contractor will be responsible for the developing, printing, revision, distribution and replenishing of the handbook in electronic and hardcopy format throughout the Contract.
- 2.3.6.5 The Contractor shall submit a proposed Participant Employer Handbook within thirty-five (35) Business Days of the Contract Commencement. Any requested revisions by the Contract Monitor or designee must be resubmitted within ten (10) Business Days of receipt for final approval by the Contract Monitors or designee. The approved Participant Employer Handbook shall be available to the individuals/Participants no later than seventy (70) Business Days after the Contract Commencement Date. The Contractor shall provide the Contract Monitors with one (1) electronic copy of the approved handbook.

The handbook shall include at the minimum information on the Contractor's roles and responsibilities:

- a. Recruiting workers and the process for hiring employees;
- b. Managing employees;
- c. Terminating employees;
- d. Goods and services;
- e. Complaints and how to resolve them;
- f. Simple instructions on how to complete required documentation, where to find the documents and easy-to-follow samples.

2.3.6.6 The Contractor must develop Employment Materials and provide them to prospective employees of Individuals/Participants. The Employment Materials shall include, but not be limited to the following:

- a. Contractor contact information;
- b. Submission information, instructions and answers for frequently asked questions;
- c. A one-page Employment Application (which shall also be available for completion, submission, and revision online);
- d. Criminal Background Authorization form;
- e. Payment information (e.g. direct deposit, mailed check), agreements and documents to enroll employee in the Contractor's payroll system; and
- f. Federal and State forms and instructions including:
  - 1.) IRS Form W-4, Employee's Withholding Allowance Certificate with instructions and completed example; IRS Notice 797;
  - 2.) MW-507 - Employee's Maryland withholding exemption certificate. This allows the employer to withhold the correct amount of Maryland income tax from the employee's pay.

2.3.6.7 The Contractor shall submit the proposed Employment Materials within thirty-five (35) Business Days of the Contract Commencement. Any requested revisions by the Contract Monitor or designee must be resubmitted within ten (10) Business Days of receipt for final approval by the Contract Monitors or designee. The approved Employment Materials shall be available to the employees no later than seventy (70) Business Days after the Contract Commencement Date.

2.3.6.8 The Contractor must process the employee's paperwork within four (4) Business Days and notify the Participant of the employee's hire status. The Contractor is responsible for ensuring the employee meets the qualifications set by the Program before clearing an employee for hire and/or processing payment for the employee on behalf of the Participant.

2.3.6.9 The Contractor must describe how counselors are trained and how both counselors and the training program are evaluated prior to and during the counselor assuming counseling

duties. The Contractor shall accept Self-Direction (or Person-Centered Planning) training & training materials from the Maryland Department of Disabilities (MDOD) or other entity designated by the Department. The training program and any related materials provided to a Medicaid beneficiary must be submitted for approval to the Contract Monitors twenty (20) Business Days prior to the Go-Live Date. Orientation and training of counselors must be open to State representatives. The Contractor is required to keep records of attendance and training materials along with the evaluations. Trainings are to occur quarterly and be reported in the monthly report in which they occur.

- a. Train the Staff, the Contract Monitors, Individuals/Participants and Workers on the completion of State and Federal Forms. Examples of required skill training objectives include;
  - 1.) Financial management and payroll;
  - 2.) Documentation required for employee/provider
  - 3.) Distribution of training materials for proper timekeeping; and
  - 4.) Self-direction policies, procedures and guidance.
- b. Develop, implement, and maintain current Orientation and Skills Training Courses for Individuals/Participants and representatives and employees. All elements of the Orientation and Skills Training must be approved by the Contract Monitors prior to implementation. If the Contractor has previously developed similar training materials, samples of this material should be provided in response to this RFP to demonstrate the Contractor's capabilities;
- c. Make the Orientation and Skills Training Course materials available online to Individuals/Participants and employees as of the Go-Live Date;
- d. Develop, implement, and maintain a competency-based online examination for Individuals/Participants and employees to cover the information presented in the online training courses. The online examination should automatically provide the Individuals/Participants and employees with a score and allow them to print a completion certificate;

### **2.3.7 Data Systems**

- 2.3.7.1 The Contractor shall maintain a data system to accomplish the functions listed throughout Section 2.3.
- 2.3.7.2 The proposed system shall have capability of importing data in standard data format file from MDH's LTSS system.
- 2.3.7.3 The Contractor's proposed system shall have capability of exporting data in standard data format file for the purpose of importing that data into MDH's LTSS system.
- 2.3.7.4 The Contractor shall establish secure FTP connectivity with MDH for the purpose of performing data exchange.

2.3.7.5 The Contractor shall apply data encryption to protect State data, especially personal identifiable information, from improper disclosure or alteration. For State data the Contractor manages or controls, data encryption should be applied to State data in transit over networks and, where possible, at rest; 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.

2.3.7.6 The Contractor shall utilize LTSSMaryland to fulfill its functions for CFC and CPAS Participants.

### **2.3.8 Policy and Procedural Manual**

2.3.8.1 The Contractor shall have written policies and procedures, internal controls and a computerized system in place for:

- a. Producing and distribution of the Individual’s/Participant’s file;
- b. Collecting and processing the information contained in the Individual/Participant Enrollment Packet;
- c. Maintaining documentation in each Individual/Participant file;

2.3.8.2 The Contractor shall provide a copy of its specific policies and procedures in the form of a manual to the Contract Monitors (to include electronic format) within ninety (90) days of the Go-Live Date of the Contract. This manual shall contain the Contractor’s policies and procedures to include the following information:

- a. Specific to Maryland and stay up-to-date with Federal, State, and local rules and regulations.
- b. The manual must delineate all tasks related to this project and identify those tasks that a reporting agent or subagent will perform.
- c. This manual must also include what monitoring will occur between the selected Contractor and the reporting agent or subagent.
- d. A disaster recovery plan in place for all electronic program information. See Section 3.2.3.2.

2.3.8.3 As a Mandatory Reporter, the Contractor must develop and implement, prior to the Go Live date, written policies, procedures and internal controls to monitor participants and representatives’ performance as common law employers and identify remediation and additional training needed and recommend termination from the self-direction services option for participants/representatives as needed.

2.3.8.4 Establishing and maintaining files and documentation including procedures and internal controls for establishing and maintaining current and archived files and documentation for participant/representative in a confidential and secure manner for the time period required by the applicable federal and State requirements.

2.3.8.5 All requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPPA) must be met.

### 2.3.9 Quality Assurance and Performance Reports

2.3.9.1 The Contractor shall have a system of written policies and procedures and internal controls to prepare and submit required reports to the Contract Monitors in a timely manner. All report formats must be approved by the Contract Monitors and must be available electronically in an Excel format or hard copy, if requested. All reports, unless otherwise specified, shall be due to the Contract Monitors by the 15<sup>th</sup> of the month for the previous month's activities. Types of applicable reports are as follows:

- a. Employee Training Reports: specify the Participant, name of the Participant and Worker, waiver/program training by type and expiration dates.
- b. Payroll Reports: will be provided to the Participant and the Contract Monitors or their designee. The payroll report shall include the type of program/waiver, number of hours the Participant has available for the prior authorization period, the number of hours used, number of hours remaining for use, hours worked by employee, check date, amount, number, and taxes by employee, and any vendor payments.
- c. Errors Reports: include delayed payments with information relate to the Participant, services, cause, and corrective action plan if applicable.
- d. Participant Reports: with current and archived listing of Participants and Workers, which includes all applicable enrollment and termination dates, program/waiver, address, telephone numbers, and social security numbers encrypted and adhere to HIPPA requirements.
- e. Monthly and Historical Reports: consist of the Participant's budget, authorized services, service provider, paid claims, and claims that have not been adjudicated. These reports must include:
  - 1.) Name and identification number of each Individual/Participant;
  - 2.) Program/waiver enrollment date;
  - 3.) Program/waiver eligibility date;
  - 4.) Type of program/waiver;
  - 5.) Monthly budgeted amount;
  - 6.) Monthly expenses;
  - 7.) Amount approved and disbursed for each service code compared to the amount billed;
  - 8.) Year budgeted amount (by service);
  - 9.) Year to date expenses (by service);
  - 10.) Projected expenditures for the remainder of the fiscal year;
  - 11.) Number of personal assistance, day, and employment service hours the Individual/Participant had available for the prior authorization period;

- 12.) Number of hours used with rate listed;
- 13.) Number of hours remaining for use;
- 14.) Hours worked by employee(s);
- 15.) Check date, amount, and number;
- 16.) Any Vendor payments. The reports have to be done on the basis of the State fiscal year, July 1 to June 30. The reports will be submitted with the invoices required by section 3.4.2.
- 17.) All claims submitted to the selected vendor for payment, but not paid, and the reason, for each Individual/Participant for the current month and cumulatively (Pending Report);
- 18.) Overtime paid (40+ hours);
- 19.) Taxes and insurances paid (as applicable) for the current month and cumulatively;
- 20.) Details of all funds disbursed for each Individual/Participant for the Items that Substitute for Human Assistance, and Transition Services, including: the number of Participants served, number of transactions per Participant, and number of Vendors, utilized, the time frames between the request for payment and actual payment to the Vendor.
- 21.) Self-direction enrollment timeliness report that indicates the date that contractor was notified of Participant's approval for self-direction by Contract Monitor, their status (enrolled, pending, declined) and the date of enrollment, if applicable; and
- 22.) Other data elements may be added at the discretion of the Contract Monitors.

- f. Participant Budgets: The Contractor must inform the Contract Monitors or designees within thirty (20) business days of Participants who are projected to exceed their budget allowance and identification of Participants. The Contractor must also inform the Contract Monitors no less three (3) Business Days when it is estimated that Individuals/Participants will incur no expenses in a given month.

