



**STATE OF MARYLAND  
DEVELOPMENTAL DISABILITIES ADMINISTRATION  
(DDA)**

**REQUEST FOR PROPOSALS (RFP)  
BEHAVIORAL RESPITE SERVICES (BRS)**

**RFP NUMBER MDH/OCMP 23-00048**

**EMMA #BPM031370**

**ISSUE DATE: AUGUST 26, 2022**

**NOTICE**

A Prospective Offeror that has received this document from a source other than eMarylandMarketplace (eMMA) <https://procurement.maryland.gov> should register on eMMA. See **Section 4.2**.

**MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO  
RESPOND TO THIS SOLICITATION.**

**VENDOR FEEDBACK FORM**

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

**Title: Behavioral Respite Services**  
**Solicitation No: MDH/OCMP 23-00048**

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 is simply too complicated. (Explain in REMARKS section)
  - We cannot be competitive. (Explain in REMARKS section)
  - Time allotted for completion of the Proposal is insufficient
  - Start-up time is insufficient
  - Bonding/Insurance requirements are restrictive (Explain in REMARKS section)
  - Proposal requirements (other than specifications) are unreasonable or too risky (Explain in REMARKS section)
  - MBE or VSBE requirements (Explain in REMARKS section)
  - Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section)
  - Payment schedule too slow
  - Other: \_\_\_\_\_

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

REMARKS:

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

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

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

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

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

**STATE OF MARYLAND**  
**DEVELOPMENTAL DISABILITIES ADMINISTRATION (DDA)**  
**KEY INFORMATION SUMMARY SHEET**

<b>Request for Proposals</b>	Services - Behavioral Respite Services
<b>Solicitation Number:</b>	MDH/OCMP-23-00048
<b>RFP Issue Date:</b>	August 26, 2022
<b>RFP Issuing Office:</b>	Maryland Department of Health (MDH) Developmental Disabilities Administration (DDA)
<b>Procurement Officer:</b>	Jim Beauchamp, Director 201 W Preston Street Baltimore, MD 21201
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<b>Phone:</b>	443-681-8844
<b>Proposals are to be sent to:</b>	Proposals will be accepted through the State's eMaryland Marketplace Advantage (eMMA) e-Procurement system. Instructions on how to submit proposals electronically can be found at: <a href="https://procurement.maryland.gov/wpcontent/uploads/sites/12/2019/08/5-eMMA-ORG-Responding-toSolicitations-Double-Envelope-v2.pdf">https://procurement.maryland.gov/wpcontent/uploads/sites/12/2019/08/5-eMMA-ORG-Responding-toSolicitations-Double-Envelope-v2.pdf</a>
<b>Pre-Proposal Conference:</b>	September 8, 2022, 11:00 AM EST Local Time via Teleconference See <b>Attachment A</b> for instructions.
<b>Questions Due Date and Time</b>	Questions should be submitted to <a href="mailto:mdh.solicitationquestions@maryland.gov">mdh.solicitationquestions@maryland.gov</a> no later than October 7, 2022, 2:00 pm EST Local Time
<b>Proposal Due (Closing) Date and Time:</b>	October 19, 2022, 2PM EST Local Time Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see <b>page iv</b> ).
<b>MBE Subcontracting Goal:</b>	0%
<b>VSBE Subcontracting Goal:</b>	0%
<b>Contract Type:</b>	Firm Fixed Price with Indefinite Quantity Units
<b>Contract Duration:</b>	Five (5) year base period with no options
<b>Primary Place of Performance:</b>	At Contract provided location(s) within each Region. See Section 2.

<b>SBR Designation:</b>	No
<b>Federal Funding:</b>	No

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## 1 Minimum Qualifications

### 1.1 Offeror Minimum Qualifications

As part of the determination to be considered reasonably susceptible of being selected for award, the Offeror must document in its Proposal that, within the last seven (7) years, the following Minimum Qualifications have been met:

- 1.1.1** The Offeror shall have at least three (3) years of experience providing Behavioral Support Services and Psychiatric Services for individuals with intellectual and developmental disabilities. Each reference shall be from a client for whom the Offeror has provided services.

**Required Documentation:** As proof of meeting this requirement, the Offeror must provide with its Proposal a minimum of three (3) references from the past three (3) years that is collectively able to attest to the Offeror's required years of experience in providing Behavioral Support and Psychiatric Services for individuals with intellectual and developmental disabilities.

References shall include:

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

- 1.1.2** The Offeror must be licensed by Developmental of Disabilities Administration (DDA) as a provider of Residential Services.

**Required Documentation:** As proof of meeting this requirement, the Offeror must provide with its Proposal a copy of their Residential Services License issued by The Maryland Department of Health (MDH), Developmental of Disabilities Administration (DDA).

