



## INVITATION FOR BIDS (IFB)

SOLICITATION NO DHMH OPASS -15-13448

**Issue Date: April 16, 2014**

### **PHARMACEUTICAL SERVICES WESTERN MARYLAND HOSPITAL CENTER**

#### **NOTICE**

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

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

**STATE OF MARYLAND  
NOTICE TO VENDORS**

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

**Title: Pharmaceutical Services for Western Maryland Hospital Center**  
**Solicitation No: DHMH OPASS – DHMH OPASS – 15-13448**

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

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

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

REMARKS:

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

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

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

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

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

**Invitation for Bids:** Pharmaceutical Services for Western Maryland Hospital Center

**Solicitation Number:** DHMH OPASS – 15-13448

**IFB Issue Date:** April 16, 2014

**IFB Issuing Office:** Maryland Department of Health and Mental Hygiene  
Western Maryland Hospital Center

**Procurement Officer:** Michael Howard, CPPB  
201 W. Preston St., Room 416B  
Baltimore, MD 21201  
Phone: (410) 767-5816 Fax: (410) 333-5958  
e-mail: [Michael.howard@maryland.gov](mailto:Michael.howard@maryland.gov)

**Contract Officer:** Theresa B. Ammons (See Subsection 1.2.p)  
[Theresa.ammons@maryland.gov](mailto:Theresa.ammons@maryland.gov)

**Contract Monitor:** Barbara M. Galloway  
Director of Clinical Services  
Western Maryland Hospital Center  
1500 Pennsylvania Ave.  
Hagerstown, Maryland 21742  
Phone: 301-745-4720  
e-mail: [barb.galloway@maryland.gov](mailto:barb.galloway@maryland.gov)

**Bids are to be sent to:** Maryland Department of Health and Mental Hygiene  
Western Maryland Hospital Center, 1500 Pennsylvania Ave  
Hagerstown, Maryland 21742  
Attention: Michael Priday, CPPB  
Director of Purchasing Services

**Pre-Bid Conference:** April 22, 2014 @ 10:00 a.m. Local Time  
Western Maryland Hospital Center, 1500 Pennsylvania Ave,  
Boardroom, Hagerstown, Maryland 21742

**Closing Date and Time:** May 7, 2014 @ 2:00 p.m. Local Time

**Public Bid Opening:** May 7, 2014 @ 2:15 p.m. Local Time, Western Maryland  
Hospital Center, 1500 Pennsylvania Avenue, Room S-10  
Hagerstown, Maryland 21742

**MBE Subcontracting Goal:** 0 %

**VSBE Subcontracting Goal:** 0 %

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## SECTION 1 - GENERAL INFORMATION

### **1.1 Summary Statement**

- 1.1.1 The Maryland Department of Health and Mental Hygiene (DHMH or the Department), Office of Procurement and Support Services, is issuing this Invitation for Bids (IFB) to provide pharmaceutical services for the Western Maryland Hospital Center.
- 1.1.2 It is the State's intention to obtain services, as specified in this IFB, from a Contract between the selected Bidder and the State. The anticipated duration of services to be provided under this Contract is five years. See Section 1.4 for more information.
- 1.1.3 The Department intends to make single award as a result of this IFB.
- 1.1.4 Bidders, either directly or through their subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Bidder (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 1.1.5 The Western Maryland Hospital Center (WMHC) is located in Hagerstown Maryland and is one of two licensed and accredited regional facilities administered by the Maryland Department of Health and Mental Hygiene, Family Health Administration. The Center serves the residents of the State of Maryland who require in-hospital treatment programs for their illness. The Center has an average daily inpatient population of 60 patients. WMHC also provides services for the region's Renal Dialysis program serving an average of 24 patients.
- 1.1.6 All required services shall be provided in compliance with licensure, certification, and accreditation standards, including but not limited to, licensure standards of the Maryland Department of Health and Mental Hygiene (DHMH), Office of Health Care Quality (OHCQ), Maryland Board of Pharmacy, and Joint Commission as well as all applicable Maryland and federal laws and regulations governing pharmacies, pharmacists, their employees, and services.
- 1.1.7 The successful Bidder must have the ability to receive, process, and reconcile orders for pharmaceuticals through a secure HL7 compliant interface with a new hospital management information system. The interface can be an existing e-prescribing system with the ability to work with WMHC's current system, Optimus EMR. Critical to this process is the transfer of information to DHMH concerning what was ordered and what was actually filled. No costs anticipated for integrating the Bidder's existing system with the hospital's system should be included in the response to this IFB.

### **1.2 Abbreviations and Definitions**

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

- a. **Actual Acquisition Cost (AAC)** – The actual amount paid by the Contractor to a pharmaceutical manufacturer or wholesaler to purchase patented/brand or generic prescription (“legend”) drugs, or non-prescription (“over-the-counter” or “non-legend”) drugs, or medical supplies (e.g., diabetic monitors, test strips, or asthma devices), without consideration of any subsequent rebate received by the Contractor for such purchases. Such drugs or supplies are provided by the Contractor to the Center under this Contract for direct/ultimate use by people residing at the Center. (See Section 3.6.3)

- b. **Administrative Costs, Overhead and Profit** – The amount a Contractor will charge to provide the services covered under the Scope of Work, including but not limited to, dispensing of drugs, materials other than the cost of drugs, personnel, delivery, trainings, overhead, insurances, licenses and reports.
- c. **Administration Errors** - Each incident in which a client receives an incorrect drug, drug dose, dosage form, quantity, route, or concentrations. A failure to administer a dose or administering a dose at an incorrect time is an error.
- d. **Apparent Successful Bidder** – An entity recommended for Contract award in response to this IFB.
- e. **Assigned Pharmacist** – A specific pharmacist licensed by the Maryland Board of Pharmacy who will primarily be responsible for filling, or overseeing the filling of prescriptions for residents of the Center. This individual pharmacist shall become thoroughly familiar with the medical and pharmaceutical circumstances of each resident of the Center so as to make informed decisions or recommendations regarding medications prescribed for Center residents. (See Section 3.2.6A)
- f. **Back-up Pharmacist (s)** – One or more pharmacists licensed by the Maryland Board of Pharmacy who will fill or oversee the filling of prescriptions for residents of the Center in the absence of the Assigned Pharmacist. Each Back-up Pharmacist shall become thoroughly familiar with the medical and pharmaceutical circumstances of each resident of the Center so as to make informed decisions or recommendations regarding medications prescribed for Center residents. (See Section 3.2.6B)
- g. **Bid** – A statement of price offered by a Bidder in response to an IFB.
- h. **Bidder** – An entity that submits a Bid in response to this IFB.
- i. **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).
- j. **Client** - Anyone receiving services or care under this solicitation.
- k. **CMS** - Centers for Medicare and Medicaid Services, a branch of the U.S. Department of Health and Human Services (formerly the Health Care Financing Administration or HCFA).
- l. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us).
- m. **Contract** – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment A**.
- n. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
- o. **Contract Monitor (CM)** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope.
- p. **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.
- q. **Contractor** – The selected Bidder that is awarded a Contract by the State.



- r. **Western Maryland Hospital Center - WMHC**
- s. **Department or DHMH** – Maryland Department of Health and Mental Hygiene.
- t. **eMM** – eMaryland Marketplace (see IFB Section 1.8).
- u. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation. See Section 1.4.
- v. **Invitation for Bids (IFB)** – This Invitation for Bids solicitation issued by the Maryland Department of Health and Mental Hygiene, Western Maryland Hospital Center, Solicitation Number OPASS-15-13448 dated 4/15/2014, including any addenda.
- w. **LAN** – Local Area Network.
- x. **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.
- y. **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.
- z. **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.
- aa. **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 Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- bb. **Prescribing Errors** - An incorrect selection of drug, drug dose, dosage form, quantity, route, concentration rate of administration, or instructions for use of a drug product ordered or authorized by physician or other legitimate prescriber. Errors may occur due to improper evaluation of indications, contraindications, known allergies, existing drug therapy and other factors. Illegible prescriptions or medication orders that lead to client level errors are also defined as error of prescribing.
- cc. **Prescription** - A prescription is an order signed by a physician for medication necessary for the treatment of an illness or disorder.
- dd. **Procurement Coordinator** – The State representative designated by the Procurement Officer to perform certain duties related to this solicitation expressly set forth herein.
- ee. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment A), including being the only State representative who can authorize changes to the Contract. DHMH may change the Procurement Officer at any time by written notice to the Contractor.
- ff. **State** – The State of Maryland.
- gg. **Total Bid Price** - The Bidder's total price for services in response to this solicitation, included in the Bid in Attachment F – Bid Form, and used in determining the recommended awardee (see IFB Section 1.15).

- hh. **Veteran-owned Small Business Enterprise (VSBE)** – a business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- ii. **Working Day(s)** – Same as “Business Day(s).”

**1.3 Contract Type**

The Contract resulting from this solicitation shall be a cost-plus fixed fee contract as defined in COMAR 21.06.03.03 A (2).

**1.4 Contract Duration**

1.4.1 The performance of the full scope of services under the Contract resulting from this IFB shall be for a period of five (5) years from the Go Live Date described in 1.4.4.

1.4.2 The Contract shall commence as of the date the Contract is signed by the Department following approval of the Contract by the Board of Public Works.

1.4.3 From the date of Contract Commencement through the date contained in a Notice to Proceed issued by the Contract Monitor (the “Start Up Period”), the Contractor shall perform start-up activities such as are necessary to enable the Contractor to begin the successful performance of Contract activities as of the “Go Live date” (defined in IFB subsection 1.4.4 below). No compensation will be paid to the Contractor for any start-up activities it performs during the Start-Up Period.

1.4.4 As of the Go-Live Date contained in a Notice to Proceed (see Section 1.2 definition), anticipated to be on or about (July 1, 2014). The Contractor shall perform all activities required by the Contract after all post award notification submission requirements of the IFB are met.