2.3.9.2 The Contractor will identify trends and patterns of excessive billing or unusual circumstances, such as the following indicators that must be documented and reported to the Contract Monitors quarterly, following the first full quarter of collected data. The Contractor shall give to the Contract Monitors an indication of what would be considered an over the limit flag:

- a. Participant self-directing their services;
- b. Approving extensively more hours than allocated;
- c. High fees to Vendors (based on established quality indicators); and
- d. Other similar instances and/or situations such as:

- 1.) Should a family member (s) be a support staff for the Participant?

- 2.) Indications that the financial benefit to the family is the driving factor, instead of providing quality supports to the Participant?
  - 3.) Especially when the self-advocate is more isolated from the community, by the family member (s) serving as staff or the Support Broker.
  - 4.) Besides situations like these being abusive and ones of exploitation, they are Medicaid Fraud, and necessary reporting is required.
- 2.3.9.3 The Contractor shall have a notification system in place to alert the Contract Monitors of situations identified as potential misuse of authorized funds immediately upon discovery through a formal report submitted via electronic mail followed by a telephone call the next Business Day.
- 2.3.9.4 The Contractor shall develop and distribute a Quality Satisfaction Survey that shall be approved by the Contract Monitors ten (10) Business Days prior to the Go-Live Date of the Contract. Distribution of the survey shall be completed upon services rendered to the Participant. The results of the satisfaction survey shall be reported to the Contract Monitors on a quarterly basis following the first full quarter of collected data: using a 10% sample to review, including a sample of timesheets for accuracy and timeliness findings. The Contract Monitors reserve the right to change reporting requirements and request reasonable ad-hoc reports.
- 2.3.9.5 The Contractor shall participate in ongoing quality management and evaluation activities of Participants and Participants' Workers including a readiness review for individuals who choose Self-Directed Services in DDA's Community Pathways Waiver.
- 2.3.9.6 The Contract Monitors reserve the right to conduct performance evaluations at any time throughout the year to provide assurance that the federal requirements as set forth in 42 CFR 441.301 and 441.302 are satisfied.
- 2.3.9.7 The Contractor shall prepare an Annual Report identifying the activities participated (to include but not limited to payrolls completed, training provided, and surveys conducted) in throughout the year due to the Contract Monitor twenty (20) Business Days following the end of the Contract year.
- 2.3.9.8 The Contractor is responsible for the following to ensure quality assurance with their services according to the Contract Monitors' best practices. For Reportable Events, determine and understand the scope and applicability of the reporting (abuse, neglect) to the proper authorities such as:
- a. the police;
  - b. Developmental Disabilities Administration (DDA);
  - c. Office of Healthcare Quality (OHCQ) for instances related to COMAR 10.22.02.01;
  - d. Adult Protective Service (APS) for instances related to COMAR 10.07.14.62; and



- e. Applicability of the State Adult Protective Services (APS) law (COMAR 10.07.14.62).
- 2.3.9.9 Develop and implement a Quality Assurance Plan and adhere to performance standards review to include program plan of corrections, freeze of new enrollments, terminating contracts based on the severity of the findings of the reviews according to DDA Quality Assurance plan (COMAR 10.22.02.14 A-E), responsible for demonstrating how it complies with the general administrative requirements and standards developed by the State to assure the provision of ongoing service quality according to COMAR 10.22.01.
- 2.3.9.10 Contractor will have access to PCIS2. It is the selected Contractor's responsibility to obtain the initial and updated Individual Plan/Budget information for each individual to determine what is allowable to be paid (this is also a quality assurance requirement). All updated individual plans can be accessed in PCIS2. Plans are updated annually.
- 2.3.9.11 The Contractor shall be responsible for successfully complying with the general administrative requirements and tasks developed by MDH to assure ongoing service quality for Participants who choose Self-Directed Services in OHS's Community First Choice (CFC) and Community Personal Assistance Services (CPAS) programs. The Contractor shall participate with the Contract Monitors in several required quality assurance and management activities consistent with the State's 1915 (k) and 1915 (c) quality management strategies, including but not limited to the following reporting to MDH and quality checks:
- a. Use of the Reportable Events Module in LTSSMaryland;
  - b. Reporting criminal background checks for Participants and Contractor staff;
  - c. Reporting service utilization (POS, budgets, authorized services, paid claims and unpaid claims);
  - d. Reporting over and underutilization;
  - e. Identification of changes in support needs and ensuring services are being provided in a manner consistent with the POS;
  - f. Reporting and redressing Participant complaints;
  - g. Maintaining and reporting telephone records;
  - h. Participating in and passing a Fiscal Intermediary and Counseling Services Readiness Review prior to the Contract Go-Live Date. The Contract Monitors will notify the Contractor if the results of the review require a corrective action plan. Based on the results of the Readiness Review, if necessary, the Contractor must develop a written corrective action plan within ten (10) Business Days of notice for approval by the Contract Monitors. The corrective action plan must satisfy any outstanding issues identified during the Readiness Review. Upon approval from the Contract Monitors, the Contractor must implement the corrective action plan.
- 2.3.9.12 The Quality Assurance Monitoring Plan is subject to the Contract Monitors' approval. The Quality Assurance Monitoring Plan approval process will be as follows:

- a. The Contractor shall develop a preliminary Quality Assurance Monitoring Plan that covers both the individuals who choose Self-Directed Services in DDA's Community Pathways Waiver and Participants who choose Self-Directed Services in OHS's Community First Choice (CFC) and Community Personal Assistance Services (CPAS) programs.
- b. Provide a preliminary Quality Assurance Monitoring Plan submitted with its Proposal and develop a final Quality Assurance Monitoring Plan,
- c. Submit the final Quality Assurance Monitoring Plan, based on the decisions and recommendations of the Contract Monitors, for approval within five (5) Business Days of Project Launch Meeting. The Contractor shall submit one (1) electronic copy of the Plan and must not proceed until approval of the plan has been obtained by the Contract Monitors; and
- d. Implement the completed Quality Assurance Monitoring Plan within 120 calendar days from the Project Launch Meeting.
- e. Provide all information as requested by the Contract Monitors regarding the Quality Assurance Monitoring Plan approval process. The general administrative requirements and standards that comprise the Quality Assurance Monitoring Plan will consist of the requirements contained in the Contract resulting from this RFP. The Contractor shall cooperate with and participate in additional reviews as applicable if Individual/Participant (or representative) employers report concerns, or State quality assurance or auditing systems present suspected problems. The Contract Monitors will notify the Contractor if the results of the review require a corrective action plan. Based on the results of the FMS and Counseling Services Quality Assurance Monitoring Plan's review, if necessary, the Contractor shall develop and implement a written corrective action plan that satisfies any outstanding issues that have been identified during the Contract Monitors' Review.

2.3.9.13 Contractor shall have seventy (70) Business Days from the Contract commencement date to complete a Readiness Review conducted by the Contract Monitors and other MDH staff for Financial Management Services and Counseling Services. The Contract Monitors will be considering the items discussed and outlined at the Project Launch/Orientation Meeting. A successful review will be determined by the Contractor's ability to demonstrate that it has successfully assumed the tasks and subtasks detailed in the Scope of Work. The evaluation will include confirmation of the following, but is not limited to

- a. Demonstrated that the Contractor has met or otherwise contacted each enrolled Individual/Participant pursuing Self-Directed Services in their respective programs, identified itself as the new Contractor and explained that it will become the Program Individual's/Participant's new fiscal management entity (including Financial Management Services and Counseling Services);

- b. Obtained all required authorization/vendor registration to function as a fiscal management entity (including Fiscal Management Services and Counseling Services) for this Contract;
- c. Established Individual/Participant accounts;
- d. Established payroll and withholding records;
- e. Created an Employer Handbook;
- f. Established ability to electronically invoice MMIS via a Medicaid provider number;
- g. Established personnel in place in accordance with Staffing Requirements (See section 2.3.6);
- h. Obtained approval from the Contract Monitors on the final Incoming Employer Implementation Plan;
- i. Established and implemented a fully operational phone number and response process for customer service inquiries;
- j. Established and implemented a fully operational Program website and web portal;
- k. Obtained approval from the Contract Monitors for all created requisite forms and survey tools;
- l. Obtained approval from the Contract Monitors for all created Contractor policies and procedures; and
- m. Trained all counselors.
- n. Developed the Enrollment Packet
- o. Developed the Policy and Procedure manual

The Contract Monitors will determine the readiness of the Contractor. The Contract Monitors will notify the Contractor if the results of the review require a Corrective Action Plan. Should the Contractor not be determined to meet readiness requirements, they will be required to submit a corrective action plan within ten (10) Business Days of receipt of deficiencies. The corrective action plan shall include remedies to all deficiencies and timeframes for implementation of each remedy.

### **2.3.10 Records**

- 2.3.10.1 All Participant and Provider records at all times shall remain the sole property of the Department and must be returned to the Department upon termination of the Contract. During such time as the records are in its possession, the Contractor shall establish and maintain current and archived Participant, Provider, and Contractor files in a secure and confidential manner as required by federal and State rules and regulations (e.g., meet any applicable HIPAA requirements).
- 2.3.10.2 Maintain client confidentiality when multiple Individuals'/Participants' names also appear in excess of the individuals'/Participants' file. For example, the approval letter from the IRS in response to a filed Form 2678 will occasionally include multiple Individuals'/Participants' names. The Contractor shall black out any name other than the Individual/Participant and should be done using a redaction black marker. . Note:

The submitted IRS Forms 2678 and 8821 should be sufficient and it is not necessary to wait to receive the IRS approval letter in order to provide services.