- 1.1.3** The Offeror must be a Medicaid Provider or an entity which has filed an application to become a Medicaid Provider. **(See COMAR 10.09.36.)** If the Offeror is not an approved Medicaid Provider at the time of Proposal submission, Offeror must be approved as a Medicaid Provider at the time of recommendation for award.

**Required Documentation:** As proof of meeting this requirement, the Offeror must submit with its Proposal, as applicable, a Certified Provider Approval letter that the Offeror is an approved Medicaid Provider or has applied to become an approved Medicaid Provider. (For additional information Offerors may visit the [Office of Health Care Quality \(OHCQ\)](#)).

- 1.1.4** The Offeror must NOT be on the Health and Human Services (HHS) Office of the Inspector General's List of Excluded Individuals and Entities (LEIE), or the federal General Services Administration System for Award Management (SAM). Links to the LEIE and SAM lists are as follows:

- A. LEIE: Go here: [http://oig.hhs.gov/exclusions/exclusions\\_list.asp](http://oig.hhs.gov/exclusions/exclusions_list.asp)
- B. SAM: Go here: <https://www.sam.gov/portal/SAM/#%2311%231#1>

**Required Documentation:** As proof of meeting this requirement, the Offeror shall provide a self-certification with its Proposal that it is not on the LEIE or SAM lists.

## 2 Contractor Requirements: Scope of Work

### 2.1 Summary Statement

- 2.1.1** The Maryland Department of Health (“MDH” or the “Department”) is issuing this Request for Proposals (RFP) in order to obtain a contract for comprehensive Behavioral Respite Services. These services are for individual identified by the Developmental Disabilities Administration (DDA) as eligible for DDA services and to prevent the need for hospitalization.
- 2.1.2** The Department intends to **make one (1) award per region (Central, Eastern, Western, and Southern)** in Maryland as a result of this RFP. Accordingly, selected Offeror(s) must provide all required Behavioral Respite Services within its awarded region(s) listed below. Offerors may submit a proposal for one (1) or more regions or all four (4) regions but may only submit one (1) proposal per region. See RFP **Section 4.9 Award Basis** for more Contract award information.
- 2.1.3** An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.4** A Contract award does not ensure a Contractor will receive all or any State business under the Contract.

### 2.2 Background, Purpose, and Goals

The DDA provides a coordinated service delivery system so that individuals with developmental disabilities receive appropriate services oriented toward the goal of integration into the community. These services are provided through a wide array of community-based services delivered primarily through a network of non-profit providers,) that provide services to individuals with intellectual disability. DDA’s mission is to partner with people with developmental disabilities to provide them leadership and resources to live fulfilling lives. The DDA has four (4) Regional offices that oversee services through separate contracts in each Region. The current services provided by DDA are broad and administered differently in each Region. The Regions are identified below.

- A. Central Maryland Region (CMR) - includes Baltimore City and Anne Arundel, Baltimore, Harford, and Howard Counties.
- B. Eastern Shore Region (ESR) - includes Caroline, Cecil, Dorchester, Kent, Queen Anne’s, Somerset, Talbot, Wicomico, and Worcester Counties.
- C. Southern Maryland Region (SMR) - includes Calvert, Charles, Montgomery, Prince George’s, and St. Mary’s Counties.
- D. Western Maryland Region (WMR) - includes Allegany, Carroll, Frederick, Garrett, and Washington Counties.

The following chart provides the most recent data on the number of DDA funded Behavioral Respite days provided per the four Regions that are referred to in this RFP.

**FY 2021**

<b>DDA REGION</b>	<b>BEHAVIORAL RESPITE SERVICES (NUMBER OF DAYS)</b>
CMR	405
ESR	425
SMR	96
WMR	134
<b>TOTAL</b>	<b>1060</b>

Behavioral Respite Service is available for eligible non-residents of the State Residential Centers when parents and guardians need relief from the care of the individual due to challenging behaviors that cannot be managed within a home environment.

Further information about DDA programs and services can be accessed via the website at: <https://dda.health.maryland.gov/Pages/home.aspx>

**2.2.1 Project Goals**

- A. Provide a therapeutic milieu where positive behaviors are supported, and an individual’s trauma history is recognized as part of behavioral patterns that can be demonstrated when said individual is stressed or triggered.
- B. Work with an individual’s care team to identify and address behaviors that are preventing said individual to live and interact within their community.
- C. Develop a therapeutic plan of action, that will encompass behavior plan (when applicable) to reintegrate the individual back into their home environment and the community as a whole.