1.4.5 The Contractor’s obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

**1.5 Procurement Officer**

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

Michael Howard, CPPB  
Maryland Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street, Room 416B  
Baltimore, Maryland 21201  
Phone Number: (410) 767-0974  
Fax Number: (410) 333-5958  
E-mail: [Michael.howard@maryland.gov](mailto:Michael.howard@maryland.gov)

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

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

Michael Priday, CPPB  
Maryland Department of Health and Mental Hygiene  
Western Maryland Hospital Center  
1500 Pennsylvania Ave  
Hagerstown, Maryland 21742  
Phone Number: 301.745.4373  
Fax Number: 301.745.4389  
E-mail: [mpriday@maryland.gov](mailto:mpriday@maryland.gov)

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

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

Theresa B. Ammons  
Contract Officer  
Maryland Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street  
Baltimore, MD 21201  
Phone Number: (410) 767- 1361  
Fax Number: (410) 333-5958  
E-mail: [Theresa.ammons@maryland.gov](mailto:Theresa.ammons@maryland.gov)

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

## **1.6 Contract Monitor**

The Contract Monitor is:

**Barbara M. Galloway**  
**Director of Clinical Services**  
**Western Maryland Hospital Center**  
**1500 Pennsylvania Ave.**  
**Hagerstown, Maryland 21742**  
**Phone: 301-745-4720**  
**e-mail: [barb.galloway@maryland.gov](mailto:barb.galloway@maryland.gov)**

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

## **1.7 Pre-Bid Conference**

A Pre-Bid Conference (the Conference) will be held on **April 22, 2014**, beginning at **10:00 a.m. a.m. Local Time**, at Western Maryland Hospital Center, Board Room, 1500 Pennsylvania Ave. Hagerstown, Maryland 21742. All prospective Bidders are encouraged to attend in order to facilitate better preparation of their Bids.

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

In order to assure adequate seating and other accommodations at the Conference, please e-mail, mail, or fax to (301) 745-4373 the Pre-Bid Conference Response Form to the attention of the Procurement Coordinator no later than **4:00 p.m. Local Time** on **4/18/14**. The Pre-Bid Conference Response Form is included as **Attachment E** to this IFB. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Coordinator no later than **4/18/14**. The Department will make a reasonable effort to provide such special accommodation.

## 1.8 eMarylandMarketplace

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

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

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

## 1.9 Questions

Written questions from prospective Bidders will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the following e-mail address: [dhmf.solicitationquestions@maryland.gov](mailto:dhmf.solicitationquestions@maryland.gov). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Bidders attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

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

## **1.10 Procurement Method**

This Contract will be awarded in accordance with the Competitive Sealed Bidding method under COMAR 21.05.02.

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

Bids, in the number and form set forth in Section 4.4 “Required Bid Submissions,” must be received by the Procurement Coordinator, at the address listed on the Key Information Summary Sheet, no later than **2:00 p.m. Local Time on 5/7/14** in order to be considered.

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

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

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

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

## **1.12 Multiple or Alternate Bids**

Multiple and/or alternate Bids will not be accepted.

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

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

1.13.2 Opening and Recording. Bids and timely modifications to Bids shall be opened publicly, at the time, date and place designated in the IFB. The name of each Bidder, the total Bid price, and such other information as is deemed appropriate shall be read aloud or otherwise made available.

1.13.3 The Bid Opening shall be **5/7/14 @2:15 p.m.** at Western Maryland Hospital Center, Room S-10, 1500 Pennsylvania Ave., Room S-10, Hagerstown, Maryland, 20742.

## **1.14 Confidentiality of Bids**

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

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

### **1.15 Award Basis**

The Contract shall be awarded to the responsible Bidder submitting a responsive Bid with the most favorable Total Bid Price (as referenced in COMAR 21.05.02.13) for providing the goods and services as specified in this IFB. The most favorable Total Bid Price will be the lowest price total on **Attachment F** - Bid Form.

### **1.16 Tie Bids**

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

### **1.17 Duration of Bid**

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

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

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

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

### **1.19 Cancellations**

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

### **1.20 Incurred Expenses**

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

### **1.21 Protest/Disputes**

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

## 1.22 Bidder Responsibilities

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

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

## 1.23 Substitution of Personnel

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

## 1.24 Mandatory Contractual Terms

By submitting a Bid in response to this IFB, a Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this IFB and the Contract, attached herein as **Attachment A**. Any exceptions to this IFB or the Contract must be raised prior to Bid submission. **Changes to the solicitation, including the Bid Form or Contract, made by the Bidder may result in Bid rejection.**

## 1.25 Bid/Proposal Affidavit

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

## 1.26 Contract Affidavit

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a Contract Affidavit. A copy of this Affidavit is included as **Attachment C** of this IFB. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. This Contract Affidavit will also be required to be completed by the Contractor prior to any Contract renewals, including the exercise of any options or modifications that may extend the Contract term.

## 1.27 Compliance with Laws/Arrearages

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

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

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

Before a business entity can do business in the State it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <http://www.dat.state.md.us/sdatweb/services.html>.

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

### **1.29 False Statements**

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

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

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

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

1.29.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

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

By submitting a response to this solicitation, the Bidder/Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$100,000. The selected Bidder/Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

[http://comptroller.marylandtaxes.com/Government\\_Services/State\\_Accounting\\_Information/Static\\_Files/APM/gadx-10.pdf](http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gadx-10.pdf)

### **1.31 Prompt Payment Policy**

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of 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 must comply with the prompt payment requirements outlined in the Contract, Section 31 "Prompt Payment" (see **Attachment A**).



Additional information is available on GOMA's website at:  
[http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs\\_000.pdf](http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs_000.pdf)

### **1.32 Electronic Procurements Authorized**

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, DHMH may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder/Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
    - (a) the solicitation (e.g., the IFB/RFP);
    - (b) any amendments;
    - (c) pre-Bid/Proposal conference documents;
    - (d) questions and responses;
    - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
    - (f) notices of award selection or non-selection; and
    - (g) the Procurement Officer's decision on any Bid protest or Contract claim.
  2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:
    - (a) ask questions regarding the solicitation;
    - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
    - (c) submit a "No Bid/Proposal Response" to the solicitation.
  3. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
1. submission of initial Bids or Proposals;
  2. filing of Bid Protests;

3. filing of Contract Claims;
4. submission of documents determined by DHMH to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder/Offeror be provided in writing or hard copy.

F. Any 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, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

### **1.33 Minority Business Enterprise Goals**

There is no MBE subcontractor participation goal for this procurement.

### **1.34 Living Wage Requirements**

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Md. Code Ann., State Finance and Procurement Article, Title 18. Additional information regarding the State's living wage requirement is contained in **Attachment G**. Bidders/Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**) with their Bid/Proposal. If a Bidder/Offeror fails to complete and submit the required documentation, the State may determine a Bidder/Offeror to be not responsible under State law.

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

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

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

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

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

### **1.35 Federal Funding Acknowledgement**

This Contract does not contain Federal funds.

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

Bidders/Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment I**) and submit it with their Bid/Proposal. All Bidders/Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful 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 I** Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

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

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

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

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

### **1.39 Nonvisual Access**

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

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

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

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

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

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

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

**1.43 Department of Human Resources (DHR) Hiring Agreement**

This solicitation does not require a DHR Hiring Agreement.

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## **SECTION 2 – MINIMUM QUALIFICATIONS**

### **2.1 Bidder Minimum Qualifications**

The Bidder must provide proof with its Bid that the following minimum qualifications have been met.

- 2.1.1 The Bidder shall be certified by the Maryland State Board of Pharmacy. As proof of meeting this requirement, the Bidder shall provide with its Bid a copy of the permit issued by the Maryland State Board of Pharmacy.
- 2.1.2 Pharmacy shall have two (2) continuous years of experience in institutional (e.g. medical facility, long term nursing home or prison) pharmaceutical delivery service within the past five (5) years. As proof of meeting this requirement, the Bidder shall provide with its Bid, three (3) references from the past five (5) years able to attest to the Bidder's experience in providing Pharmaceutical Services.

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## **SECTION 3 – SCOPE OF WORK**

### **3.1 Background and Purpose**

The State is issuing this solicitation for the purposes outlined in Section 1.1 “Summary Statement” of this IFB.

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

The Contractor shall:

- 3.2.1 Comply with all applicable Maryland and federal laws and regulations related to pharmacies, pharmacists, and the provision of pharmaceutical services.
- 3.2.2 Ensure that each pharmacist that will provide any of the services required under this Contract is licensed by the Maryland Board of Pharmacy. The license must remain in effect throughout the term of this Contract and be presented to the Contract Monitor upon request.
- 3.2.3 Notify the Center immediately if the Maryland Board of Pharmacy advises any disciplinary action against a pharmacist employed by Contractor. If an individual is awarded the Contract and receives disciplinary action by the Maryland Board of Pharmacy, the Contract may be terminated immediately. If a company is awarded the Contract and an employee, subcontractor, or agent of the company receives disciplinary action by the Maryland Board of Pharmacy, the employee, subcontractor, or agent of the company shall be prohibited from working on this Contract.
- 3.2.4 Provide the following pharmaceutical services:
  - a. Deliver both prescription, non-prescription medications, over the counter, as well as miscellaneous medical supplies, diabetes supplies, ostomy supplies and other items normally supplied by pharmacies as ordered by WMHC.
  - b. Provide these services for each person located at WMHC. WMHC is currently licensed for 185 beds.
  - c. Provide all tablets, capsules, etc. and selected liquids in unit-dose packaging, with the name of medication and dosage administration time, client name, expiration date, and all applicable warning labels affixed or printed on the back of each dose.
  - d. When it is not feasible to provide medications in unit dose form, such as those provided in bottles, tubes, jars, etc., they shall be provided in individual labeled containers with the medication name, dose, administration time, client name, and expiration date with all applicable warning labels affixed in sizes appropriate to expected usage and practical limitations of size. Items where unit dosing is not feasible may include creams, liquids, patches, drops and suppositories, etc.
  - e. Use generic drugs whenever feasible. The Contractor shall furnish the lowest-priced available brand in accordance with the Interchangeable Drug Costs formulary established by DHMH. [http://www.mdmahealthchoicercx.com/healthchoice\\_docs/mmmh\\_form.pdf](http://www.mdmahealthchoicercx.com/healthchoice_docs/mmmh_form.pdf) However, under certain circumstances “Brand Only” medications may be necessary for medical reasons. The DHHC reserves the right to document justification in the form acceptable for reimbursement by the Medicare Assistance program for “Brand Only” medications.
  - f. Provide medications for seven (7) emergency boxes, five (5) interim drug cabinets equivalent to a pysis-like medication system, similar to three (3) Pyxis Medstation 4000 six drawer main, three (3) Pyxis Medstation 4000 single column auxiliary and two (2) Pysis Medstation 4000 2 drawer main, the contents of which will be determined by the medical staff of WMHC. The Contractor will be

advised by WMHC whenever any of these drugs are used and if WMHC or the person's insurance is to be charged. Replenishment of emergency or interim stock shall be the responsibility of the Contractor and shall be performed with the next drug delivery following notification from WMHC unless a request is made by WMHC for a STAT replacement.