- 2.3.10.3 Have a functional Disaster Recovery Plan for electronic and hard copy files in place and documented. See Section 3.2.3.2.
- a. Describe the hardware backup used if management information systems are disabled;
  - b. Describe the process for allowing the continuation of budget allowance disbursements;
  - c. Assure the rapid return to limited operation;
  - d. Provide for a complete backup of all non-software data sets at the end of each Business Day;
  - e. Store the resultant information in an external secure site;
  - f. Utilize a server designed to employ a method of redundancy for operational integrity and production;
  - g. Provide that all workstations attached to the network have sufficient processing capability to be used interchangeably and the ability to backup one another until repair or replacement can be affected on a failed workstation; and
  - h. Have a system in place, written policies and procedures, and internal controls documented for testing and updating the Disaster Recovery Plan for electronic and hard copy files.
- 2.3.10.4 The Contractor shall provide for a sixty (60) business day transition period and describe the transition plan. The transition plan shall include the following:
- a. If the Contract is awarded to the incumbent Contractor, a detailed description of how the Contractor will incorporate new or modified review requirements into its operations; or
  - b. If the Contract is awarded to an entity other than the incumbent Contractor, a detailed description of how the Contractor will work with the incumbent Contractor and MDH to acquire appropriate documents, databases, and other information deemed necessary by MDH, in order to ensure a smooth transition and uninterrupted services during the start-up period.
  - c. The Contractor shall obtain the Contract Monitors or designee approval of the transition plan ninety (90) Business Days before implementation.
- 2.3.10.5 The Contractor shall develop and implement processes to support Participants in maintaining documentation of service delivery to support payments for services provided and bi-weekly monitor such documentation.
- 2.3.10.6 The Contractor will submit to the Contract Monitors:
- a. Its annual audited financial statement, within four (4) months of the close of the Contractor's fiscal year.

- b. A hard copy of any IRS notification of late payment, penalty and/or interest within five (5) days of receipt.
- c. Independent assessments performed of the Contractor's security controls that provide assurance that adequate security controls, as required in Section 3.2, are in place and operating properly to ensure Sensitive Data, such as Personally Identifiable Information (PII), is adequately protected from disclosure. Such independent assessments of the Contractor's security controls may include a SOC-1 Type-2 audit, a SOC-2 Type-2 audit, ISO 27001 certification, or a HIPAA Compliance Audit.
- d. Cooperate with all State and federal auditors and assist with gathering information during audit process.

### **2.3.11 Performance Audits**

This section is separate from Section 3.5 SOC-2 Type-2 Audit Report and is applicable for invoice submission, see Section 3.4

- 2.3.11.1 The Contractor shall obtain an annual audit by an independent Certified Public Accountant (CPA) or independent CPA firm. The Contractor shall have the right to employ, at its own expense, a qualified accountant or firm of its own selection for the purpose of verifying the activities under the general service requirements of the Contractor and its subcontractors relating to all aspects of this Contract. The independent audit shall assess at least 10% of the population of clients serviced by the Contractor through a random selection process of Statewide services for the State's previous Fiscal Year which runs July 1 through June 30.
- 2.3.11.2 A report shall be written, attested to by the independent auditor, and submitted to each Contract Monitor or designee annually on each SDS program separately. The report shall be submitted no later than seventy (70) business days following the end of the State's fiscal year. The report must contain all findings of the audit. If the independent audit report finds a misrepresentation by the Contractor in fulfilling its duties under the requirements of this Contract, a written statement substantiating the circumstances and remedies of correction will be provided to the Contract Monitor within twenty (20) business days of the finding(s).
- 2.3.11.3 If the Contractor is not in agreement with the findings of the audit report, then the Contractor shall so notify the Contract Monitor of such in writing within twenty (20) business days of the Contractor's receipt of the final audit report. The Contractor and Contract Monitor will then jointly appoint (within a period of twenty (20) business days and at the Contractor's expense) an independent qualified accountant to validate the findings of the Contractor's accountant. The decision of said independent accountant shall be final.

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## **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 and Cyber Liability insurance with minimum limits of \$5,000,000 per claim and annual aggregate.
- 3.1.3 The Contractor shall maintain Crime Insurance to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and single loss retention not to exceed \$10,000.
- 3.1.4 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. Crime Insurance as required in Section 3.4.4.
- 3.1.5 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 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' advanced 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 ten 10 business 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.
- 3.1.6 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 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 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-listed 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 twenty-four (24) 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 of Maryland and its Officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.
  - (7) This Section 3.2.3.3 shall survive expiration or termination of the contract

### **3.3 Problem Escalation Procedure**

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

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

- 3.3.2 The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
  - a. The process for establishing the existence of a problem;
  - b. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
  - c. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
  - d. Expedited escalation procedures and any circumstances that would trigger expedited them;

- e. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- f. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- g. A process for updating and notifying the Contract Monitor of any changes to the PEP.

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

## **3.4 Invoicing**

### **3.4.1 General**

3.4.1.1 All invoices for services shall be signed by the Contractor and submitted to the Contract Monitors listed on the Key Information Summary Sheet for the services provided for each identified Department referral as per Section 2.3.4. All invoices shall include the following information:

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

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

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

accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.

#### 3.4.2 Invoice Submission Schedule

The Contractor shall submit invoices in accordance with the previous month's activities and at the unit prices for the described services quoted in the Contractor's financial proposal form, Attachment B. The invoice shall contain the number of occurrences, units, referral region and/or unit area (Section 3.4.1) and be submitted to the Contract Monitor identified on the Key Information Summary Sheet. Invoices are due by the 15<sup>th</sup> of the month following the month in which services were performed. The invoice shall be verified against the Contract Compliance Checklist by the Contract Monitor in Attachment P.

### 3.5 SOC 2 Type 2 Audit Report

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

The Contractor shall have an annual audit performed, by an independent audit firm of the Contractor's choosing, of the Contractor's and any relevant subcontractor's handling of Sensitive Data and the Department's critical functions, which are identified as: Account Receivable or Fee Payment Processing Services; Call Center or Help Desk Services; Payroll Processing Services; and Records Retention Services; and shall address all areas relating to Information Technology security and operational processes (see RFP Section 3.2.3.). These services provided by the Contractor and any relevant subcontractor that shall be covered by the audit will collectively be referred to as the "Information Functions and/or Processes." Such audits shall be performed in accordance with audit guidance: *Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2)* as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:

- 3.5.1 The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the "SOC 2 Audit" or "SOC 2 Report"). The initial SOC 2 Audit shall be scheduled and completed within a timeframe to be specified by the Contract Monitor. All

subsequent SOC 2 Audits that are arranged after this initial audit shall be performed on annual basis and submitted to the Contract Monitor by March 1 for the preceding calendar year.

- 3.5.2 The SOC 2 Audit shall report on the Contractor's and any relevant subcontractor's system(s) and suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes to meet the requirements of the Contract, including the Security Requirements identified in Section 3.2, relevant to the following trust principles: Security, Confidentiality, and/or Privacy as defined in the aforementioned Guidance.
- 3.5.3 The audit scope of each year's SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Confidentiality, Processing Integrity, and/or Privacy) to accommodate any changes to the Contractor's and any relevant subcontractor's environment since the previous SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and/or Processes through modifications to the Contract, or due to changes in information technology or operational infrastructure implemented by the Contractor and/or subcontractor. The Contractor and any relevant subcontractor shall ensure that the audit scope of each year's SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- 3.5.4 The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the Contractor for the Information Functions and/or Processes for the services provided to the Department under the Contract. The Contractor shall ensure the audit includes all subcontractors operating in performance of the Contract.
- 3.5.5 All SOC 2 Audits, including those of the Contractor and any relevant subcontractor, shall be performed at no additional expense to the Department.
- 3.5.6 The Contractor and all relevant subcontractors shall promptly provide a complete copy of the final SOC 2 Report(s) to the Contract Monitor upon completion of each SOC 2 Audit engagement.
- 3.5.7 The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a documented corrective action plan which addresses each audit finding or exception contained in a SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor and/or subcontractor(s) along with the date(s) when each remedial action is to be implemented.
- 3.5.8 If the Contractor, including any relevant subcontractor, currently has an annual information security assessment performed that includes the operations, systems, and repositories of the Information Functions and/or Processes being provided to the Department under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Department will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's and any relevant subcontractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).



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

### 3.6 MBE Reports

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

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

### 3.7 VSBE Reports

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

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

### **3.8 Liquidated Damages**

- 3.8.1 The Contractor shall make good faith efforts to comply with all requirements of the RFP and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements. The damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.
- 3.8.2 Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one (1) or more of the specified requirements or Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The State may withhold payment on any invoices as an offset against liquidated damages owed.
- 3.8.3 In the event the Contractor fails to meet the performance standards specified within the contract, the liquidated damages worksheet defined in Attachment Q will be assessed.
- 3.8.4 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and to exercise any and all other rights or remedies which may be available under the Contract or which otherwise may be available at law or in equity.

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

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

### **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 (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

All prospective Offerors are encouraged to attend 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 Officer at least five (5) Business Days prior to the Pre-Proposal Conference date. The Department will make a reasonable effort to provide such special accommodation.

### **4.2 eMaryland Marketplace**

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

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the MDH website (<http://dhmh.maryland.gov/procumnt/SitePages/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/bsa/login.jsp>, click on "Register" to begin the process, and then follow the prompts.

### **4.3 Questions**

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

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

#### 4.4 Procurement Method

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

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

Proposals, in the number and form set forth in RFP Section 5.2 "Proposals" must be received by the Procurement Officer at the Procurement Officer's address no later than the Proposal Due date and time indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) 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 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 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 E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

4.25.5 The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:

- (a) Submission of initial Proposals;
- (b) Filing of 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

**4.26.1 Establishment of Goal and Sub goals.** An overall MBE subcontractor participation goal of 20% of the total contract dollar value, including all option years, if any, has been established for this procurement.

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

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

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

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

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

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

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

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

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

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

**4.26.6** A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY

(410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**

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

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

**4.26.8** An Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.

**4.26.9** All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – **Attachment M**, Section 2.1).

**4.26.10** The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment M**, “Liquidated Damages” clause).

**4.26.11** As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a Contract as a Prime Contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

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



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

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

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

## 4.27 Veteran-Owned Small Business Enterprise Goal

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

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

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

4.27.3 **VSBE Goal.** A VSBE participation goal of 3% of the total Contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by verified veteran-owned small business enterprises.