**2.2.2 Existing Reporting**

- A. **Weekly reports** containing all contract activities since the previous weekly report per individual in Behavioral Respite, to include all therapeutic activities, community reintegration, and team meetings.
  - 1) Every Tuesday by 12:00 pm, the Contractor must submit a report to the Contract Monitor of all Contract activities completed since the previous weekly report. In addition, each Contract activity being reported must include the date it occurred and the duration of the occurrence, including, if applicable, the actual or approximate times the activity started and stopped. Of necessity, the report information for an individual who was accepted into services shortly prior to 12:00 pm on a Tuesday – e.g., that Tuesday morning or the day before – may only have a bare minimum of projected treatment information, but it must at least fully identify the individual with the information described in 2.2.2. A2 and the authorized treatment duration.
  - 2) Each individual receiving services shall be identified by first and last name, Medical Assistance Number, if applicable, and other appropriate identification information.
  - 3) Along with services (treatment) information, the weekly report must have a detailed financial component. This financial component must include:

- a) The total amount of all payments received under the Contract, both for the Contract year to-date and the total Contract to-date.
  - b) The total amount of any invoices that have been submitted to the Contract Monitor but for which payment has not yet been received.
  - c) The projected total value (amount) of the Contract if all in-place or projected services are provided as planned. For example, if an individual is accepted into a 28-day treatment program but has only been receiving services for five (5) days as of a given weekly report date, the financial reporting for this individual would note the value of the five (5) days of incurred, but not yet invoiced services and the maximum billable amount for the individual if the authorized 28-days of services are realized
  - d) If at any point in time it appears the total value of the Contract will or might exceed the not-to-exceed Contract limit, the Contractor must highlight this circumstance on the report and separately directly inform the Contract Monitor. Based upon this financial information, the Department will decide whether to seek to increase the not-to-exceed value of the Contract, curtail future usage of the Contract, or prematurely require the termination of services to one or more individuals, or some combination of these actions.
  - e) If the Contractor fails to properly report and/or calculate the projected total value of the Contract with the result that the not-to-exceed value of the Contract is reached or would be reached when all performed services are invoiced, invoices cannot be processed unless and until the not-to-exceed value of the Contract is increased via a Contract modification that receives all required State approvals.
- 4) If any Tuesday is a State observed holiday or State offices are otherwise closed at 12:00 pm on that day – e.g., due to a weather or national emergency, death of State dignitary, terrorist activity – the weekly report is due by noon on the next State Business Day.

**B. Monthly Reports**

- 1) If any Quarterly Assurance Report described in Section 2.2.2.C shows that the Contractor did not satisfy all Contract requirements being reported in that Section, for the next quarter the Contractor shall report on all elements contained in Section 2.2.2B **monthly**.
- 2) These monthly reports will be due no later than ten (10) days following the end of each month being reported.
- 3) If any monthly report as described in this Section 2.2.2.B shows that all Contract requirements as described in **Section 2.2.2.C** were not met, the Contractor must continue to submit these reports monthly.
- 4) If any monthly report as described in this Section shows that all Contract requirements as described in **Section 2.2.2.C** were not met, in addition to the continuation of monthly reporting, the Contract Monitor typically will also require a new or revised Corrective Action Plan, as described in **Section 2.2.2 F**.
- 5) If all three (3) monthly reports for a given Contract quarter show the Contractor met all Contract requirements, the Contractor may revert to quarterly reporting as described in **Section 2.2.2.C**.

C. **Quarterly reports**

1) **Submission Timeframes**

- a) For the entire Contract Duration, the Contractor is to submit quarterly Reports to the Contract Monitor by the 15th calendar day after the end of each quarter (each 3-month period of the Contract, starting on the NTP Date.); e.g., the Contractor is to submit the 1st quarterly report by the middle of the 4th month of the Contract, the 2nd quarterly report by the middle of the 7th month of the Contract, the 3rd quarterly report by the middle of the 10th month of the Contract, and the 4th quarterly report by the middle of the 13th month of the Contract (1st month of the 2nd Contract year.)
- b) For the last year of the Contract, the final quarterly reports must be submitted to the Contract Monitor no later than when a final invoice is submitted.

2) **Training and types of quarterly reports**

- a) **Performance Report.** This quarterly report must include information on staff training and on-the-job performance evaluations of staff as described in **Sections 2.3.1.B** and **2.3.1.C**.
- b) **Quality Assurance Report.** This quarterly report must address the extent to which the Contractor must meet each of the following requirements for each individual that received Behavior Respite Services during the preceding quarter.
  - i) A Behavioral Assessment (BA) completed for each individual accepted into Behavioral Respite before the individual entered Behavioral Respite
  - ii) A Behavior Plan agreed upon by the Individual Planning Team, and in place within five (5) days of each individual entering Behavioral Respite
  - iii) A graphic representation of sleep and target behaviors for each maladaptive behavior for each respective individual is provided to the Contract Monitor in weekly reports for each week or portion thereof that an individual was receiving Behavioral Respite Services (BRS).
  - iv) A description of contact between the Contractor and each individual's Individual Planning Team regarding progress towards the individual transitioning out of BRS was provided to the Contract Monitor in weekly reports for each week or portion thereof that an individual was receiving BRS.
  - v) All relevant information about the individual for a successful transition back to the receiving agency was documented in a weekly report no later than the Tuesday following when the information first became available. (i.e., when an event or action occurred, a meeting or discussion was held, etc.