The Contractor shall monitor and update the drug supplies in the emergency and interim drug cabinets at least monthly to ensure that all drugs listed on the cabinet are present and acceptable for use (e.g., expiration dates are valid, drugs are appropriate strength, form and delivery dispenser, etc.) (See Subsection 3.2.4 p).

- g. For patient/residents having insurance, the Contractor shall bill the person's insurance for any medications and accept that amount paid by that insurance as payment in full. Over the counter medications are not covered by insurance and shall be billed to WMHC.
- h. For patient/residents with Medicaid/Medicare/Medical Assistance, the Contractor shall bill these agencies and accept the amount paid by these agencies as payment in full.
- i. For patient/residents who do not have private insurance nor Medicaid/Medicare/Medical Assistance coverage, invoices shall be submitted to the Contract Monitor by the 21<sup>st</sup> of the month following the month in which the services were provided in both a summary format and a detail form for all medications (e.g. over the counter medications supplied by the contractor and not billable to Medicare/Medical Assistance). The two must reconcile before payment is made.
- j. Maintain adequate inventory to supply WMHC's medication needs.
- k. Bill per Bid Pricing instructions (Attachment F). All pricing shall include all costs necessary to perform all services required under this Contract, including, but not limited to, the cost of dispensing, the cost of providing delivery, in-service pharmaceutical training, attendance at committee meetings, profit, and all other services as detailed in this solicitation. There will be no additional compensation for any additional services provided. It is, therefore, recommended that the Bidder fully understand and weigh the estimated amount of time and expenses required for the Contract.
- l. Provide WMHC's Contract Monitor with an electronic version, if available, and hard copy of invoices in order to provide an audit trail. A monthly invoice indicating what the facility owes to the vendor will be forwarded to the facility in addition to invoices from the Contractor's wholesalers to prove what is being charged is the actual amount the Contractor paid.
- m. Provide, to the Contract Monitor, a preprinted hardcopy, in duplicate, and an Optimus(EMR) **Electronic Medical Records**' version of physician orders, with medication administration record forms for each person served monthly, one week prior to medication expiration. The physician orders are currently FAXED to the pharmacy, but at some point in the future may be sent electronically (ex. via email). The Contractor shall provide forms in the same manner as those provided by the current contractor. (See Attachment P).
- n. Present reports, requested by Contract Monitor, in a way that is easy to understand.
- o. Have the Assigned Pharmacist verify the content of each unit-dose package and each cassette before delivery to DHHC. Documentation of the pharmacist's review shall be maintained by the Contractor and provided to the Center upon request. (See Subsections 1.2.e & 3.2.6A)
- p. Inventory all drug storage areas at WMHC monthly, or as necessary to maintain proper quantity levels. The Contractor shall monitor the expiration dates of drugs, proper storage of drugs, temperature, etc. Contractor shall notify WMHC of any drugs set to expire within four months of inspection date. All inspections, recommendations and subsequent corrective actions shall be documented and the reports forwarded to WMHC's Contract Monitor by the 15<sup>th</sup> day of the month following the inspection. In the event the Contractor does not notify WMHC of any recorded drugs set to expire, as required in these monthly inspections, and those drugs are returned to the Contractor after their expiration date, the Contractor will fully reimburse WMHC for the cost of those specific drugs, notwithstanding their expired status, or provide equivalent replacement at no cost to WMHC.
- q. The Assigned Pharmacist shall meet, or designate someone to meet, with WMHC's Contract Monitor monthly, per the Contract Monitor's request.
- r. Provide two (2) hours of pharmaceutical in-service training to WMHC's staff at least four (4) times per year on topics selected by the pharmacist and approved by WMHC's Contract Monitor.
- s. If the solicitation requires that a particular individual or personnel be assigned by the Bidder to work on

the Contract, any substitution of personnel must be approved in writing by the Contract Monitor prior to the substitution. If the Contractor substitutes personnel without the prior written approval of the Contract Monitor, the Contract may be terminated for default which shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law. (See Subsection 3.2.6A)

- t. The Contractor shall provide certain medications in bulk to the Central Supply Service, Respiratory and/or Kidney Dialysis Unit at WMHC because of the inappropriateness of unit dose administration. Such medications might include Granulex, Brokosol, Sodium Chloride Tablets (1 gram), Gelfoam, etc. The facility will provide a list of these items.
- u. Intravenous solutions and intravenous additive solutions shall be supplied in the most cost-effective size available for practical dose administration, in individual client-labeled containers and prepared in accordance with current Maryland Board of Pharmacy standards governing intravenous medication preparation.
- v. Controlled drugs including narcotics shall be provided separately in locked carriers.
- x. WMHC, at its discretion, may elect to purchase selected items such as vaccines, bulk topical products, antiseptics, respiratory drugs, colony stimulating factors, diabetes supplies, enemas, bladder irrigation solutions, personal hygiene products, and intravenous fluids (other than those used in the Contractor's preparation of additive solutions), from the Contractor, a State contract, or other sources and maintain their own inventory. This inventory is not the responsibility of the Contractor.
- y. WMHC reserves the right to purchase and obtain prescription drugs, non-prescription drugs, and supplies from sources other than from the Contractor at any time.
- z. The Contractor shall provide a copy of the Contractor's policies and procedures' manual to the Contract Monitor upon Contract Award.

### 3.2.5 Delivery of Medication:

- a. Medication delivery is the complete responsibility of the Contractor.
- b. The Contractor shall deliver medication with exchange cassettes containing an eight (8) to fourteen (14) day unit dose supply for each person every eight (8) to fourteen (14) days to WMHC daily, except Sundays and approved State Holidays. The specific delivery time will be determined by WMHC.
- c. STAT and emergency medications and medical supplies that are not available within DHHC shall be provided by the Contractor within two (2) hour of notification of need on a 24 hour per day, 7 day per week basis.
- d. The Contractor shall deliver all medication errors (e.g., incorrect drugs, incorrect strengths, insufficient quantity, etc.) within two (2) hours of notification of error on a 24 hour per day, 7 day per week basis. This delivery requirement is also applicable to the replacement of lost or damaged medication if there are insufficient doses of the medication to last until the next regularly scheduled medication delivery.
- e. Any medication order faxed or phoned to the Contractor by 4p.m. on weekdays must be delivered the same day unless the item is not in stock or the faxed order states differently. All medications ordered which are not in stock must be delivered no later than one business day following receipt by the Contractor of a properly executed Physician's order. This delivery requirement shall apply to both prescription and non-prescription medications.
- f. Non-urgent, maintenance medications shall be provided in the quantities requested by WMHC (7 day supply, 30 day supply). Prescriptions may be limited to a period of time allowed by WMHC's Stop-Order Schedule, but in no case shall they exceed a one-month supply. Any unused medication from a prior delivery shall be removed from the medication cart when the new supply is delivered. Any discontinued medications shall be removed from the medication cart at the time of delivery of new medication by the Contractor and a credit shall be applied for all returns as allowed by law.
- g. Between medication deliveries, WMHC nursing personnel may remove from the medication carts any medications that have become outdated or discontinued and arrange for the item(s) to be returned to the Contractor. Credit shall be applied to WMHC's monthly invoice for all returns.



This shall be done in accordance with all appropriate laws and regulations.

- h. Delivery time requirements may be relaxed by the Chief Nursing Officer or his/her designee under certain circumstances such as but not limited to:
  - i. Recognition by Contractor of known or suspected client allergy to requested medication.
  - ii. Recognition by Contractor of drug-drug interactions that must be resolved with DHHC prior to delivery.
  - iii. Non-availability of a product from the manufacturer. In the event of non-availability of a product, the Contractor will recommend therapeutic alternatives, when available.

### 3.2.6 Assigned and Back-up Pharmacists:

#### A. Assigned Pharmacist

Within 5 days of notification of proposed Contract award the apparent successful Bidder shall provide notice to the Contract Monitor of the intended Assigned Pharmacist (See Section 1.2 e). Included with this notice shall be a copy of the current license from the Maryland Board of Pharmacy for this individual, an explanation of why this individual was selected and the expected availability of this individual to successfully perform in this capacity. The Contract Monitor reserves the right to approve or disapprove the designation of the Assigned Pharmacist, and may request further information from the apparent successful Bidder before making either decision. The assigned pharmacist will work with/answer to the Medical Director, Director of Clinical Services, etc. or designee.