#### 4.27.4 **Solicitation and Contract Formation.**

4.27.4.1 In accordance with COMAR 21.11.13.05 C (1), this solicitation requires Offerors to:

- (a) Identify specific work categories within the scope of the procurement appropriate for subcontracting;
- (b) Solicit VSBEs before proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;
- (c) Attempt to make personal contact with the VSBEs solicited and to document these attempts;
- (d) Assist VSBEs to fulfill, or to seek waiver of, bonding requirements; and
- (e) Attempt to attend preproposal or other meetings the procurement agency schedules to publicize contracting opportunities to VSBEs.

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

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

As set forth in COMAR 21.11.13.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the VSBE Prime Contractor performs with its own workforce towards meeting up to one hundred percent (100%) of the VSBE goal.

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

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

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

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

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

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

- (5) At the option of the procurement agency, upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE subcontractors.

## 4.28 Living Wage Requirements

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

- (1) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- (2) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- (3) If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 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 MDH is \$1,997,757.95 in Maryland State fiscal year FY 18. This represents 47 % 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: 93.778/2600. 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

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

#### 4.33 Nonvisual Access

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

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

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

This solicitation does not require a DHR Hiring Agreement.

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

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

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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 four (4) 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 (see RFP Key Information Summary Sheet) prior to the date and time for receipt of Proposals (see RFP Section 4.4 “Proposals Due (Closing) Date and Time”).

5.2.2 An electronic version (on Compact Disk/CD, Digital Versatile Disc/DVD, or Universal Serial Bus/USB Flash/Thumb Drive) of Volume 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 romanettes (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.

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

5.4.2.6.3 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 problem 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.

**5.4.2.7 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.

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

The Offeror shall provide an Organizational Chart outlining personnel and their related duties. All Contractor and subcontractor staff must be at least eighteen (18) years of age and US Citizens or documented immigrants. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

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

- a.) The number of years the Offeror has provided the similar services;
- b.) The number of clients/customers and geographic locations that the Offeror currently serves;
- c.) The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- d.) The Offeror's process for resolving billing errors;
- e.) An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror;
- f.) Documentation of all experience providing fiscal management services as a selected vendor in accordance with section 3504 of the IRS code and IRS Revenue Procedure 70-6;
- g.) Documentation of any experience providing fiscal management services for participants with developmental disabilities;
- h.) Documentation of any experience providing fiscal management services for the Medicaid Program; and
- i.) Names and contact information for at least three entities for which they have performed similar large scaled projects in the past five (5) years that have at least

1000 Participants. Large scale projects would include projects that involve multiple agencies, programs, and funding streams.

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

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

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

**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:

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

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

**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:

- a.) Dun & Bradstreet Rating;
- b.) Standard and Poor's Rating;
- c.) Lines of credit;
- d.) Evidence of a successful financial track record; and
- e.) 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:

- a.) A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- b.) A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- c.) 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
- d.) In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, the name of the judge and location of the court.

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

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:

- a.) Generic statements that the State will benefit from the Offeror's superior performance under the Contract;
- b.) Descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under this Contract; and
- c.) 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:

- a.) 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;**
- b.) 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; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave. If no new positions or subcontracts are anticipated as a result of this Contract, so state explicitly;
- c.) 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;
- d.) Subcontract dollars committed to Maryland small businesses and MBEs; and
- e.) 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:

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

### 5.5 Volume II – Financial Proposal

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



complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

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## **SECTION 6 – EVALUATION 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 sub-criteria within each criterion have equal weight. Refer to Section 5 Proposal Format, ensure that all the required information per tab has been included in both the Technical and the Financial Offer. All tabs have been fulfilled and all required attachments have been submitted. Failure to complete all tabs and the required attachments could cause the loss of a contract. Also refer to Section 6.6.

- 6.2.1 Experience and Qualifications of Proposed Staff (See RFP § 5.4.2.7). Offerors with the indicated experience and qualifications as attested to by references, licenses and certification will receive a higher evaluation within this category.
  - 6.2.1.a Three (3) years' experience within the last ten (10) years providing Financial Management Services (FMS) for large scale projects for at least two (2) public entities and have operated under various State and Federal laws and regulations, including: Section 3504 of the IRS code, IRS Revenue Procedure 2013-39, federal income tax withholding, Medicare and Social Security taxes (FICA), unemployment tax (FUTA), state income tax (SIT), state unemployment tax (SUTA), state gross receipts tax, and federal and state labor laws related to household employment. As proof of meeting this requirement, the Offeror shall provide with its Proposal, two (2) letters of reference documenting their experience. Large scale projects for the purposes of this Minimum Qualification requires serving at least 600 people.
  - 6.2.1.b One (1) year of experience within the past five (5) years utilizing an electronic tracking and reporting system to provide Financial Management Services. As proof of meeting this requirement, the Offeror shall provide with its Proposal at least one (1) reference able to attest to the Offeror's experience. A single reference letter can address Section 6.2.1.a and the required letter for Section 6.2.1.b.

- 6.2.1.c One (1) year experience within the past five (5) years providing Counseling Services to the people it serves. As proof of meeting this requirement, the Offeror shall provide with its Proposal at least one (1) reference able to attest to the Offeror's experience in these Counseling Services. The same reference letter can address the requirements of 6.2.1.a, 6.2.1.b and 6.2.1.c, if applicable.
- 6.2.1.d Shall have provided Accounting Services, in accordance with Generally Accepted Accounting Principles (GAAP), Financial Management Services to recipients and their families of at least one (1) self-directed benefits program for at least two (2) years. As proof of meeting this requirement, the Offeror shall provide with its Proposal one (1) reference that is able to attest to the Offeror's experience in providing Financial Management Services in accordance with GAAP. The same reference letter can address the requirements of 6.2.1.a, 6.2.1.b, 6.2.1.c, and 6.2.1.d, if applicable.
- 6.2.2 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 will receive a higher evaluation within this category.
- 6.2.3 Offeror Qualifications and Capabilities, including proposed Subcontractors (See RFP § 5.4.2.3 – 5.4.2.5 and 5.4.2.8 – 5.4.2.14). Offerors with the indicated experience as attested to by references will receive a higher evaluation within this category.
- 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:

- a.) The Maryland resident business is a responsible Offeror;

- b.) 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;
- c.) The other state gives a preference to its resident businesses through law, policy, or practice; and
- d.) 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:

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

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## **RFP ATTACHMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ATTACHMENT J – HIPAA Business Associate Agreement**

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

**ATTACHMENT K – Mercury Affidavit**

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

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

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

**ATTACHMENT M – Contract**

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

**ATTACHMENT N – Contract Affidavit**

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

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

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

**ATTACHMENT P – Contract Compliance Checklist**

**ATTACHMENT Q – Liquidated Damages Worksheet**

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ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM
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**Solicitation Number 19-17751**  
**FINANCIAL MANAGEMENT AND COUNSELING SERVICES**

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

Please return this form at least five (5) Business Days prior to the Pre-Proposal Conference date, advising whether or not you plan to attend. The completed form should be returned via e-mail or fax to the Procurement 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.

- 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.

## **B-2: FINANCIAL PROPOSAL FORM**

See attached Excel Spreadsheet.

## 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**

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

**PLEASE READ BEFORE COMPLETING THIS DOCUMENT**

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

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including an MBE Prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule.
4. Please refer to the MDOT MBE Directory at [www.mdot.state.md.us](http://www.mdot.state.md.us) to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit [www.naics.com](http://www.naics.com). Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **WARNING:** If the firm's NAICS Code is in **graduated status**, such services/products **may not be counted** for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term "Graduated" follows the Code in the MDOT MBE Directory.

5. Guidelines Regarding MBE Prime Self-Performance: Please note that when a certified MBE firm participates as a Prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the MBE participation goal (overall), including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.
- ✓ In order to receive credit for self-performance, an MBE Prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE Prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE Prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
  - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the Contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to other MBEs for each of any remaining subgoals or request a waiver. As set forth in **Attachment D1-B** Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to GOMA's website ([www.goma.maryland.gov](http://www.goma.maryland.gov)) for the MBE Prime Regulations Q&A for illustrative examples.
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own workforce towards fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.

8. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.
9. Worksheet: The percentage of MBE participation, calculated using the percentage amounts for all of the MBE firms listed on the Participation Schedule MUST at least equal the MBE participation goal **and** subgoals (if applicable) set forth in the solicitation. If a Offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the Offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) or the Proposal will be determined to be not susceptible of being selected for award. You may wish to use the Subgoal summary below to assist in calculating the percentages and confirm that you have met the applicable MBE participation goal and subgoals, if any.

#### **SUBGOALS (IF APPLICABLE)**

<b>TOTAL AFRICAN AMERICAN MBE PARTICIPATION:</b>	_____ %
<b>TOTAL ASIAN AMERICAN MBE PARTICIPATION:</b>	_____ %
<b>TOTAL HISPANIC AMERICAN MBE PARTICIPATION:</b>	_____ %
<b>TOTAL WOMEN-OWNED MBE PARTICIPATION:</b>	_____ %

#### **OVERALL GOAL**

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

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

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

In connection with the Proposal submitted in response to Solicitation No. 18-17751, I affirm the following:

**1. MBE Participation (PLEASE CHECK ONLY ONE)**

☐ I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of 20 percent and all of the following subgoals:

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

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

**OR**

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

**2. Additional MBE Documentation**



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

- (b) Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**)
- (c) Outreach Efforts Compliance Statement (**Attachment D-2**);
- (d) MBE Subcontractor/MBE Prime Project Participation Statement (**Attachments D-3A/B**);
- (e) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer in connection with the certified MBE participation goal and subgoals, if any.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that my proposal is not is not susceptible of being selected for contract award. If the Contract has already been awarded, the award is voidable.