- D. **Annual reports.** The Contractor must provide an annual report to the Contract Monitor by the last day of the month following the last month of each Contract year. (e.g., by July 31st of each year of the Contract if the Contract starts on July 1st the year before.). For the last year of the Contract this annual report must be received before final Contract payment will be made. This report must provide:

- 1) A detailed summary of all services provided during the year;
  - 2) An analysis of the results of the services; and
  - 3) Recommendations the Contractor has for improving the efficiency and quality of services being delivered
- E. **Other Reports** Any other information the Contractor committed to provide in its Technical Proposal and any additional information agreed to by the Contractor and Contract Monitor shall be submitted by the Contractor in the agreed timeframe and manner.
- F. **Corrective Action Plan**
- 1) If any Quarterly Assurance Report described in **Section 2.2.2.C** shows that the Contractor did not satisfy all Contract requirements being reported, in addition to changing to monthly reporting on those requirements as described in **Section 2.2.2.B**, the Contractor shall also submit a Corrective Action Plan (CAP), describing all actions it will take to ensure that all these requirements will be satisfied thereafter. This CAP must be submitted to the Contract Monitor for approval within 15 days of the submission of a quarterly report showing such deficiencies.
  - 2) If the Contract Monitor is not satisfied that the Contractor's proposed Corrective Action Plan will prevent a recurrence of the deficiency(ies), the Contract Monitor will so notify the Contractor and require a revised CAP. The revised CAP must be submitted to the Contract Monitor within 10 days of the Contract Monitor's rejection of the previous CAP.

## **2.3 Responsibilities and Tasks**

### **2.3.1 General Contract Requirements**

The offeror must:

- A. Provide at a minimum the Key Personnel and other staff as set out in Section 3.10.2, 3.10.3 and 3.10.4.
- B. Ensure that all personnel or staff working under the Contract are trained for their job duties per DDA regulations regarding required trainings, including training in positive behavior supports, trauma informed care, and trainings related to co-occurring mental health disorders. The Contractor must maintain a training log for each staff member, including contractual staff, that demonstrates their successful completion of required training and any additional staff training they have attended. "Required training" is any training required by law or regulation for a given position or function or otherwise committed to by the Contractor in its Technical Proposal. Staff training must be included as part of the required Quarterly Report. (**See Section 2.2.2.C**)
- C. Evaluate the on-the-job performance of its staff at least on a quarterly basis. Such evaluations shall be conducted as described in its Technical Proposal or as otherwise approved in writing by the Contract Monitor.
- D. Submit to the Contract Monitor its proposed quarterly and annual report formats no later than 15 calendar days after the NTP Date. The Contractor must make any changes required by the Contract Monitor no later than three (3) Business Days after receiving notification of the Contract Monitor's required changes.
- E. Provide all required services to individuals who are not fluent in the English language or who have visual or hearing impairments. The State maintains contracts for foreign



language and sign language interpretation. If the Contractor chooses to utilize the State contracts for services, telephonic language interpretation services are provided by the Regional office through conference calling procedures. On-site interpretation services require twenty-four (24) hour notice to the Contract Monitor and/or Regional office and are subject to availability. If the Contractor chooses to provide for its own interpretation services, it will be at its own cost.

- F. Contractor must provide an on-line database management system for record purposes and treatment plans and must provide to access to the Contract Monitor