1. If the intended Assigned Pharmacist is approved by the Contract Monitor, as long as this person is employed by, or is the Contractor, this person shall perform in this capacity for the duration of the Contract, unless a substitution is approved as per §1.23. Except for periods of illness, vacation/holiday, vacancy, or other than normal working hours it is expected that the Assigned Pharmacist shall directly fill or supervise the filling of all prescriptions for any resident of the Center. In these acceptable periods of absence prescriptions shall be filled or the filling shall be supervised by a Back-up Pharmacist. (See 3.2.6 B below)
2. If the intended Assigned Pharmacist is not approved by the Contract Monitor the apparent successful Bidder shall within 3 working days of the disapproval identify another individual to serve in this capacity. The apparent successful Bidder shall continue identifying intended Assigned Pharmacists until one is approved by the Contract Monitor, or until the provision of 3.2.6 A is invoked.
3. In the event within 30 days of notification of proposed Contract award the apparent successful Bidder does not obtain the approval of the Contract Monitor for any of the individuals proposed to be the Assigned Pharmacist, the Procurement Officer may revoke the apparent successful Bidder designation and determine that Bidder to be not responsible, in which case that Bidder shall be eliminated from award consideration. In this event the next Bidder in line for the award shall be designated as the apparent successful Bidder and this process shall begin anew with that Bidder.
4. In the event an individual is approved by the Contract Monitor to be the Assigned Pharmacist, but at any time during the Contract term the Contract Monitor determines that individual to be absent too frequently, or otherwise not properly performing the duties of the Assigned Pharmacist:
  - a. The Contract Monitor may require a Back-up Pharmacist to be designated as the Assigned Pharmacist, in which case the procedure described in 3.2.6 B shall be followed to obtain a new Back-up Pharmacist; or,
  - b. The Procurement Officer may terminate the Contract for default.
5. The Contractor shall be required to provide evidence upon request that each pharmacist's performance has been evaluated on at least an annual basis. The performance appraisal must be in accordance with the standards of the Joint Commission, based on at least the written job description and key competencies.

B. Back-up Pharmacist (s)

Upon approval of the Assigned Pharmacist as described in 3.2.6 A, or simultaneously with that process, the apparent successful Bidder shall identify one or more pharmacists to be a Back-up Pharmacist (See Subsection 1.2 f) to fill, or oversee the filling of prescriptions for Center residents in the absence of the Assigned Pharmacist.

C. Medical Examination of Employees

Prior to beginning work, and in keeping with WMHC's infection control regulations, each employee of the Contractor who will provide services for WMHC (whether this be a pharmacist, a courier, or other personnel), shall be required to pass a medical examination to exclude communicable disease. This examination shall be completed by a licensed physician and shall include, at a minimum:

- a. A statement of general health
- b. Tuberculosis test via the intradermal PPD test. All employees of the Contractor who provide services at WMHC must be certified free of tuberculosis before working in the facility and each must be tested annually thereafter and be certified as tuberculosis free for the full duration of the Contract. The Contractor shall provide verification of tuberculosis testing of each employee to the Contract Monitor annually and at the time of hiring new employees who will provide services at WMHC.
- c. The Contractor shall provide documentation to the Contract Monitor that any employee of the Contractor providing services at WMHC has either received or been offered and declined a Hepatitis B vaccination series prior to the employee providing services at WMHC.
- d. Random drug testing may be required.

All costs of above medical examinations shall be the responsibility of the Contractor.

3.2.7 Professional Services:

- a. The assigned pharmacist or pharmacist-designee, shall be available during normal business hours (8am through 5pm Monday to Friday with the exception of approved holidays) for consultation with WMHC physicians and nursing staff regarding routine matters, medication selection, and prescribing including advice on drugs of choice for therapeutic indications, cost-effective prescribing practices, drug interactions, and other aspects of pharmacy and therapeutics which are recognized to be in the pharmacist's area of professional expertise. There shall be an on-call pharmacist, who is an employee of the Contractor, available at all other times for urgent and unusual medication selection and prescribing matters and consultations. There shall be no additional compensation for consulting services provided.
- b. A licensed pharmacist shall review and initial each medication order prior to dispensing the medication. The Contractor shall have a licensed pharmacist(s) check the content of each individual/blister pack unit-dose package and each cassette before delivery to WMHC. Documentation of the pharmacist's review shall be maintained by the Contractor and provided to the Contractor Monitor upon request. Each order will be reviewed for possible client allergy and for drug-drug or drug food interaction.
- c. The pharmacist shall notify the prescribing physician of any possible allergy or drug-drug/drug-food interaction and not dispense the medication until the allergy or interaction issue is resolved to the satisfaction of the pharmacist and prescribing physician or physician designee. When the pharmacist has a question about a medication order, he/she shall resolve it with the prescribing physician and record the communication and follow-up action in a log book or electronic record. This procedure shall be followed for medication orders that may have an adverse medication reaction or for any occurrence when the pharmacist is not clear what the physician's intent is. Copies shall be filed

- and accessible for review at the next quarterly meeting of WMHC's Pharmacy and Therapeutics Committee. The pharmacist or designee shall provide continuous pharmacy consultation services, including areas such as advice on drugs of choice for therapeutic indications, cost-effective prescribing practices, drug interactions, etc.
- d. The assigned pharmacist or pharmacist designee shall attend and participate in all WMHC's quarterly Pharmacy and Therapeutics Committee meetings. The assigned pharmacist or pharmacist designee shall provide all requested pharmaceutical and cost-related information to enable the Pharmacy and Therapeutics Committee to formulate appropriate policies and procedures, to achieve consensus on efficacious and cost-effective prescribing practices and to design and carry out pharmacy-related quality assurance activities. The assigned pharmacist or pharmacist designee shall provide reports of medication errors, adverse reactions and other incidents, and reports of drug utilization at each meeting. The assigned pharmacist or pharmacist designee shall submit reports quarterly to the Pharmacy Committee detailing the current status of WMHC's pharmacy services, including description of problems occurring in the delivery of pharmacy services with suggestion for policy and procedure changes. The first report will be due the first full calendar quarter after services have begun with subsequent reports submitted quarterly thereafter. The contractor shall present the quarterly report at the committee meeting; date and time TBD.
  - e. The assigned pharmacist or pharmacist designee shall conduct clinical reviews of any new client's chart on site within five business days of notification by WMHC of a new admission, and an in-depth clinical record review of a client's chart on an as needed basis as required by WMHC (this could include some medications not provided by the Contractor). These reviews may be performed by the Contractor at the Contractor's facility upon written approval by the DHMH Contract Monitor.
  - f. The Contractor's assigned pharmacist or pharmacist designee shall review each client's medications every quarter. The scheduling of these reviews will be per an agreement between the Contractor and the Contract Monitor. The results of the client medication reviews will be recorded on a quarterly medication review form. The reviews will cover, at a minimum, a review of the client's medications, diagnoses, recent laboratory tests, and clinical status. The assigned pharmacist or pharmacist designee will provide, on the quarterly medication review form, any comments or recommendations regarding the client's medication treatment. These reviews may be performed by the Contractor at the Contractor's facility upon written approval by the Contract Monitor. The Contractor will notify the Contract Monitor when each review has been completed in order that the primary physician can read the reviews, act upon any recommendations, and sign off on each review.
  - g. The Contractor shall use a clinical pharmacist to provide therapeutic drug monitoring including ordering medications based on drug monitoring results, i.e. Amino glycoside dosaging, hyper alimentation, etc.
  - h. The Contractor shall maintain a medical profile on each client for whom a prescription is filled. This profile is to include at a minimum the client's name, date of birth, gender, weight, diagnoses, prescribing physician(s), current medication therapy including prescription and non-prescription drugs, medication allergies or sensitivities and potential drug-food interactions. The Contractor shall promptly alert the prescribing physician or medication nurse on duty and Medical Director when contraindications, drug interactions, dosage abnormalities, or other potential drug problems occur or may occur. The Contractor shall maintain other information as deemed appropriate by the Contract Monitor.
  - i. The Contractor shall routinely conduct a prospective review when new medications are prescribed and serve as a consultant and alert the prescribing physician regarding potential adverse drug/drug interactions, potential drug/food interactions and identify by severity level.
  - j. The Contractor shall perform monthly inspections and inventory of the medication carts, medication rooms at each nursing station, emergency and interim boxes, stock supply cabinet, and additional areas where pharmaceuticals may be stored or handled as specified by the Contract Monitor. The Contractor shall monitor and update the drug supplies in the emergency and interim drug box and stock supply cabinet monthly to insure that all listed drugs are present and acceptable for use (i.e., expiration dates are valid, drugs are appropriate strength, etc.). Inspections shall include:

- i. Checking and removing outdated drugs;
  - ii. Checking for proper storage of drugs;
  - iii. Checking proper refrigerator and freezer temperatures;
  - iv. Assuring those antiseptics and other drugs for external use and disinfectants are stored separately from internally administered and injectable medication;
  - v. Assuring that no food items or laboratory specimens are stored in the same refrigerator or freezer as medications;
  - vi. Assuring that those drugs requiring special conditions for storage are stored in accordance with current established standards (United States Pharmacopoeia) so that, in the opinion of the assigned pharmacist or pharmacist designee, the integrity, stability, and effectiveness of the drugs are maintained.
  - vii. Assuring that all recalled, outdated or otherwise unusable drugs are removed from storage areas, cabinets and boxes, and from WMHC;
  - viii. Inspecting medication rooms to be sure they are secure and have properly functioning door locks; and
  - ix. Inspecting medication carts to be sure they are secure and have properly functioning locks.
- k. Results of these inspections, recommendations and subsequent corrective action shall be documented (format of report to be approved by the Contract Monitor) and the reports forwarded promptly to the Contract Monitor. WMHC will be responsible for any necessary repairs or adjustments of medication, refrigerators, door locks, or repairs to medication rooms or other medication storage areas. The Contractor shall supply, maintain, and service the interim and emergency medication boxes.
- l. The Contractor shall provide a minimum of eight (8) hours of in-service training to WMHC medical and nursing staff each year on drug topics selected in conjunction with the staff, such as: signs of drug deterioration, drug incompatibilities, drug toxicity and optimum drug effect, choice of antibiotics, hypnotics, tranquilizers, etc., and instructions regarding new pharmaceutical products.
- m. The assigned pharmacist or pharmacist designee may be requested to be present at WMHC during inspections and surveys by regulatory and licensing bodies such as Joint Commission, OHCQ, CMS, DHMH, the Maryland Board of Pharmacy or any other regulatory agency whose inspection or survey includes pharmacy services at WMHC.