### 3. **Information Provided to MBE firms**

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

### 4. **MBE Participation Schedule**

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

Prime Contractor	Project Description	PROJECT/CONTRACT NUMBER

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

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

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

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

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

(Continue on separate page if needed)

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

\_\_\_\_\_  
Offeror Name  
(PLEASE PRINT OR TYPE)

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

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

### **WAIVER GUIDANCE**

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

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

### **I. Definitions**

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

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

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

**Identified Items of Work** – “Identified Items of Work” means the Proposal items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the Offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be

achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

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

## **II. Types of Actions Agency will Consider**

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

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

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

### **B. Identify MBE Firms to Solicit**

1. MBE Firms Identified in Procurements
  - (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.

- (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

2. MBE Firms Identified by Offerors

- (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
- (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

**C. Solicit MBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Offeror should:
  - (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;
  - (b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; and
  - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)
2. “All” Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Offeror provides written solicitations.
3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Offeror must make the information available in a manner that is accessible to the interested MBE.
4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:
  - (a) by telephone using the contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; or
  - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:

- (a) attending any pre-proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
- (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

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

Offerors must negotiate in good faith with interested MBE Firms.

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



7. An Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
  - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
  - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

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

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

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

### **III. Other Considerations**

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

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

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

At a minimum, an Offeror seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 Business

Days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

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

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

**B. Outreach/Solicitation/Negotiation**

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

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

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

**D. Other Documentation**

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



\_\_\_\_\_  
Signature of Prime Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**MBE ATTACHMENT D-1C**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER**  
**REQUEST**

PAGE \_\_ OF \_\_

Prime Contractor	Project Description	SOLICITATION NUMBER

**PARTS 1, 2, AND 3 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS**  
**SUPPORTING YOUR WAIVER REQUEST.**

I affirm that I have reviewed **Attachment D-1B**, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this **Attachment D-1C** Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

**GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST**

**PART 1 – IDENTIFIED ITEMS OF WORK OFFEROR MADE AVAILABLE TO MBE FIRMS**

PAGE \_\_ OF \_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>SOLICITATION NUMBER</b>

Identify those items of work that the Offeror made available to MBE Firms. This includes, where appropriate, those items the Offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the Offeror's responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the Offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

<b>Identified Items of Work</b>	<b>Was this work listed in the procurement?</b>	<b>Does Offeror normally self-perform this work?</b>	<b>Was this work made available to MBE Firms? If no, explain why?</b>
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
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☐ Please check if Additional Sheets are attached.

## GOOD FAITH EFFORTS DOCUMENTATION

### TO SU

### PPORT WAIVER REQUEST

### PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

PAGE \_\_ OF \_\_

Prime Contractor	Project Description	SOLICITATION NUMBER

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see **Attachment D-1B – Exhibit A**). If the Offeror used a Non-MBE or is self-performing the identified items of work, Part 3 must be completed.

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
<b>Firm Name:</b> <hr/> <b>MBE Classification</b> (Check only if requesting waiver of MBE subgoal.)  <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date:  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date:  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With:  <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE  <input type="checkbox"/> Self-performing
<b>Firm Name:</b> <hr/> <b>MBE Classification</b> (Check only if requesting		Date:  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date:  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile	Time of Call:  Spoke With:  <input type="checkbox"/> Left	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE

<b>waiver of MBE subgoal.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification			<input type="checkbox"/> Email	Message			<input type="checkbox"/> Self-performing
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☐ Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST**

**PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES**

PAGE \_\_ OF \_\_

Prime Contractor	Project Description	SOLICITATION NUMBER

This form must be completed if Part 2 indicates that an MBE quote was rejected because the Offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE (Include spec/section number from Proposal)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____ –	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ –	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other



			<input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE		
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☐ Please check if Additional Sheets are attached.

**MBE ATTACHMENT D-2**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

Complete and submit this form within 10 Business Days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the Proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

1. Offeror identified subcontracting opportunities in these specific work categories:

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2. Attached to this form are copies of written solicitations (with bidding/proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.

3. Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:

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4. **Please Check One:**

- ☐ This project does not involve bonding requirements.
- ☐ Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements.  
(DESCRIBE EFFORTS):

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5. **Please Check One:**

- ☐ Offeror did attend the pre-proposal conference.
- ☐ No pre-Proposal meeting/conference was held.
- ☐ Offeror did not attend the pre-Proposal conference.

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

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

\_\_\_\_\_

\_\_\_\_\_

Address

Printed Name and Title

---

City, State and Zip Code

---

Date

**MBE ATTACHMENT D-3A**  
**MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION**

**PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) is awarded the State Contract in conjunction with Solicitation No. \_\_\_\_\_, such Prime Contractor intends to enter into a subcontract with \_\_\_\_\_ (Subcontractor's Name) committing to participation by the MBE firm \_\_\_\_\_ (MBE Name) with MDOT Certification Number \_\_\_\_\_ which will receive at least \$\_\_\_\_\_ which equals to \_\_\_\_% of the Total Contract Amount for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

Each of the Contractor and Subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and Subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Proposal and:

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

<b>PRIME CONTRACTOR</b> Signature of Representative: _____ Printed Name and Title: _____ Firm's Name: _____ Federal Identification Number: _____ Address: _____ Telephone: _____ Date: _____	<b>SUBCONTRACTOR</b> Signature of Representative: _____ Printed Name and Title: _____ Firm's Name: _____ Federal Identification Number: _____ Address: _____ Telephone: _____ Date: _____
---	--

**MBE ATTACHMENT D-3B**  
**MBE PRIME - PROJECT PARTICIPATION CERTIFICATION**

**PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE FIRM HAS LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name)  
with Certification Number \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation  
No. \_\_\_\_\_, such MBE Prime Contractor intends to perform with its own forces at  
least \$ \_\_\_\_\_ which equals to \_\_\_\_% of the Total Contract Amount for performing the following  
products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE). FOR CONSTRUCTION PROJECTS, GENERAL CONDITIONS MUST BE LISTED SEPARATELY.	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

**MBE PRIME CONTRACTOR**

Signature of Representative:

\_\_\_\_\_

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

\_\_\_\_\_

Firm's Name: \_\_\_\_\_

Federal Identification Number: \_\_\_\_\_

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

\_\_\_\_\_

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

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

**MBE ATTACHMENT D-4A**

**Minority Business Enterprise Participation  
MBE Prime Contractor Paid/Unpaid Invoice Report**

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

Prime Contractor:		Contact Person:																									
Address:																											
City:		State:	ZIP:																								
Phone:	Fax:		E-mail:																								
MBE Subcontractor Name:		Contact Person:																									
Phone:	Fax:																										
Subcontractor Services Provided:																											
<b>List all payments made to MBE subcontractor named above during this reporting period:</b>  <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><u>Invoice#</u></th> <th style="text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td style="text-align: center;">1.</td><td></td></tr> <tr><td style="text-align: center;">2.</td><td></td></tr> <tr><td style="text-align: center;">3.</td><td></td></tr> <tr><td style="text-align: center;">4.</td><td></td></tr> <tr> <td colspan="2" style="padding-top: 10px;">Total Dollars Paid: \$ _____</td> </tr> </tbody> </table>		<u>Invoice#</u>	<u>Amount</u>	1.		2.		3.		4.		Total Dollars Paid: \$ _____		<b>List dates and amounts of any outstanding invoices:</b>  <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><u>Invoice #</u></th> <th style="text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td style="text-align: center;">1.</td><td></td></tr> <tr><td style="text-align: center;">2.</td><td></td></tr> <tr><td style="text-align: center;">3.</td><td></td></tr> <tr><td style="text-align: center;">4.</td><td></td></tr> <tr> <td colspan="2" style="padding-top: 10px;">Total Dollars Unpaid: \$ _____</td> </tr> </tbody> </table>		<u>Invoice #</u>	<u>Amount</u>	1.		2.		3.		4.		Total Dollars Unpaid: \$ _____	
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1.																											
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3.																											
4.																											
Total Dollars Unpaid: \$ _____																											

- If more than one MBE subcontractor is used for this contract, you must use separate D-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment D-4B
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____
Contracting Unit and Address: _____



**Signature:**\_\_\_\_\_ **Date:**\_\_\_\_\_

(Required)

**MBE ATTACHMENT D-4B**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Report**

MBE Prime Contractor: Certification Number: _____ Report #: _____ Reporting Period (Month/Year): _____ <b>MBE Prime Contractor: Report is due to the MBE Liaison          by the __ of the month following the month the services were          provided.</b> <b>Note: Please number reports in sequence</b>	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals: _____ Project Begin Date: _____ Project End Date: _____
---	--

Contact Person:		
Address:		
City:	State:	ZIP:
Phone:	Fax: _____ E-mail: _____	

Invoice Number	Value of the Work	NAICS Code	Description of the Work

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____ Contracting Unit and Address: _____ _____ _____ _____
---

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

**MBE ATTACHMENT D-5**  
**Minority Business Enterprise Participation**  
**MBE Subcontractor Paid/Unpaid Invoice Report**

Report #: _____  Reporting Period (Month/Year): _____  <b>Report is due by the ____ of the month following the month the services were performed.</b>	Contract #: _____ Contracting Unit: _____ MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
---	---

MBE Subcontractor Name:																						
MDOT Certification #:																						
Contact Person:		E-mail:																				
Address:																						
City:	State:	ZIP:																				
Phone:	Fax:																					
<b>Subcontractor Services Provided:</b>																						
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>  <table style="width: 100%;"> <thead> <tr> <th style="text-align: left;"><u>Invoice Amt</u></th> <th style="text-align: left;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td></tr> <tr><td>2.</td><td></td></tr> <tr><td>3.</td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Paid: \$ _____</b></td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.		2.		3.		<b>Total Dollars Paid: \$ _____</b>		<b>List dates and amounts of any unpaid invoices over 30 days old.</b>  <table style="width: 100%;"> <thead> <tr> <th style="text-align: left;"><u>Invoice Amt</u></th> <th style="text-align: left;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td></tr> <tr><td>2.</td><td></td></tr> <tr><td>3.</td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Unpaid: \$ _____</b></td> </tr> </tbody> </table>	<u>Invoice Amt</u>	<u>Date</u>	1.		2.		3.		<b>Total Dollars Unpaid: \$ _____</b>	
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1.																						
2.																						
3.																						
<b>Total Dollars Paid: \$ _____</b>																						
<u>Invoice Amt</u>	<u>Date</u>																					
1.																						
2.																						
3.																						
<b>Total Dollars Unpaid: \$ _____</b>																						
Prime Contractor:		Contact Person:																				

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____
Contracting Unit and Address: _____
_____

**Signature:**\_\_\_\_\_ **Date:**\_\_\_\_\_

(Required)

**ATTACHMENT E-1**  
**VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule**

(submit with Proposal)

This document **MUST BE** included with the Proposal. If the Offeror fails to complete and submit this form with the Proposal, the procurement officer may determine that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Proposal submitted in response to Solicitation No.19-17751, I affirm the following:

1. ☐ I acknowledge and intend to meet the overall verified VSBE participation goal of 3%. Therefore, I will not be seeking a waiver.