### **2.3.2 Behavioral Respite Services**

- A. Behavioral Respite Services (BRS) is a temporary relief service, provided to the family or caregiver of an individual who is exhibiting challenging behavior. Behavioral Respite Services can help families meet emergency needs or overcome the challenging behavior that is preventing the individual from living in a less restrictive environment. Behavioral Respite Services (BRS) involves transferring an individual from their current living environment to a more highly structured and positive environment for a time-limited period where their challenging behavior(s) can be managed in a positive, safe, and effective manner. Changing the individual's environment is part of the therapeutic intervention needed to improve the situation. These services must be authorized by DDA as part of a planned, coordinated, stepwise approach to address challenging behaviors and return the individual to less restrictive community living arrangement
- B. The Regional Office and the Contract Monitor will pre-authorize the provision of Behavioral Respite Services (BRS) for a maximum of 28 calendar days, pending the completion by the Contractor of an eligibility determination (see Section 2.3.2D), within ten (10) Business Days of the initial referral. Behavioral Respite Services (BRS) for an individual must not exceed 45 calendar days within a one-year period and must not be provided for more than 28 consecutive calendar days unless prior written approval is granted by the Regional Office or the Contract Monitor. (COMAR 10.22.08.03E.2) **See Appendix 6 - Sample Behavioral Respite Request Form.**
- C. Access to Behavioral Respite Services (BRS) services is contingent upon referral through DDA and verification that this individual has been determined by DDA to be eligible for DDA funding, as well as confirmation by the Contractor of the presence of challenging behaviors or co-occurring mental health issues that cannot be adequately addressed in the current community setting. Behavioral Respite Services (BRS) services are an all-inclusive service (i.e., room, board, staffing as clinically indicated, administrative/clinical supervision, documentation, nursing assessments, nursing, care coordination, assistive technology, behavioral support services, family support, personal supports, transition services, discharge planning, reporting, transportation, preparing weekly data collection reports, etc.) When looking at transitioning an individual out of Behavioral Respite Services (BRS) and back into the community, the Contractor must ensure that waiver services are reviewed and that the individual is connected with the said services. A transition plan shall be developed to ensure that transition back into the community is planned and provides the individual with the supports needed to make the transition smooth.
- D. An individual will not be admitted into Behavioral Respite Services (BRS) until a Behavior Assessment has been completed for the individual, unless otherwise authorized by the DDA (**See Appendix 6 - Behavior Assessment**). Typically, a Behavioral Assessment will have been completed for an individual being referred for

Behavioral Respite Services (BRS) by that individual's provider of residential and/or other services, possibly including the Contractor since Offeror must be a DDA residential services provider to be eligible for the award of the Contract. See section 1.1.2. In other instances, a Behavioral Assessment might be performed by a DDA approved Behavior Support Services (BSS) provider through the Community Pathways Waiver, Community Supports Waiver or Family Supports Waiver. However, the Contractor may not perform a Behavioral Assessment of an individual under this Contract, as part of Behavioral Respite Services (BRS).

- E. The Behavioral Assessment will include the level(s) of support that the individual will require (i.e., Tier 1, Tier 2, or Tier 3 as described in **(Appendix 6)**). The Assessment will also include the initial staffing ratio that the individual will require (i.e., one to one, two to one etc.) and any projected Step-Down (reduction) in that ratio while receiving Behavioral Respite Services. However, the recommended staff ratio must be provided by the Contractor. The Behavior Assessment will also include specific recommendations for other required staff (i.e., qualified clinician) needed to train Behavioral Respite agency staff and implement a Behavior Plan (BP) or other recommended levels of support (Tier 1, Tier 2).
- F. Behavioral Respite Services are not a substitute for psychiatric admission or for Non-Behavioral Respite; however, they can be used as a transitional environment from a psychiatric admission. The goal of Behavioral Respite Services is to stabilize behaviorally so that the individual may return to a less restrictive community living environment. If the determination of the Contractor is that a psychiatric admission for an individual is appropriate, the Contractor must help to arrange that admission(e.g., calling 911, collaborating with mobile crisis, assisting with transportation, etc.) Moreover, unless the Contractor's activities in this regard satisfy the requirements of a Behavioral Respite Services Billable Interval, the Contractor may not invoice for any of its efforts leading to a psychiatric admission.

### **2.3.3 Behavioral Respite Services Requirements**

#### **A. General Behavioral Respite Requirements.**

The Offeror must:

- 1) Develop and maintain relationships with community mental health providers, such as local health departments and hospitals, to support and assist for a Step-Down of care if an individual is ready to be released from an institutional, restrictive environment or for increased care if Behavioral Respite Services does not meet the psychiatric or behavioral needs of the individual.
- 2) Provide Behavioral Respite Services for children and adults in separate locations unless approved otherwise by the Deputy Secretary for Developmental Disabilities of MDH.
- 3) Provide Behavioral Respite Services in a therapeutic setting capable of meeting the clinical needs of individuals with challenging behaviors. Behavioral Respite settings must be a highly structured therapeutic environment located within the contracted Region, with staff specifically trained to work with individuals with challenging behaviors through the use of Positive Behavior Supports and Trauma Informed Care.