### 3.2.8 Equipment To Be Supplied

- a. Based on current censuses, the Contractor shall provide a minimum of nine (9) medication carts. The number of carts needed is determined by the number of people served and the amount of medications each person served requires. Additional carts shall be supplied by the Contractor at no additional cost to WMHC. Carts are to be maintained in good shape with an arm to hold a laptop computer and space for a keyboard on top of the medication cart and shall be replaced if WMHC requests replacement due to the shape of the cart. Each medication cart shall have a locking storage area containing individual draws for each client's medication not needed for pyxis. The Contractor shall furnish this equipment in good working condition without undue blemishes, chips, scratches, or stains. WMHC shall be the sole judge of the acceptability of the equipment. The equipment shall be the property and responsibility of the Contractor. The Contractor shall be responsible for repair, maintenance or replacement of the carts should they become unusable, inoperable or no longer secure. Restoration to safe working order shall occur within 24 hours of notification of problems. An extra full set of all keys to all medication carts will be maintained by WMHC in a place specified by the Contract Monitor. The Contractor shall provide a loaner or replacement cart in the event the medical cart is out of commission.
- b. Cabinets (emergency and interim; see subsection 3.2.4 f) and carts shall be furnished by Contractor and remain the property and responsibility of the Contractor. Provide medications in unit dose

packaging for tablets, capsules, etc. Ensure WMHC approved liquids are individually labeled in bottles, tubes, jars, etc. in sizes appropriate to expected individual usage and practical limitations of size (i.e. the storage unit of the medication shall be equal to the amount of medication prescribed. If a prescription is 10 pills, it shall be in a 10 pill bottle.).

- c. The Contractor shall supply appropriate, secure medication storage containers, approved by the Contract Monitor, for storage of interim and emergency medication supplies.
- d. The Contractor shall ensure that WMHC has operating electronic plain paper facsimile (FAX) machines. The number and placement of the machines will be determined by WMHC. Machines will possess a transmission time of no longer than 45 seconds per 8 1/2" x 11" page. The fax machines will be used to transmit medication orders and other correspondence or data to the Contractor not sent via the Internet.
  - i. The Contractor shall provide a local number to transmit this data or an "800" number, or some type of similar arrangement which avoids incurring any long distance telephone charges when communicating with the Contractor.
  - ii. The Contractor shall provide all related supplies and cover the cost of those supplies, (drum, toner cartridges) and arrange and bear the cost of maintenance of the fax machines. Phone lines used for fax transmissions will be supplied and paid for by WMHC.
  - iii. If the fax equipment becomes inoperable, the Contractor will provide a replacement machine or a loaner. If loaner is made, Contractor will have a new machine within two (2) business days of notification that the machine is inoperable.
- e. The Contractor shall provide a secure Internet based tool which allows the physicians and Quality Assurance Department access to specific information on each individual. This system shall provide:
  - i. Access to billing information;
  - ii. Drug formulary recommendations;
  - iii. Payor status report which ensures that WMHC is billed correctly;
  - iv. Access to drug fact information; and
  - v. Capacity to fill pharmacy prescription orders electronically.

The Contractor shall provide internet program software that will permit staff to access client medication profiles (current and past), pricing information, drug interaction/allergy information, patient education, physician order sheets, medication sheets, reports, and drug pricing. The Contractor shall provide for submission of prescription orders via the internet to enable personnel to send prescription orders and/or other appropriate correspondence or data to the Contractor and for WMHC to maintain verification of orders sent.

- f. The Contractor shall provide training to key personnel at WMHC in the use of all equipment and software supplied.

### 3.2.9 Forms, Publications and Reports

- a. The Contractor shall interface with WMHC's EHR physician order sheets and medication administration record (MAR) for each client.
  - i. Physician order sheets shall be provided electronically prior to the medication review date for each client or whenever requested by the Contract Monitor.
  - ii. MAR forms are provided on the EMR for each client. The MAR must correspond to the prescribed medications and included the client's name, birth date, chart number, allergies and diagnoses. All currently ordered medications and treatments will be listed on a grid to enable recording the next

month's administration of medications and treatments. MARs shall be provided for all new admissions within one (1) business days of notification and transmission of medication orders and demographic, allergy and diagnostic data to the Contractor by WMHC. The Contractor shall provide forms electronically for the month following termination of the Contract.

- b. The Contractor shall provide annually one copy of the current Physicians' Desk Reference (PDR).
- c. The Contractor shall provide the following reports to WMHC. The minimum information required is identified as follows below; however, the number of copies required and the recipient(s) of each report shall be arranged with the Contract Monitor. Copies of report formats currently in use may be provided with the approval of the Contract Monitor. The delivery date for each report will be in accordance with the particular schedule determined by the Contract Monitor.
  - i. Master Drug Listing. This report is required monthly in a standard electronic format acceptable to WMHC (such as Microsoft Access or Excel). The report shall list the prescriptions written during the previous month. It shall be sorted alphabetically by client and contain the following data elements: drugs prescribed, order date, dosage strength, form and quantity or cumulative quantity of multi-source drugs, NDC code, new medications initiated, cost and prescribing physician. This report shall also include a list of drugs that exceed the FDA recommended dosage and prompt for various labs needed with specific drugs (i.e. lithium levels). **Data should be coded so that WMHC can filter on psychotropic, somatic, over the counter medications, and new generation antipsychotic drugs.**
  - ii. The Contractor shall provide a quarterly report to the Contract Monitor containing the results of quality indicator monitoring. At least five significant indicators shall be chosen and approved by the Contract Monitor.
  - iii. Pharmacy Inspection Reports - quarterly. Report results of Pharmacist's or Pharmacist designee's inspection for all medication administration areas.
  - iv. Medication Error Report - monthly. This report shall list administration errors and errors in prescribing (see definitions).
  - v. If other report data, not presently compiled, are required in the future by accrediting or licensing agencies, the Contractor shall agree to work with DHHC staff to collect additional data and develop an adequate report format.
  - vi. The Contractor and assigned pharmacist or pharmacist designee shall include full name and address on all forms and reports.

#### 3.2.10 Drug Formulary

- a. The Contractor shall furnish generic drugs if available and covered by Medicaid or other insurance.
- b. The Contractor shall fill prescriptions only for drugs as listed in WMHC's formulary unless presented with authorization for non-formulary or "special approval" drugs in accordance with WMHC's policies and procedures (e.g. a medication that has a newly studied application that has not been officially studied by the FDA). WMHC will provide a copy of the formulary; however the formulary may change as a result of new medications as well as changes in client population.
- c. Contractor shall notify prescribing physician if a medication is outside of a client's pharmacy benefits manager's drug formulary and recommend possible therapeutic substitutions that fall within the drug formulary.

#### 3.2.11 Quality Assurance

- a. The Contractor's medication errors shall be no greater than 1% of medication dispensed per month. If a higher percentage of error occurs the errors shall constitute a material breach of contract and the State may terminate the Contract for default, in addition to any other remedies which may be available by the terms of the contract, applicable by law, or in equity.
- b. If the Contractor commits multiple documented medication errors that could result in serious or fatal complications for a person, or persons, those errors, even if the Contractor's medication error rate is below the 1% monthly threshold, shall constitute a material breach of the Contract and the State may terminate the Contract for default, in addition to any other remedies which may be available by the terms of the Contract, applicable laws, or in equity.
- c. The Contractor shall ensure that the places of preparation of medications to be supplied have appropriate space, equipment, and supplies to permit the proper storage, compounding, sterilizing when applicable, packaging, labeling, and dispensing of medications. These areas of preparation must also have appropriate ventilation, including laminar airflow hoods, when necessary and appropriate and required by regulation. Furthermore, adequate quality control methods must be in place regarding the cleaning of equipment and microbiological monitoring. The State reserves the right to inspect the facilities with a 24-hour notice.
- d. Upon notification of selection as the apparent awardee, the Contractor shall provide the State with a written description of its quality control program including the monitoring of the qualifications, training and performance of personnel and the monitoring of equipment, facilities, and products; thereafter the Contractor shall provide a periodic report of the results of such monitoring no less than quarterly. The performance appraisal must be in accordance with Joint Commission and based on a written job description and include age-specific criteria and key competencies.

### **3.3 Security Requirements**

#### **3.3.1 Employee Identification**

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

#### **3.3.2 Information Technology**

- (a) Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.
- (b) The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

#### **3.3.3 Criminal Background Check**

The Contractor shall obtain from each pharmacist that will provide any of the services required under this 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 shall provide the Contract Monitor with completed checks on all new employees prior to assignment. The Contractor may not assign an employee with a criminal record unless prior written approval is obtained from the Contract Monitor.

### **3.4 Insurance Requirements**

- 3.4.1 The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 3.4.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per occurrence.
- 3.4.3 Within five (5) Business Days of recommendation for Contract award, the Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time 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 as 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 3.4.1.
  - c. Errors and Omissions/Professional Liability as required in Section 3.4.2.
- 3.4.4 The State shall be listed as an additional insured on the policies with the exception of Worker's Compensation Insurance and Professional Liability Insurance. Certificates of insurance evidencing coverage shall be provided prior to the commencement of any activities in the Contract. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 45 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.
- 3.4.5 The Contractor shall require that any subcontractors providing services under this Contract obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

### **3.5 Problem Escalation Procedure**

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

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



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

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

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

## **3.6 Invoicing**

### **3.6.1 General**

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

- Contractor name;
- Remittance address;
- Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- Invoice period;
- Invoice date;
- Invoice number
- State assigned Contract number;
- State assigned (Blanket) Purchase Order number(s);
- Goods or services provided; and
- Amount due.

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

(b) The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with

the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.02.