**OR**

- ☐ I conclude that I am unable to achieve the VSBE participation goal. I hereby request a waiver, in whole or in part, of the overall goal. Within 10 Business Days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.13.07. If this request is for a partial waiver, I have identified the portion of the VSBE goal that I intend to meet.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 days of receiving notice of the apparent award or from the date of conditional award (per COMAR 21.11.13.06), whichever is earlier.
  - (a) Subcontractor Project Participation Statement (**Attachment E-2**); and
  - (b) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Offeror responsibility in connection with the VSBE participation goal.

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

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

4. Set forth below are the (i) verified VSBEs I intend to use and (ii) the percentage of the total contract amount allocated to each VSBE for this project. I hereby affirm that the VSBE firms are only providing those products and services for which they are verified.

**ATTACHMENT E-1A**  
**VSBE Prime/Subcontractor Participation Schedule**

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: - _____	

List Information For Each Verified VSBE Prime Contractor or Subcontractor On This Project

Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:

Continue on a separate page, if needed.



## SUMMARY

**TOTAL VSBE Participation:** \_\_\_\_\_ %

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Offeror Name  
(PLEASE PRINT OR TYPE)

\_\_\_\_\_  
Signature of Affiant

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

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

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

**VSBE ATTACHMENT E-1B - Exhibit A**  
**VSBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
(Name of Veteran-owned firm)  
located at \_\_\_\_\_  
(Number) (Street)  
\_\_\_\_\_  
(City) (State) (Zip)  
was offered an opportunity to bid on Solicitation No. \_\_\_\_\_  
in \_\_\_\_\_ County by \_\_\_\_\_  
(Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Veteran-owned Firm), is either unavailable  
for the

work/service or unable to prepare a bid for this project for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Minority Firm's VSBE Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
USDVA #

\_\_\_\_\_  
TELEPHONE #

\*\*\*\*\*

4. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Veteran-Owned Small Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

---

Signature of Prime Contractor

---

Title

---

Date

## ATTACHMENT E-2

### **VSBE Subcontractor Participation Statement**

*Please complete and submit one form for each verified VSBE listed on Attachment E-1 within 10 Business Days of notification of apparent award*

\_\_\_\_\_ (prime contractor) has entered into a contract with  
\_\_\_\_\_ (subcontractor) to provide services in connection with the Solicitation described below.

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: _____	Total Contract Amount: \$
Name of Veteran-Owned Firm:	DUNS Number:
Address:	FEIN:
Work to Be Performed:	
Percentage of Total Contract:	Total Subcontract Amount: \$

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Veteran-Owned Small Business Enterprise Law, State Finance and Procurement Article, Title 14, Subtitle 6, Annotated Code of Maryland.

**PRIME CONTRACTOR SIGNATURE**

**SUBCONTRACTOR SIGNATURE**

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

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

Date \_\_\_\_\_

**ATTACHMENT E-3**  
**Veterans Small Business Enterprise (VSBE) Participation**  
**VSBE Prime Contractor Paid/Unpaid Invoice Report**

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

Prime Contractor:		Contact Person:																					
Address:																							
City:		State:	ZIP:																				
Phone:	Fax:		E-mail:																				
VSBE Prime Contractor Services Provided (if applicable):																							
Subcontractor Name:		Contact Person:																					
Phone:	Fax:																						
VSBE Subcontractor Services Provided (if applicable):																							
<b>List all payments made to VSBE subcontractor named above during this reporting period:</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; width: 60%;"><u>Invoice#</u></th> <th style="text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td style="text-align: center;">1.</td><td></td></tr> <tr><td style="text-align: center;">2.</td><td></td></tr> <tr><td style="text-align: center;">3.</td><td></td></tr> <tr><td style="text-align: center;">4.</td><td></td></tr> </tbody> </table> <b>Total Dollars Paid: \$</b> _____		<u>Invoice#</u>	<u>Amount</u>	1.		2.		3.		4.		<b>List dates and amounts of any outstanding invoices:</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; width: 60%;"><u>Invoice #</u></th> <th style="text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td style="text-align: center;">1.</td><td></td></tr> <tr><td style="text-align: center;">2.</td><td></td></tr> <tr><td style="text-align: center;">3.</td><td></td></tr> <tr><td style="text-align: center;">4.</td><td></td></tr> </tbody> </table> <b>Total Dollars Unpaid: \$</b> _____		<u>Invoice #</u>	<u>Amount</u>	1.		2.		3.		4.	
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3.																							
4.																							
<u>Invoice #</u>	<u>Amount</u>																						
1.																							
2.																							
3.																							
4.																							

If more than one VSBE subcontractor is used for this contract, you must use separate M-3 forms for each subcontractor.

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____
Contracting Unit and Address: _____
_____
_____

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

**Veterans Small Business Enterprise Participation**  
**VSBE Subcontractor Paid/Unpaid Invoice Report**

Report #: _____  Reporting Period (Month/Year): _____  <b>Report is due by the 10<sup>th</sup> of the month following the month the services were performed.</b>	Contract # _____ Contracting Unit: _____ VSBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
--	---

VSBE Subcontractor Name: _____																						
Department of Veterans Affairs Certification #: _____																						
Contact Person: _____		E-mail: _____																				
Address: _____																						
City: _____	State: _____	ZIP: _____																				
Phone: _____	Fax: _____																					
<b>VSBE Subcontractor Services Provided:</b>																						
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 60%;"><u>Invoice Amt</u></th> <th style="text-align: left;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1. _____</td><td>_____</td></tr> <tr><td>2. _____</td><td>_____</td></tr> <tr><td>3. _____</td><td>_____</td></tr> <tr> <td><b>Total Dollars Paid: \$</b> _____</td> <td></td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1. _____	_____	2. _____	_____	3. _____	_____	<b>Total Dollars Paid: \$</b> _____		<b>List dates and amounts of any unpaid invoices over 30 days old.</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 60%;"><u>Invoice Amt</u></th> <th style="text-align: left;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1. _____</td><td>_____</td></tr> <tr><td>2. _____</td><td>_____</td></tr> <tr><td>3. _____</td><td>_____</td></tr> <tr> <td><b>Total Dollars Unpaid: \$</b> _____</td> <td></td> </tr> </tbody> </table>	<u>Invoice Amt</u>	<u>Date</u>	1. _____	_____	2. _____	_____	3. _____	_____	<b>Total Dollars Unpaid: \$</b> _____	
<u>Invoice Amt</u>	<u>Date</u>																					
1. _____	_____																					
2. _____	_____																					
3. _____	_____																					
<b>Total Dollars Paid: \$</b> _____																						
<u>Invoice Amt</u>	<u>Date</u>																					
1. _____	_____																					
2. _____	_____																					
3. _____	_____																					
<b>Total Dollars Unpaid: \$</b> _____																						
Prime Contractor: _____		Contact Person: _____																				

**Return one copy of this form to the following address (electronic copy with signature & date is preferred):**

Contract Monitor: _____
Contracting Unit and Address: _____
_____
_____



**Signature:**\_\_\_\_\_ **Date:**\_\_\_\_\_

(Required)

**Living Wage Requirements for Service Contracts**

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

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

restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.

- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dlir.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 regards 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

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## DISCLOSURE OF LOBBYING ACTIVITIES

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

<p>material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>	
<p><b>Federal Use Only:</b></p>		<p>Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)</p>

## 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.

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## **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.

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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 MDH (the “Department”), and \_\_\_\_\_ (the “Contractor”).

### RECITALS

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for Financial Management and Counseling Services Solicitation # 19-17751; 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: \_\_\_\_\_

**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) Date</b>	<b>Signature</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

\_\_\_\_\_, 20\_\_\_\_ (“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)

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and between the \_\_\_\_\_ Maryland Department of Health and \_\_\_\_\_ (Insert Name of Contractor) (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§ 4-301 *et seq.*) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

### I. DEFINITIONS.

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- B. Specific definitions:
1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in referenced to the party to this agreement, shall mean (**Insert Name of Contractor**).
  2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in referenced to the party to this agreement, shall mean (Maryland Department of Health).
  3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
  4. Protected Health Information (“PHI”). Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103.

## **II. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.**

- A. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement or as required by law.
- B. Business Associate agrees to make uses, disclosures, and requests for PHI consistent with Covered Entity’s policies and procedures regarding minimum necessary use of PHI.
- C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.
- D. Business Associate may, if directed to do so in writing by Covered Entity, create a limited data set, as defined at 45 CFR 164.514(e)(2), for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 CFR § 164.514(e)(2). Business Associate will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 CFR § 164.514(e)(4), with the limited data set recipient. Business Associate will report any material breach or violation of the data use agreement to Covered Entity immediately after it becomes aware of any such material breach or violation.