#### **B. Location and Transportation requirements.**



The Offeror must:

- 1) Be a licensed DDA Residential Services provider for the full duration of the Contract.
- 2) Have one (1) or more locations within each of its contracted Regions to provide residential services in compliance with all licensure requirements for individuals accepted into Behavioral Respite Services, in addition to whatever services are required to provide Behavioral Respite. The location(s) may be provided by the Contractor
  - a) Directly through a residential setting(s) it owns, rents or leases;
  - b) Indirectly through a residential setting(s) owned, rented or leased by a subcontractor; or
- 3) Accommodate staff to provide services at any residential setting location provided under this Contract. Staff may be employees or agents of the Contractor, or a subcontractor, or a combination thereof, as long as any and all such staff possess all licenses, certificates, experience, skills, and abilities required to properly perform their assigned duties.
- 4) Have and maintain the capacity within each Region it is contracted to serve to simultaneously provide Behavioral Respite Services (BRS) in an approved residential setting and with all associated services for at least the following number of individuals
  - a) Central Region – four (4);
  - b) Southern Region – three (3);
  - c) Western Region – two (2);
  - d) Eastern Region – two (2)
- 5) Maintain capacity means that unless the Contractor is already serving the required or committed-to number of individuals in Behavioral Respite Services (BRS) within each contracted Region(s), it must accept any eligible individual into Behavioral Respite Services (BRS), including providing all activities, facilities, and supports needed for residential services for the rate quoted on the Financial Proposal Form for each respective contract period.
- 6) Serve more than the number of individuals for a Region(s), listed in **Section 2.2.3.B.5**, if the Offeror committed in its Technical Proposals to have the capability to serve more, for the full duration of the Contract it must simultaneously accept and serve that higher number if and when required.

#### **2.3.4. Requirements for Assessing the Need for Behavioral Respite Services**

The Offeror must:

- A. Ensure that one of the following two (2) criteria is met in order to justify a referral for Behavioral Respite Services:
  - 1) The individual must be exhibiting a pattern of accelerating challenging behaviors resulting in serious multiple injuries--defined as three (3) or more incidents requiring medical treatment--to themselves or others during the past 21 days, and/or,

- 2) The individual must have exhibited an increase in the frequency and intensity of challenging behaviors in the past 21 days to the magnitude that the safety of the individual and others cannot be assured unless the individual is removed from the current residential setting and placed in Behavioral Respite, in order to mitigate the behavior crisis.
- B. Provide written documentation (i.e., incident reports, behavioral data analysis, medical records, etc.) to the Regional Director or designee prior to admitting an individual to Behavioral Respite Services. Contractor must clearly indicate that one or both criteria listed in **Section 2.3.4** have been met. Approval to begin Behavioral Respite Services will be made in writing by the Regional Director or designee.
- C. Contact its counterpart contractors in the other three Regions to arrange Behavioral Respite Services (BRS) to be provided outside the consumer's home Region if the Contractor is already serving the number of individuals required by **Section 2.3.3.B.3** for its Region or as committed to in its Technical Proposal (**Section 2.3.3.C**) and does not have the physical capacity to provide Behavioral Respite Services (BRS) to another eligible consumer from within the Region it is contracted to serve.
- 1) The determination of whether the Contractor has the physical capacity to provide services should be made before the Contractor exerts any effort to ascertain the eligibility of a consumer to receive Behavioral Respite Services (BRS).
  - 2) Except for highly extenuating circumstances that must be approved in advance by the Contract Monitor, the Contractor must not decline to provide services to any consumer based upon a lack of clinical capability.
  - 3) Initial contact should be made to the Behavioral Respite Services (BRS) contractor serving the Region closest to the consumer's current residence. If that Contractor lacks capacity to serve the consumer, contact should be made to the other Regional Behavioral Respite Services (BRS) contractors to determine if another Contractor can provide the needed Behavioral Respite Services (BRS) services
  - 4) The Offeror that actually provides the Behavioral Respite Services (BRS) services for a given consumer will be paid for providing the services at the rate in its contract.
- D. Have a State of Maryland licensed health occupation professional perform a face-to-face on-site evaluation of the individual in their current environment (residential, home, hospital).

### **2.3.5 Prior to Placement in Behavioral Respite**

The Offeror must identify and submit in writing to the Coordinator of Community Services and Regional Office Staff, a request for the information needed during the individual's stay. This will include but is not limited to the following: Behavior Plan, Individual Person-Centered Plan, nursing care plan, and medical appointment schedule. Contact information for the Coordinator of Community Services and Regional Office Staff will be provided to the Contractor upon Contract award. The Offeror must have the capacity to fulfill the individual staffing needs to provide the service within 24 hours of receipt of the admissions intake information listed above in this section.