### 3.6.2 **Invoice Submission Schedule**

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

- a. For people having insurance, the Contractor shall bill the person's insurance for any medications and accept the amount paid by that insurance as payment in full. (See Subsection 3.2.4 g )
- b. For people with Medicaid/Medicare/Medical Assistance, the Contractor shall bill these agencies and accept the amount paid by these agencies as payment in full. (See Subsection 3.2.4 h)
- c. For person's who neither have private insurance nor Medicaid/Medicare/Medical Assistance coverage, invoices shall be submitted by the 21<sup>st</sup> of the month following the month in which the services were provided in both a summary format and a detail form for all medications (e.g. over the counter medications supplied by the contractor and not billable to Medicare/Medical Assistance). The two must reconcile before payment is made. (See Subsection 3.2.4 i)
- d. The invoices shall reflect medication details as follows:
  - a. Listing by person;
  - b. Drug identification (description plus NDC code.);
  - c. Date of prescription order;
  - d. Quantity/unit dispensed;
  - e. Number of times dispensed; and
  - f. Total cost per person.

### 3.6.3 **Billing** – NOTE: The Center's Contract Monitor shall be provided with an electronic version, if available and hard copies of invoices of drugs purchases in order to provide an audit trail.

- a. If the Contractor makes more than one purchase of a legend or non-legend drug or medical supply item during a month, the Actual Acquisition Cost shall be construed to be the amount invoiced to the Contractor closest to the end of the month in which the drug is provided to the Center.
- b. If the Contractor does not purchase a legend or non-legend drug or medical supply item during the same month that such drug or item is provided to the Center under this Contract, the Actual Acquisition Cost shall be construed to be the amount invoiced to the Contractor for its most recent purchase of that drug or item. For example, if a medication is purchased in March, April and May, and dispensed to other clients regularly, but not provided to the Center until August, the Contractor shall use the price of the medication in May as the acquisition price for the Center.
- c. However, if the Contractor makes purchases of overstock or soon to be outdated drugs or items at discounted prices, the Actual Acquisition Cost shall be construed to be the Contractor's lowest invoiced discounted price paid for the item, regardless of when during the month the item was purchased by the Contractor or the quantities purchased.
- d. The Contractor shall provide invoices giving evidence of the Actual Acquisition Cost paid by the vendor and billed to the Center.

### 3.6.4 **Reimbursement**

WMHC shall provide its best available information on annual Medicaid billing. **THERE IS NO ASSURANCE THAT WMHC WILL GENERATE SIMILAR BILLING IN THE FUTURE.** In addition, WMHC believes that there may be additional revenues available from filling prescriptions under Medicare Part D, private insurance, and no insurance situations.

WMHC is to be billed for any co-pay and will be responsible to the Contractor for payment under

the provisions of paragraph (g) below. The information shall include clients name, drug, date of delivery, amount of drug cost, and amount of co-pay. In the instances where there is no insurance, the Contractor is to bill, and accept, the Medicaid rate which will be paid by WMHC (including any applicable co-pay). Should the procedure change and WMHC request that all or any clients be billed directly for any co-pay, the WMHC will guarantee payment after the vendor has made a good faith effort to collect the money.

- a. When a client has prescription insurance coverage, that insurance will be billed for the client's medications and supplies. This payment will be accepted as primary coverage and payment will be accepted as payment in full. This includes medical Assistance, Medicare D, or any private insurance provider. In the event a prescription is not covered by a client's plan the Contractor will notify the physician with a suggested substitute that is covered by the client's plan.
- b. Prior approvals: Contractor shall notify prescribing physician if prior approval for a medication is required by a client's pharmacy benefits manager.
- c. Client summary shall be submitted monthly in duplicate in both summary format and a detail form. THE TWO MUST RECONCILE. The following detail information is needed at the time of delivery and another with a monthly summary statement.
  - i. Client summary shall reflect the following information: Vendor identification date (name, address, Federal Tax I.D. number, and a contract control number). Grand total of all charges for the month, (Medical Assistance, Private Pay, and DHHC).
  - ii. Client detail shall reflect the following information: Alphabetical listing by client name, Drug identification (description plus NDC Code), Date of prescription order, Quantity/ unit dispensed, Unit cost of the medication (with decimal place extension), Agency/ Individual billed for medication, Over the Counter medications by client, and Total cost per medication dispensed to each client (i.e. Joes' Depakote, Joe's Ritalin).
  - iii. Clients must be separately tracked for data retrieval in the following categories: Medical Assistance, Private Pay, and Facility.
- d. The Contractor shall accept complete responsibility for securing payment for prescription drugs from the private insurance company and/or from Medical Assistance.
- e. WMHC agrees to notify the Contractor as to the status of each client regarding source of reimbursement for prescription drugs and supplies and shall promptly notify the Contractor as to any change in status or source of reimbursement. WMHC will give the Contractor reasonable access to all client records, space, and supplies necessary for the performance of pharmacy duties therein, and the Contractor agrees that it shall furnish to WMHC upon request all reciprocal information relating to the drugs and supplies furnished to WMHC or clients therein.
- f. The Contractor shall bill the responsible party directly for all clients using private insurance for which services are provided. In the event of any dispute arising from any claims or bill submitted by the Contractor, the Contractor shall have access to all reasonable and necessary documents and records that would, in the discretion of the Contractor, tend to sustain its claim. Further, where WMHC is an intermediary in the processing of said claim, WMHC shall promptly furnish to the Contractor all information regarding the status of the claim and shall grant to any fiscal agency involved the right to discuss the status of the claim with the Contractor.
- g. The Contractor shall bill Medicaid directly for all medications covered by Medicaid. Billing and Collection Procedures and tactics to be used by the Contractor shall follow good business practices. The Contractor shall be provided by WMHC with information to facilitate collection of co-payments and other payments. The Contractor is responsible for collection of co-payments from individuals or parents/guardians. If the Contractor is unable to collect after reasonable efforts, WMHC shall assist in the following manner:

- i. Provide to the Contractor the billing method agreed upon by the parent/guardian,
- ii. The Contractor shall inform WMHC after thirty (30) days of any billed and non-collected payments so that WMHC can do an intervention,
- iii. After sixty (60) days, WMHC will assume responsibility for payment for unpaid co-pays, to the extent funding for such payment is appropriated and available.

### **3.7 MBE Reports**

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

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

### **3.8 VSBE Reports**

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

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

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

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

### **3.10 End of Contract Transition**

The Contractor shall cooperate in the orderly transition of services from it to a subsequent contractor upon receipt of a Notice of Termination from the State. Transition shall be provided in a prompt and timely manner, shall proceed in accordance with the schedule provided to the Contractor by the State in the Notice of Transition, and shall be for a period of at least ninety (90) days. Additional instructions regarding transition services may be provided in the Notice of Termination issued by the State.

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## **SECTION 4 – BID FORMAT**

### **4.1 One Part Submission**

Bidders shall submit with their Bid all Minimum Qualification documentation required (see Section 2), and all Required Bid Submissions (see Section 4.4) in a single sealed package/envelope.

### **4.2 Labeling**

Each Bidder is required to label the sealed Bid. The Bid shall bear the IFB title and number, name and address of the Bidder, and closing date and time for receipt of the Bids.

### **4.3 Bid Price Form**

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

### **4.4 Required Bid Submissions**

Bidders shall include the following with their Bid:

#### **4.4.1 Transmittal Letter:**

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

- Name and address of the Bidder;
- Name, title, e-mail address, and telephone number of primary contact for the Bidder;
- Solicitation Title and Solicitation Number that the Bid is in response to;
- Signature, typed name, and title of an individual authorized to commit the Bidder to its Bid;
- Federal Employer Identification Number (FEIN) of the Bidder, or if a single individual, that individual's Social Security Number (SSN);
- Bidder's eMM number;
- Bidder's MBE certification number (if applicable);
- Acceptance of all State IFB and Contract terms and conditions (see Section 1.24); and
- Acknowledgement of all addenda to this IFB.

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

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

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

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

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

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

- a. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) \*see **Section 1.33**. This attachment must be provided in a separately sealed envelope within the main Bid package/envelope.
- b. Completed Federal Funds Attachment (**Attachment H**) \*see **Section 1.35**.
- c. Completed Conflict of Interest Affidavit and Disclosure (**Attachment I**) \*see **Section 1.36**.
- d. Completed Mercury Affidavit (**Attachment L**) \*see **Section 1.40**.
- e. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule. (**Attachment M-1**) \*see **Section 1.41**. This attachment must be provided in a separately sealed envelope within the main Bid package/envelope.
- f. Completed Location of the Performance of Services Disclosure (**Attachment N**) \*see **Section 1.42**.

**4.4.5 References:**

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

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

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

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

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

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
- 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 Bidder's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

**4.4.7 Financial Capabilities:**

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

**4.4.8 Certificate of Insurance:**

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

**4.4.9 Subcontractors:**

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

**4.4.10 Legal Action Summary:**

This summary shall include:

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

**4.5 Reciprocal Preference**

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

- The most advantageous offer is from a responsible Bidder whose headquarters, principal base of operations, or principal site (that will primarily provide the services required under this IFB) is in another state.
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- The preference does not conflict with a Federal law or grant affecting the procurement Contract.

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

## 4.6 Delivery

Bidders may either mail or hand-deliver Bids.

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

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

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

- a. signed Contract (**Attachment A**),
- b. completed Contract Affidavit (**Attachment C**),
- c. completed MBE **Attachments D-2 and D-3**, within ten (10) Working Days, if applicable; \*see **Section 1.33**,
- d. MBE Waiver Justification within ten (10) Working Days, usually including **Attachment D-6**, if a waiver has been requested (if applicable; \*see **Section 1.33**),
- e. signed Non-Disclosure Agreement (**Attachment J**), if applicable; \*see **Section 1.37**,
- f. signed HIPAA Business Associate Agreement (**Attachment K**), if applicable; \*see **Section 1.38**,
- g. completed VSBE **Attachments M-2 and M-3**, if applicable \*see **Section 1.41**,
- h. completed DHR Hiring Agreement, **Attachment O**, if applicable \*see **Section 1.43**, and
- i. copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.4 "Insurance Requirements," listing the State as an additional insured, if applicable; \*see **Section 3.4**.