- E. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- F. The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the State's payment of Business Associate for its performance pursuant to the Underlying Agreement.
- G. The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

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

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law.
  - B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
  - C. Business Associate agrees to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.
  - D. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure.
2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:
- a. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would



impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;

- b. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
- c. Is in substantially the same form as **ATTACHMENT J-1** attached hereto; and
- d. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
  - i) A brief description of what happened, including the date of the Breach and discovery of the Breach, if known;
  - ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
  - iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
  - iv) A brief description of what the Covered Entity and Business Associate are doing to investigate the Breach, mitigate losses, and protect against any further Breaches; and
  - v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
- e. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;
- f. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- g. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. §

- 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
- h. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
  - i. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
  - j. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.
  - k. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

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

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for Financial Management and Counseling Services, Solicitation # 19-17751, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph B of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
  - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or

2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered Entity determines or reasonably believes that cure is not possible.

C. Effect of Termination.

1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the Maryland Confidentiality of Medical Records Act (MCMRA), Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

- D. Survival. The obligations of Business Associate under this Section shall survive the termination of this agreement.

## **V. CONSIDERATION**

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

## **VI. REMEDIES IN EVENT OF BREACH**

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies

contained in this Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to Covered Entity at law or in equity.

## **VII. MODIFICATION; AMENDMENT**

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA rules and any other applicable law.

## **VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES**

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

## **IX. COMPLIANCE WITH STATE LAW**

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

## **X. MISCELLANEOUS**

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Name: Ramiek James, Esq, Privacy Officer & Compliance Analyst  
Address: Maryland Department of Health, Office of the Inspector General  
201 W. Preston Street, Baltimore, MD. 21201  
Email: ramiek.james@maryland.gov  
Phone: 410-767-5411

- D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_

- E. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.
- F. Severability. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- G. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.
- H. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

**COVERED ENTITY:**

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

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

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

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

**BUSINESS ASSOCIATE:**

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

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

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

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

**ATTACHMENT J-1**

**FORM OF NOTIFICATION TO COVERED ENTITY OF  
BREACH OF UNSECURED PHI**

This notification is made pursuant to Section III.D(3) of the Business Associate Agreement between Maryland Department of Health and

\_\_\_\_\_ (Business Associate).

Business Associate hereby notifies Maryland Department of Health that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach:

\_\_\_\_\_  
\_\_\_\_\_

Date of the breach: \_\_\_\_\_ Date of discovery of the breach: \_\_\_\_\_

Does the breach involve 500 or more individuals? Yes/No      If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach: \_\_\_\_\_

Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

\_\_\_\_\_  
\_\_\_\_\_

Description of what Business Associate is doing to investigate the breach, mitigate losses, and protect against any further breaches:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact information to ask questions or learn additional information:

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

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

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

\_\_\_\_\_

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

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



#### ATTACHMENT K – MERCURY AFFIDAVIT

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.

## FINANCIAL MANAGEMENT AND COUNSELING SERVICES

THIS CONTRACT (the “Contract”) is made this (“X<sup>th</sup>”) day of (month), (year) by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the Maryland Department of Health - Developmental Disabilities Administration .

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 - Developmental Disabilities Administration.
- 1.3 “Contract Monitor” means the following Department employee identified as the Contract Monitor: Kathleen Sarnecki, Statewide Coordinator of Self-Directed Services, Developmental Disabilities Administration, 201 West Preston Street, Baltimore, Maryland 21201, Phone: 410-767-1014, email kathleen.sarnecki@maryland.gov
- 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 Developmental Disabilities Administration.
- 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: Dana Dembrow, Director, Office of Procurement and Support Services, 201 West Preston Street, Baltimore, Maryland 21201
- 1.8 “RFP” means the Request for Proposals for Financial Management and Counseling Services Solicitation # 19-17751, 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 Financial Management and Counseling Services 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 three (3) years 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 two (2) successive one-year terms at the prices quoted in the Financial Proposal for Option Years.

- 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
- 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  
201 W Preston Street, 4<sup>th</sup> Floor  
Baltimore, Maryland 21201

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

**36. Liquidated Damages**

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

Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the

State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor expressly agrees that the State may withhold payment on any invoices as an offset against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of each violation.

- 36.1.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): **\$35.00** per day until the monthly report is submitted as required.
- 36.1.2 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): **\$85.00** per MBE subcontractor.
- 36.1.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- 36.1.4 Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- 36.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$100.00 per day until the undisputed amount due to the subcontractor is paid.
- 36.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or otherwise may be available at law or in equity.

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

### **37. Parent Company Guarantee**

(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.

**38. Federal Department of Health and Human Services (DHHS) Exclusion Requirements**

The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the Department immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

**39. Confidentiality of Health and Financial Information**

The Contractor agrees to keep information obtained in the course of this contract confidential in compliance with \_\_\_\_\_. The Contractor agrees further to comply with any applicable State and federal confidentiality requirements regarding collection, maintenance, and use of health and financial information. This includes, where appropriate, the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations at 45 C.F.R. Parts 160 and 164, and the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Department for information about its privacy practices in general or with respect to a particular individual, modifying such information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health and financial information.

**40. Hiring Agreement**

- 40.1 The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Resources (DHR) Hiring Agreement (Attachment O). The Hiring Agreement is to be executed by the Offeror and delivered to the Procurement Officer within ten (10) Business Days following

receipt of notice by the Offeror that it is being recommended for contract award. The Hiring Agreement will become effective concurrently with the award of the contract.

- 40.2 The Hiring Agreement provides that the Contractor and DHR will work cooperatively to promote hiring by the Contractor of qualified individuals for job openings resulting from this procurement, in accordance with Md. Code Ann., State Finance and Procurement Article §13-224.

**41. Limited English Proficiency**

The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and MDH Policy 02.06.07.

**42. Miscellaneous**

- 42.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 42.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

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

**CONTRACTOR**

**STATE OF MARYLAND  
MARYLAND DEPARTMENT OF HEALTH**

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

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

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
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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, §13221, 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 – DHR HIRING AGREEMENT**

This solicitation does not require a DHR Hiring Agreement.

**ATTACHMENT P – CONTRACT COMPLIANCE CHECKLIST**

See attached Spreadsheet in Excel Format.

**ATTACHMENT Q – LIQUIDATED DAMAGES WORKSHEET**

See attached Spreadsheet in Excel Format.



## APPENDIX 1

### Abbreviations and Definitions

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

1. **Applicant** – A prospective Individual or Participant applying to enter a Self-Directed Services program covered by this RFP.
2. **Authorized Representative** – An individual who is eighteen (18) years of age and is designated by a waiver recipient's legal representative to act on the waiver recipient's behalf. The Authorized Representative must successfully pass a criminal background study and must not have a financial interest in the delivery of goods or services to the waiver recipient.
3. **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).
4. **CMS** – Centers for Medicare and Medicaid Services.
5. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us/COMAR/ComarHome.html](http://www.dsd.state.md.us/COMAR/ComarHome.html).
6. **Community First Choice (CFC)** - A Medicaid State plan option to provide home and community-based services such as personal assistance services; transition services; nurse monitoring; home delivered meals; and environmental modifications and/or Items that Substitute for Human Assistance.
7. **Community Personal Assistance Services (CPAS)** –Community Personal Assistance Services provides assistance with activities of daily living to Medicaid recipients who have a chronic illness, medical condition or disability. Services are provided in the eligible Participant's home or community residence.
8. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
9. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 4.9 and Section 6

10. **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. For the purposes of this RFP, there is a Contract Monitor for the DDA as well as a Contract Monitor for OHS.
11. **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.
12. **Contract Year** – The 1-year period beginning with the effective date of the Contract and each additional 12-month period thereafter during the term of the Contract, including renewal options.
13. **Contractor** – The selected Offeror that is awarded a Contract by the State.
14. **Coordinator of Community Services (CCS)** – Case managers for the DDA’s Community Pathways Waiver. DDA’s Coordination of Community Services assist individuals with intellectual/developmental disabilities and their families in learning and gaining access to resources in their community, planning for their future, and accessing needed services and supports. A CCS assists individuals with developing a Person-Centered Plan (PCP).
15. **Counseling Services** – Counseling Services includes: (1) aiding prospective and enrolled Individuals and -Participants to develop a personalized budget selection (Individual Plan or Plan of Service) based on his or her Person-Centered Plan; (2) offering assistance with recruiting, hiring, managing, and dismissing employees, and (3) training individuals, Participants and direct service Workers.
16. **DDA** – Developmental Disabilities Administration.
17. **Department or MDH**– Maryland Department of Health.
18. **Designated Representative**- The person authorized by the participant, on the form provided by the Department, to serve as a representative in connection with the provision of Family Supports Waiver services or supports under the Self-Directed Services delivery model.
19. **eMM** – eMaryland Marketplace.
20. **Employer Agent** - Fiscal Management Agency providing Financial Management Services to include payroll and related employment paperwork to Participants in becoming the employers of record.

21. **FEIN** – Federal Employer Identification Numbers (also called the EIN), which are issued for purpose of tax administration.
22. **FICA** – Federal Insurance Contributions Act tax.
23. **Financial Management Services (FMS)** – Assistance to Participants in exercising budget authority. FMS includes: understanding of billing and documentation responsibilities; performance of payroll and employer-related duties (e.g., withholding and filing federal, state, local and unemployment taxes, purchasing workers compensation or other forms of insurance, collecting and processing worker timesheets, calculating and processing employee benefits, and issuing payroll checks); purchasing of approved goods and services as well as processing invoices for this purpose; tracking and monitoring of Participant or Individual budget expenditures; identifying expenditures that are over or under budget; and preauthorization of services.
24. **Fiscal Intermediary** – Performs the accounting, purchasing, budget tracking and employment-related functions on behalf of the Participant; another name for the Contractor or Fiscal Employer/Agent.
25. **FMCS** – Financial Management and Counseling Services
26. **FUTA** – Federal Unemployment Tax.
27. **GAAP** – Generally Accepted Accounting Principles.
28. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation.
29. **Guardian and/or Legal Representative** - A person who has the legal authority (and the corresponding duty) to care for the personal and property interests of another person.
30. **Health Risk Screening Tool (HRST)** – Identifies and tracks health risks in vulnerable populations, making it possible to design a plan tailored to meet the unique health and safety needs of each Participant in the least restrictive setting. The instrument can objectively justify resources allocated both financially and in-service intensity.
31. **HIPAA** – The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and amendments thereto.
32. **Home and Community-Based Services Waiver (HCBS)** - The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's

target population. Waiver services complement and/or supplement the services that are available to Participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide.