### 2.3.6 Once an Individual Is Receiving Behavioral Respite Service

As part of its all-inclusive rate as proposed on **Attachment B, the Financial Proposal Form**, the Contractor must:

- A. Develop a written treatment plan, within 24-hours of admission, based upon the individual's mental health diagnosis/needs, Positive Behavior Supports as well as the individual's possible trauma history, specifically for the Behavioral Respite Services stay. The treatment plan will detail specific outcomes that are measurable and observable through the objectives that support the overarching outcome. The treatment plan must be reviewed at least weekly and updated as appropriate. The treatment plan must be reviewed at least weekly, updated as appropriate and added to the on-line Information database. **(See Appendix 2 – NNN. Treatment Plan)**
- B. Develop a written transition plan, within 48-hours of admission, to coordinate services from Behavioral Respite Services to the individual's permanent residential setting. The transition plan must be reviewed at least weekly and updated as appropriate. The updated transition plan must then be added to the Contractor provided on-line information database.
- C. Support the individual to continue to live their life, including going to work, meeting with their outpatient providers, attending employment or day services, and spending time with family and friends
- D. Provide services daily to assist with skills building (i.e., self-care/Activities of Daily Living (ADLs), and independent living skills) and conduct daily therapeutic groups and activities to address possible mental health and trauma needs (i.e., self-esteem building, wellness groups, appropriate self-expression, problem solving, coping skills/relaxation strategies, and recreational, social, and leisure activities).
- E. Work with the individual and their system of supports and services in order to problem solve, reduce the frequency of needed emergency interventions, and assist with ongoing stability.
- F. Assess whether changing the individual's environment is part of the therapeutic intervention needed to improve the situation. This is a temporary, time-limited placement that provides all of the resources needed, including, but not limited to, therapeutic staffing, recognizing/supporting and addressing mental health needs, the use of Positive Behavioral Supports and Trauma informed care to meet the identified needs.
- G. Within the first five (5) calendar days of Behavioral Respite Services, arrange and participate in an Individual Planning Team meeting, including the Coordinator of Community Services and START Coordinator, as applicable, to develop a plan for long-term services. This plan will be implemented using the agreed upon format or Behavioral Respite Services (BRS) that is developed by the Contractor and approved by the Contract Monitor. This may include DDA-funded services if DDA has deemed the individual cannot return to the previous living situation and there is no other non-DDA funded option.
- H. Develop a staffing level Fading Plan based upon the individual's health/self-care and challenging behavior needs. The Fading Plan must be completed on a weekly basis **(See Section 2.2.2 on weekly reports)** and is due to the Contract Monitor before 12:00 pm on Tuesdays, even if the individual started receiving Behavioral

Respite Services (BRS) as recently as the day before, or even that Tuesday morning. The Fading Plan must include but is not limited to criteria for:

1. Expanding or generalizing Fading to relevant times and/or places, and
2. Abandoning the Fading Plan or going back one step
- I. Train all staff and family working with the individual in Behavioral Respite Services on all aspects of the individual's BP, including the data collection procedures
- J. Provide a weekly Behavioral Respite Services Report (**see Section 2.2.2.A**) to the Contract Monitor about the individual's progress and efforts undertaken to return the individual to the community including:
  1. All relevant information about the individual for a successful transition back to the receiving agency is to be documented
  2. Behavioral data (frequency, duration, and intensity/severity) for all targeted challenging behaviors on an ongoing basis 24/7 as long as the individual is receiving Behavioral Respite Services (BRS). This data will be graphed (with a written trend analysis for each maladaptive behavior) and provided to the Contract Monitor in the Behavioral Respite Services (BRS) portion of the required weekly report
  3. Weekly updates to the Contract Monitor about the individual's progress and undertaking being done to return the individual to the community. This should include what therapeutic interventions are being used for that individual. These reports are due to the Contract Monitor by 12:00 noon on Tuesdays regardless of the date of admission.

### **2.3.7 Targeted Therapeutic Staff (TTS)**

As outlined in COMAR 10.22.10.03, Behavioral Support Services include the provision of temporary augmentation of staff. This service will be titled Targeted Therapeutic Staff (TTS) and will provide for this temporary augmentation of staff specifically in a General Hospital Behavioral Unit or Psychiatric Unit. The goal of Targeted Therapeutic Staff is to provide additional, time-limited direct support to a person who has been admitted to a General Hospital Behavioral or Psychiatric Unit and is preparing for discharge back to their provider or family. Concerning TTS, the Offeror must:

- A. Develop procedures for delivering temporary TTS that are individualized, timely and flexible. These procedures must be submitted to and approved by the Contract Monitor no less than 2 weeks prior to the NTP Date.
- B. Develop a pool of specially trained staff who will be available on within 2-3 hours to provide Targeted Therapeutic Staff (TTS) services
- C. Assure that TTS work collaboratively with the individual and their community team along with clinical and hospital staff to develop a successful discharge plan and a smooth transition back to their community setting.
- D. Provide TTS services in conjunction with Behavioral Assessment and Support Services and provide training in positive behavior supports, trauma informed care and if applicable training in specific mental health diagnosis. As well as modeling of behavioral interventions within the Behavior Plan

- E. Not allow for TTS services to be used to improve on-going staff/individual ratios, nor may it be offered to be a substitute for or provided in the absence of assigned caregiver(s)/agency staff.