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## **IFB ATTACHMENTS**

### **ATTACHMENT A – Contract**

This is the sample contract used by the Department. It is provided with the IFB for informational purposes and is not required to be submitted at Bid 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 B – Bid/Proposal Affidavit**

This Attachment must be completed and submitted with the Bid.

### **ATTACHMENT C – 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 D – Minority Business Enterprise Forms**

If required (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D-1 through D-6. Attachment D-1 must be properly completed and submitted with the Bidder's Bid or the Bid will be deemed non-responsive and rejected. Within 10 Working Days of receiving notification of recommendation for Contract award, the Bidder must submit Attachments D-2 and D-3 and, if the Bidder has requested a waiver of the MBE goal, usually Attachment D-6.

### **ATTACHMENT E – Pre-Bid Conference Response Form**

It is requested that this form be completed and submitted as described in Section 1.7 by those potential Bidders that plan on attending the Pre-Bid Conference.

### **ATTACHMENT F – Bid Form Instructions and Bid Form**

See excel file for Bid Pages. The Bid Pages must be completed and submitted with the Bid.

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

Attachment G-1 Living Wage Affidavit of Agreement must be completed and submitted with the Bid.

### **ATTACHMENT H – Federal Funds Attachment**

If required (see Section 1.35), these Attachments must be completed and submitted with the Bid as instructed in the Attachments.

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

If required (see Section 1.36), this Attachment must be completed and submitted with the Bid.

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

If required (see Section 1.37), 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 Bid.

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

If required (see Section 1.38), 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 Bid.

### **ATTACHMENT L – Mercury Affidavit**

If required (see Section 1.40), this Attachment must be completed and submitted with the Bid.

**ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms**

If required (see Section 1.41), these Attachments include the VSBE Attachments M-1 through M-4. Attachment M-1 must be completed and submitted with the Bid. Attachment M-2 is required to be submitted within ten (10) Business Days of receiving notification of recommendation for award.

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

If required (see Section 1.42), this Attachment must be completed and submitted with the Bid.

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

If required (see Section 1.43), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

**ATTACHMENT P – Physicians Order Sample**

Sample provided for informational purposes.

## ATTACHMENT A – CONTRACT

### Pharmaceutical Services – Western Maryland Hospital Center

THIS CONTRACT (the “Contract”) is made this (“X<sup>th</sup>”) day of (month), (year) by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the DEPARTMENT OF HEALTH AND MENTAL HYGIENE, OFFICE OF PROCUREMENT AND SUPPORT SERVICES.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

#### 1. Definitions

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

- 1.1 “Bid” means the Contractor’s Bid dated (Bid date).
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contract Monitor” means the Department employee identified in Section 1.6 of the IFB as the Contract Monitor.
- 1.4 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.5 “Department” means the Maryland Department of Health and Mental Hygiene and any of its Agencies, Offices, Administrations, Facilities, or Commissions.
- 1.6 “IFB” means the Invitation for Bids for Pharmaceutical Services – Western Maryland Hospital Center Solicitation # DHMH OPASS 15-13448, and any addenda thereto issued in writing by the State.
- 1.7 “Procurement Officer” means the Department employee identified in Section 1.5 of the IFB as the Procurement Officer.
- 1.8 “State” means the State of Maryland.

#### 2. Scope of Contract

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

Exhibit A – The IFB

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

Exhibit C – The Bid

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the IFB. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this

section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

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

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

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately five years beginning July 1, 2014 and ending on June 30, 2019.

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

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

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted on the Bid Form (Attachment F). Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract shall not exceed \$ (Not-to-Exceed amount).

- 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 as from time-to-time amended, 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 eMarylandMarketplace 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.

## **6. Exclusive Use**

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

## **7. Patents, Copyrights, 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. Confidentiality**

- 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, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data

stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

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

## **9. Loss of Data**

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

## **10. Indemnification**

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

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

No official or employee of the State, as defined under Md. Code Ann., State Government Article, § 15-102, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall,

during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## **12. Disputes**

This Contract shall be subject to the provisions of 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 Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.
- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

## **14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

## **15. Contingent Fee Prohibition**

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

## **16. Non-availability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has

knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**17. Termination for Cause**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State’s option, become the State’s property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor’s breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**18. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

**19. Delays and Extensions of Time**

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

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

**20. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

**21. Pre-Existing Regulations**

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

**22. Financial Disclosure**



The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

**23. Political Contribution Disclosure**

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

**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, 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. This Section 24 shall survive expiration or termination of the Contract.

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

- 24.1 That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly-authorized representatives, shall be granted access to the Contractor's contract, books, documents, and records necessary to verify the cost of the services provided under this contract, until the expiration of four (4) years after the services are furnished under this contract; and
- 24.2 That similar access will be allowed to the books, documents, and records of any organization related to the Contractor or controlled by the Contractor (as those terms are defined in 42 C.F.R. 420.301) if that organization is subcontracting to provide services with a value of \$10,000 or more in a twelve (12) month period to be reimbursed through funds provided by this contract.

**25. Compliance with Laws**

The Contractor hereby represents and warrants that:

- 25.1 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;

- 25.2 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;
- 25.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 25.4 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.

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

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Bid/Proposal.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Bid/Proposal, was inaccurate, incomplete, or not current.

## **27. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the 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.

## **28. Liability**

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

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

**(Corporate name of Contractor's Parent Company)** hereby guarantees absolutely the full, prompt, and complete performance by **(Contractor)** of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. **(Corporate name of Contractor's Parent Company)** may not transfer this absolute guaranty to any other person or entity without the prior express

written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, suit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

**30. Commercial Nondiscrimination**

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

**31. Prompt Pay Requirements**

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
  - a. Not process further payments to the contractor until payment to the subcontractor is verified;
  - b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
  - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
  - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - e. Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:
  - a. Retainage which had been withheld and is, by the terms of the 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.
- b. This verification may include, as appropriate:
  - i. Inspecting any relevant records of the Contractor;
  - ii. Inspecting the jobsite; and
  - iii. Interviewing subcontractors and workers.
  - iv. Verification shall include a review of:
    - (a) The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
    - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- c. If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- d. If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
  - i. Terminate the contract;
  - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
  - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- e. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

## **32. 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.

**33. 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: Michael Howard, CPPB  
Procurement Officer  
Maryland Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street, Room 416  
Baltimore, Maryland 21201

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

**34. 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 DHMH Office of Systems, Operations and Pharmacy 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.

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

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

- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
- (c) Otherwise providing good information management practices regarding all health information and medical records.

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

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

**36. Miscellaneous**

36.1 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.

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

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

CONTRACTOR

STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND  
MENTAL HYGIENE

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

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

\_\_\_\_\_  
Date

Or designee:  
  
\_\_\_\_\_

\_\_\_\_\_  
Date

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

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

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

**ATTACHMENT B – BID/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 Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/Offeror has considered all quotes submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal. As part of its Bid/Proposal, the Bidder/Offeror herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/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. Bidder/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 Bidder/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 Bid/Proposal and:

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

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

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



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

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; 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:

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

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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**E. AFFIRMATION REGARDING DEBARMENT**

**I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting

activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

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

I FURTHER AFFIRM THAT:

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

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

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**G. 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 Bid/Proposal that is being submitted;

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. 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. ACKNOWLEDGEMENT

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

of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

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

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

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

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

**ATTACHMENT C – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

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

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

**I FURTHER AFFIRM THAT:**

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

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

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

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

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

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

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

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

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the above business will comply with, Election Law Article, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

#### E. DRUG AND ALCOHOL FREE WORKPLACE

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

#### I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its Bid/Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

#### F. CERTAIN AFFIRMATIONS VALID

##### I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 201\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

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

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

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



**ATTACHMENT D – MINORITY BUSINESS ENTERPRISE FORMS**

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

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

**Solicitation Number OPASS 15-13448  
PHARMACEUTICAL SERVICES – Western Maryland HOSPITAL CENTER**

A Pre-Bid Conference will be held at **10:00 a.m.**, on April 22, 2014, at Western Maryland Hospital Center, Board Room, 1500 Pennsylvania Ave., Hagerstown, Maryland 21742. Please return this form by **April 18, 2014** advising whether or not you plan to attend.

Return via e-mail or fax this form to the Procurement Coordinator:

Michael Priday, CPPB  
Director of Purchasing Services  
Western Maryland Hospital Center  
Department of Health and Mental Hygiene  
1500 Pennsylvania Ave.  
Hagerstown, Maryland 21742  
Email: [mpriday@maryland.gov](mailto:mpriday@maryland.gov)  
Fax #: 301.745.4389

Please indicate:

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

- 1.
- 2.
- 3.

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

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

---

Signature

Title

---

Name of Firm (please print)

## ATTACHMENT F – BID PRICING INSTRUCTIONS AND BID PAGE

### (SEE EXCEL FILE FOR BID PRICE FORM)

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

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

- A) All Unit Prices must be the actual price per unit the Bidder paid for the specific item and verified by submitting invoices with this IFB as required in this Bid. If a Bidder has not purchased a specific drug in the past, a quote from the Bidder's supplier is permitted. Prices for services identified in this IFB may not be contingent on any other factor or condition in any manner.
- B) Any goods or services required through this IFB and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- C) Every blank in every Bid Page shall be filled in. Any blanks may result in the Bid being regarded as non-responsive and thus rejected. Any changes or corrections made to the Bid Page by the Bidder prior to submission shall be initialed and dated.
- D) Except as instructed on the form, nothing shall be entered on the Bid Page that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Bid non-responsive.
- E) It is imperative that the prices included on the Bid Page have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Page. Any incorrect entries or inaccurate calculations by the Bidder will be treated as provided in COMAR 21.05.02.12.
- F) Bidders are instructed to use the Excel File provided separately as "Attachment F – Bid Pages." Enter information in only the "yellow" fields in the Excel File. All other fields are locked. The Excel File will automatically make the calculations described below in the "blue" fields.
- G) Bidder's Actual Acquisition Costs for Brand, Generic and Over-the-Counter drugs shall be current costs as of **December 31, 2013**. These costs shall be verified by providing a print out to the Center from the Bidders' supplier showing the cost for the drugs listed.
- H) Drug "Quantity Dispensed" totals listed on the Bid Pages reflects Western Maryland Hospital Center's top drugs used with the past year and is to be used for historical data and calculations to determine an award. The listed "Quantity Dispensed" totals do not guarantee any minimum or maximum amounts that will be supplied to the Center. The "Quantity Dispensed" totals were paid by one or a combination of the following: Medicaid/Medical Assistance, Private Insurance or Western Maryland Hospital Center.  
  