33. **IEIP:** - Incoming Employer Implementation Plan – A plan for collecting information on, and following-up with, Individuals/Participants or their representative.
34. **Individual** – A Maryland Medicaid recipient who is accessing DDA services and is eligible to receive Financial Management Services and Counseling Services. For the purposes of this RFP, the term Participant and Individual may be used interchangeably.
35. **Items that Substitute for Human Assistance** – Support items, such as a microwave or computer, that increase a Participant’s independence or replaces support from another person.
36. **IRS Form CP 575** – A notification letter from the IRS for a granted FEIN. The notification contains the employer’s FEIN and legal name.
37. **IRS Form W-4** – Employee’s Federal withholding allowance certificate. This form allows the employer to withhold the correct amount of federal income tax from the employee’s pay.
38. **IRS Form W-5** – Earned income credit advance payment certificate. This form enables the employee to benefit from a tax credit before their taxes are due.
39. **IRS Form 147c** – A confirmation of an FEIN available from the IRS upon request. The 147c is typically used in lieu of the CP 575 in the event that the original CP 575 is not available, has been misplaced or the FEIN is not known.
40. **IRS Form 940** – IRS form used to report an employee’s annual Federal Unemployment tax (FUTA).
41. **IRS Form 2678** – IRS form to request approval of an agent to file returns and make deposits or payments of an employer or other withholding taxes or to revoke an existing appointment. Agents of home care service recipients will receive an approval letter from the IRS following this request.
42. **IRS Form 8821** – IRS form to request the authorization of any individual, corporation, firm, organization or partnership designated on the form to inspect and/or receive confidential information verbally or in writing for the type of tax and years or periods listed on the form. The form can also be used to delete or revoke prior tax information authorizations.
43. **IRS Form 8822-B** – IRS form to request a change to the participant/employer business address or assign a new responsible party.

44. **IRS Form SS-4** – IRS form to apply for a Federal Employer Identification Number (FEIN or EIN).
45. **IRS Notice 797** – Notice to inform the public that they may be eligible for a refund on their Federal Income tax return because of the earned income credit (EIC).
46. **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 2.3.5 and 5.4.2.7.
47. **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.
48. **LTSSMaryland (or Long-Term Services and Supports Maryland)** – A tracking system used to monitor each Participant’s or Applicant’s Plan of Service (POS) and all Medicaid-approved benefits (for CPAS and CFC). This system will be used to determine Participant eligibility. LTSS Maryland is also the future information technology platform that will be utilized by DDA for the Provider services and payment systems.
49. **Mandatory Reporter** - A person who because of their profession, is legally required to report any suspicions of abuse or neglect to the appropriate/relevant authorities.
50. **Maryland Medicaid** – The Program authorized by Maryland Health-General Article 15-103 et seq., Code Ann., and Title XIX of the federal Social Security Act.
51. **Medicaid Management Information System or MMIS** – A system that enables the Maryland Medicaid Program to reimburse Providers of healthcare services and to collect data necessary for the operation of the Maryland Medicaid Program.
52. **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.
53. **MW-507** – Employee’s Maryland withholding exemption certificate. This form allows the employer to withhold the correct amount of Maryland income tax from the employee’s pay.
54. **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.
55. **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.

- 56. **OHCDs** - Organized Health Care Delivery System - an entity that contracts with a carrier for the purpose of providing or arranging for the provision of health care services to persons covered under a carrier's health benefits plan, that are not a licensed healthcare facility or other healthcare provider.
- 57. **Offeror** – An entity that submits a Proposal in response to this RFP.
- 58. **OHCQ** – Office of Health Care Quality- is an Agency within the Department of Health charged with monitoring the quality of care in Maryland's health care facilities and community-based programs.
- 59. **OHS** – Office of Health Services.
- 60. **Participant** – A Maryland Medicaid recipient who is accessing CPAS or CFC services and is eligible to receive Financial Management and Counseling Services. For the purposes of this RFP, the term Participant and Individual may be used interchangeably.
- 61. **Participant Employer Handbook** - The Participant Employer Handbook provides an overview of the Contractor's role and responsibilities in relation to the Participant. Topics include: recruiting workers and the process for hiring employees; managing employees; terminating employees; goods and services; complaints and how to resolve them; as well as simple instructions on how to complete required documentation, where to find the documents and easy-to-follow samples.
- 62. **PCIS2**- Provider Consumer Information System is the data system that DDA uses for all Participants that receive services.
- 63. **Personal Assistance Provider** – Employee or worker who performs Personal Assistance Services for an Individual or Participant.
- 64. **Personal Assistance Services** – Assistance with activities of daily living offered to Individuals/Participants.
- 65. **Person-Centered Plan or PCP** - Identifies what services an Individual receives, who will provide the services, and how often the services shall be provided.
- 66. **Plan of Service or POS** – A document that specifies services along with any informal supports that are furnished to meet the needs of and to assist a Participant to remain in the community. The POS appears in the LTSSMaryland system.



67. **PORII** – DDA Policy on Reportable Incidents and Investigations, see <https://health.maryland.gov/ohcq/dd/docs/10.22.02.01%20FINAL%20PORII%20.pdf>.
68. **Procurement Coordinator** – The State representative designated by the Procurement Officer to perform certain duties related to this solicitation which are expressly set forth herein
69. **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.
70. **Program** – Any one of the Home and Community Based Service Programs operated by Maryland Medicaid with the option of Self-Directed Services, such as the Community Pathways Waiver, Community First Choice, and Community Personal Assistance Services.
71. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
72. **Provider** – An agency licensed by the Office of Health Care Quality (OHCQ) to provide supports and services to participants with developmental disabilities. The Maryland Department of Health partners with numerous licensed Provider agencies in Maryland.
73. **Public Funds** - State, Federal, Medicaid and Social Security
74. **Quality Assurance Plan** - Self assessment plan to document, evaluate, and monitor performance of the agency. A working agency document used to remediate challenges and deficiencies in order to create systemic improvements. The plan focuses on the individual’s choices, preferences and satisfaction.
75. **Reportable Event or (RE)** – (for Participants *enrolled* in CFC or CPAS services) an allegation or an actual occurrence of an incident that adversely impacts or has the potential to adversely impact the health, welfare or safety of a Participant. Everyone that works with Long Term Services and Supports programs must report. A Reportable Event tool for reporting exists within the LTSSMaryland tracking system.
76. **Reportable Incidents and Investigations** – (for individuals enrolled in DDA’s Services) Reportable Incidents are significant events or situations that, because of the severity or the sensitivity of the situation, shall be reported electronically within prescribed timeframes to OHCQ, the DDA regional office, and the involved Coordinator of Community Services office. All reportable incidents are reported to DDA. Incidents of abuse, neglect, death, hospital admissions/emergency room visits, injuries, medication error, and choking are also reportable to OHCQ. The agency shall notify family and/or advocates as identified by the interdisciplinary team for all reportable incidents. Some reportable incidents shall also be reported to other

external entities such as Disability Rights Maryland (DRM), local department of social services, Adult Protective Services (APS), law enforcement, etc.

77. **Reporting Agent** – An accounting service, franchiser, bank, service bureau or other entity authorized to perform one or more acts on behalf of an Individual or Participant who is employing a Personal Assistance Provider.
78. **Representative** - An individual designated by the participant to assist in decision making and/or managing the participant's budget allowance and needed services. Although the representative acts on behalf of the participant in self-directed services matters, the participant remains the employer of record. The representative may be a person who has been legally appointed to act on behalf of the participant.
79. **Request for Proposals (RFP)** – This Request for Proposals issued by the Maryland Department of Health, with the Solicitation Number and date of issuance indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors), including any addenda.
80. **Self-Direct/Self-Direction (SD)** - A service model that empowers Program Participants and their families by expanding their degree of choice and control over the long-term services and supports that they need to live at home.
81. **Self-Directed Services (SDS)** – Participants who are enrolled in Maryland's Home and Community-Based Waivers are eligible for Self-Directed Services (SDS). Under Self-Direction the participant or Guardian/Legal Representative Guardian/Legal Representatives have the opportunity to self-direct services. Currently, approximately 400 participants in the Maryland HCBS waivers Self-Direct their services. Additionally, Participants enrolled in the State Plan services Community First Choice and Community Personal Assistance Services will become eligible for SDS.
82. **State** – The State of Maryland.
83. **SUTA** – State Unemployment Tax.
84. **Support Broker** - Human resource supports (agent of the person) to assist a Participant and the Participant's family to make informed decisions, as the employer, about what will work best for the participant and about what staff, services, and supports are consistent with the Participant's needs and reflects the Participant's unique circumstances.
85. **Supports Planner** – Case managers for MDH's CFC and CPAS programs. Supports Planners coordinate community services and supports from various programs and payment sources to aid Applicants and Participants in developing a comprehensive plan for community living or a Plan of Service (POS).

86. **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 5.3).
87. **Transactions** – Non-labor related payments for goods and services purchased on behalf of Individuals or Participants.
88. **Transition Funds** – Funds of up to \$3,000 for the purpose of making purchases related to the provision of Transition Services, including housing security deposits; essential furnishings; household goods such as tables, blankets, towels, and dishes; moving expenses; and set-up fees or deposits for utility services.
89. **Transition Youth (TY)** – Youth who are exiting the Maryland school system to DDA services.
90. **USCIS Form I-9** – U.S. Citizenship and Immigration Services form to document that each new employee (both citizen and noncitizen) hired after November 6, 1986, is authorized to work in the United States.
91. **Vendor** – A non-personal assistance Provider entity that receives payment for Transactions related to Transition Services made on behalf of Individuals or Participants.
92. **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.
93. **WAN** – Wide Area Network.
94. **Workers** – Direct Support Professionals. People who work directly with the Participant.