(Historically Medicaid records indicate that April 2008 to February 2013 there have been 19,459 prescriptions filled for a cost to Medicaid of \$440,206.00. That works out to \$7,860.00 per month and an average price per prescription of \$22.62 based on 56 months). Currently 60% of our people have some form of insurance).
- I) While only a portion of the drugs used by the Center are listed on the Bid pages, the Contractor is advised that all other drugs shall be sold to the Center at the Actual Acquisition Cost.
- J) The Contract will be awarded to the responsible Bidder that submits a responsive Bid that is the most favorable Bid price for the total five year Contract.

- k) Drugs and quantities listed are for bidding purposes only. The Center does not guarantee any minimum or maximum quantities.
- L) The Excel file contains fields that will calculate totals entered for the five year Contract Period.

## ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

### Living Wage Requirements for Service Contracts

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

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

**Maryland Living Wage Requirements Affidavit of Agreement**

(submit with Bid/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):

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

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

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

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

- The employee(s) proposed to work on the contract will spend less than one-half of the employee’s time during any work week on the contract

- The employee(s) proposed to work on the contract is 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 with Bid/Proposal)**



**ATTACHMENT H - FEDERAL FUNDS ATTACHMENT**

This solicitation does not include a Federal Funds Attachment.

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

**Reference COMAR 21.05.08.08**

**(submit with Bid/Proposal)**

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 Bidder/Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/Proposal is made.

C. The Bidder/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 Bidder/Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder/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 Bidder/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)

## ATTACHMENT J – NON-DISCLOSURE AGREEMENT

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

### RECITALS

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for Pharmaceutical Services – Western Maryland Hospital Center Solicitation # DHMH OPASS 15-13448; and

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

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

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT J-1. Contractor shall update ATTACHMENT J-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 IFB or who will otherwise have a role in performing any aspect of the IFB, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor’s Personnel or the Contractor’s former

Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).

6. Contractor shall, at its own expense, return to the Department, all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, 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 and Mental Hygiene

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

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

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

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

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

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

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

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

**NON-DISCLOSURE AGREEMENT - ATTACHMENT J-1**

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

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

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

**CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION**

I AFFIRM THAT:

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

\_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 20\_\_\_\_ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation.

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

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

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

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

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

## ATTACHMENT K – HIPAA BUSINESS ASSOCIATE AGREEMENT

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and between the Deer’s Head Hospital Center, a unit of the Maryland Department of Health and Mental Hygiene (herein referred to as “Covered Entity”) 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:

#### DEFINITIONS

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- B. Specific definitions:

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean (**Insert Name of Contractor**).
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean **Western Maryland Hospital Center**.
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.

### **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 and 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.

#### **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. 1. 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 K-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 the date of the 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 the Business Associate are doing to investigate the Breach, to mitigate losses, and to 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 Pharmaceutical Services – Western Maryland Hospital Center, Solicitation # DHMH OPASS 15-13448 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 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 to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to, 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:

Ramiek James, Esq.  
Privacy Officer and Compliance Analyst  
Department of Health & Mental Hygiene  
Office of the Inspector General  
201 W. Preston Street, Floor 5  
Baltimore, MD 21201-2301  
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:**

**BUSINESS ASSOCIATE:**

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

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

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

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

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

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

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

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

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

This notification is made pursuant to Section III.2.D (3) of the Business Associate Agreement between Western Maryland Hospital Center, a unit of the Maryland Department of Health and Mental Hygiene (DHMH), and \_\_\_\_\_ (Business Associate).

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

Description of the breach: \_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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

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

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

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

Contact information to ask questions or learn additional information:

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

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

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

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

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

**ATTACHMENT L – MERCURY AFFIDAVIT**

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



**ATTACHMENT M – VETERAN-OWNED SMALL BUSINESS ENTERPRISE**

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

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

**(submit with Bid/Proposal)**

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Bid/Proposal submitted in response to Solicitation No. DHMH/OPASS 14-13431, the following disclosures are hereby made:

- 1. At the time of Bid/Proposal submission, the Bidder/Offeror and/or its proposed subcontractors:
  - \_\_\_ have plans
  - \_\_\_ have **no** plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Bidder/Offeror or its proposed subcontractors, the Bidder/Offeror shall answer the following (attach additional pages if necessary):

- a. Location(s) services will be performed:

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- b. Reasons why it is necessary or advantageous to perform services outside the United States:

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The undersigned, being an authorized representative of the Bidder/Offeror, hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

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

Bidder/Offeror Name: \_\_\_\_\_

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

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

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

Please be advised that the Department may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States exceeds by an unreasonable amount the price of services provided outside the United States; or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

**ATTACHMENT O – DHR HIRING AGREEMENT**

This solicitation does not require a DHR Hiring Agreement.

## ATTACHMENT P – PHYSICIANS ORDERS SAMPLE

Physicians Transcribed Order		Date	Orders	Time
Facility	Western Maryland Hospital Center	Order Date	LISACODIYL (ALOPHEN PILLS / BISALAX), tablet, delayed release (DR/EO), 5 mg Give 1 Tablet By Mouth As needed 1 time per day For Constipation, Special Instructions: Give at bedtime as needed if no BM for 2 days. From Hayford, Kwaku A, MD, Medical Doctor. Order entered by Jola Tammy, RN Registered Nurse	PRN
Patient Name	[REDACTED]	03/11/2014		
Att. Physician	Hayford, Kwaku A 1500 Pennsylvania Avenue Hagerstown, MD 21742	Start Date 03/11/2014 Finish Date		
Phone #	301-745-4200			
Room / Bed	J - 31	DOB		
Admission #	442-9316	11/26/1921	Reason for Order	
Address	[REDACTED]  Hagerstown, MD 21740	Pharmacy	Constipation	
SIGNATURE OF STAFF SIGNING ORDER		Time	SIGNATURE OF ORDERING MD, PA OR NP	
Jola Tammy		03/11/2014 11:39:01 am		
CERTIFICATION OF STAFF SIGNING ORDER			MD, PA OR NP LICENSE #	Date
RN, Registered Nurse			D0062108	
This Prescription Will Be Filled Generically Unless The Prescriber Checks "Dispense As Written".				Dispense As Written <input type="checkbox"/>

Physicians Transcribed Order		Date	Orders	Time
Facility	Western Maryland Hospital Center	Order Date	BISACODIYL (ALOPHEN PILLS / BISALAX), tablet, delayed release (DR/EO), 5 mg Give 1 Tablet By Mouth As needed 1 time per day For Constipation, Special Instructions: Give at bedtime as needed if no BM for 2 days. From Hayford, Kwaku A, MD, Medical Doctor. Order entered by Jola Tammy, RN, Registered Nurse	PRN
Patient Name	[REDACTED]	03/11/2014		
Att. Physician	Hayford, Kwaku A 1500 Pennsylvania Avenue Hagerstown, MD 21742	Start Date 03/11/2014 Finish Date		
Phone #	301-745-4200			
Room / Bed	J - 31	DOB		
Admission #	442-9316	11/26/1921	Reason for Order	
Address	[REDACTED]  Hagerstown, MD 21740	Pharmacy	Constipation	
SIGNATURE OF STAFF SIGNING ORDER		Time	SIGNATURE OF ORDERING MD, PA OR NP	
Jola Tammy		03/11/2014 11:39:01 am		
CERTIFICATION OF STAFF SIGNING ORDER			MD, PA OR NP LICENSE #	Date
RN, Registered Nurse			D0062108	
This Prescription Will Be Filled Generically Unless The Prescriber Checks "Dispense As Written".				Dispense As Written <input type="checkbox"/>

Physicians Transcribed Order		Date	Orders	Time
Facility	Western Maryland Hospital Center	Order Date	BISACODIYL (ALOPHEN PILLS / BISALAX), tablet, delayed release (DR/EO), 5 mg Give 1 Tablet By Mouth As needed 1 time per day For Constipation, Special Instructions: Give at bedtime as needed if no BM for 2 days. From Hayford, Kwaku A, MD, Medical Doctor. Order entered by Jola Tammy, RN, Registered Nurse	PRN
Patient Name	[REDACTED]	03/11/2014		
Att. Physician	Hayford, Kwaku A 1500 Pennsylvania Avenue Hagerstown, MD 21742	Start Date 03/11/2014 Finish Date		
Phone #	301-745-4200			
Room / Bed	J - 31	DOB		
Admission #	442-9316	11/28/1921	Reason for Order	
Address	[REDACTED]  Hagerstown, MD 21740	Pharmacy	Constipation	
SIGNATURE OF STAFF SIGNING ORDER		Time	SIGNATURE OF ORDERING MD, PA OR NP	
Jola Tammy		03/11/2014 11:39:01 am		
CERTIFICATION OF STAFF SIGNING ORDER			MD, PA OR NP LICENSE #	Date
RN, Registered Nurse			D0062108	
This Prescription Will Be Filled Generically Unless Prescriber Checks "Dispense As Written".				Dispense As Written <input type="checkbox"/>