### **2.3.8 Required Project Policies, Guidelines, and Methodologies**

The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines affecting Information Technology projects, which may be created or changed periodically. Offeror is required to review all applicable links provided below and state compliance in its response.

It is the responsibility of the Contractor to ensure adherence and to remain abreast of new or revised laws, regulations, policies, standards, and guidelines affecting project execution. These include, but are not limited to:

- A. The State of Maryland System Development Life Cycle (SDLC) methodology at: <https://doit.maryland.gov/SDLC/Pages/agile-sdlc.aspx>;
- B. The State of Maryland Information Technology Security Policy and Standards at: <http://www.DoIT.maryland.gov>- keyword: Security Policy;
- C. The State of Maryland Information Technology Non-Visual Standards at: <https://doit.maryland.gov/policies/Pages/ContractPolicies.aspx>;
- D. The State of Maryland Information Technology Project Oversight at: <http://doit.maryland.gov/epmo/Pages/ProjectOversight.aspx>;
- E. The Contractor shall follow project management methodologies consistent with the most recent edition of the Project Management Institute's Project Management Body of Knowledge Guide; and

## **2.4 Deliverables**

### **2.4.1 Deliverable Submission**

- A. Unless specified otherwise, written deliverables shall be compatible with Microsoft Office, Microsoft Project or Microsoft Visio within two (2) versions of the current version. At the Contract Monitor's discretion, the Contract Monitor may request one hard copy of a written deliverable.
- B. A standard deliverable review cycle will be elaborated and agreed-upon between the State and the Contractor. The State has the ultimate and/or final authority to determine and approve the deliverable review cycle. This review process is entered into when the Contractor completes a deliverable.
- C. For any written deliverable, the Contract Monitor may request a draft version of the deliverable, to comply with the minimum deliverable quality criteria listed in **Section 2.4.3 Minimum Deliverable Quality**. Drafts of each final deliverable, except status reports, are required at least two weeks in advance of when the final deliverables are due (with the exception of deliverables due at the beginning of the project where this lead time is not possible, or where draft delivery date is explicitly specified). Draft versions of a deliverable shall comply with the minimum deliverable quality criteria listed in **Section 2.4.3 Minimum Deliverable Quality**.

### **2.4.2 Deliverable Acceptance**

- A. A final deliverable shall satisfy the scope and requirements of this RFP for that deliverable, including the quality and acceptance criteria for a final deliverable as defined in **Section 2.4.4 Deliverable Descriptions/Acceptance Criteria**.
- B. The Contract Monitor shall review a final deliverable to determine compliance with the acceptance criteria as defined for that deliverable. The Contract Monitor is responsible for coordinating comments and input from various team members and stakeholders. The Contract Monitor is responsible for providing clear guidance and direction to the Contractor in the event of divergent feedback from various team members.
- C. The Contract Monitor will issue to the Contractor a notice of acceptance or rejection of the deliverable in the DPAF (see online sample). Following the return of the DPAF indicating “Accepted” and signed by the Contract Monitor, the Contractor shall submit a proper invoice in accordance with the procedures in **Section 3.3**. The invoice must be accompanied by a copy of the executed DPAF, or payment may be withheld.
- D. In the event of rejection, the Contract Monitor will formally communicate in writing any deliverable deficiencies or non-conformities to the Contractor, describing in those deficiencies what shall be corrected prior to acceptance of the deliverable in sufficient detail for the Contractor to address the deficiencies. The Contractor shall correct deficiencies and resubmit the corrected deliverable for acceptance within the agreed-upon time period for correction.

#### **2.4.3 Minimum Deliverable Quality**

The Contractor shall subject each deliverable to its internal quality-control process prior to submitting the deliverable to the State.

Each deliverable shall meet the following minimum acceptance criteria:

- A. Be presented in a format appropriate for the subject matter and depth of discussion.
- B. Be organized in a manner that presents a logical flow of the deliverable’s content.
- C. Represent factual information reasonably expected to have been known at the time of submittal.
- D. In each section of the deliverable, include only information relevant to that section of the deliverable.
- E. Contain content and presentation consistent with industry best practices in terms of deliverable completeness, clarity, and quality.
- F. Meets the acceptance criteria applicable to that deliverable, including any State policies, functional or non-functional requirements, or industry standards.
- G. Contains no structural errors such as poor grammar, misspellings or incorrect punctuation.
- H. Must contain the date, author, and page numbers. When applicable for a deliverable, a revision table must be included.
- I. A draft written deliverable may contain limited structural errors such as incorrect punctuation and shall represent a significant level of completeness toward the associated final written deliverable. The draft written deliverable shall otherwise comply with minimum deliverable quality criteria above.



**2.4.4 Deliverable Descriptions/Acceptance Criteria**

In addition to the items identified in the table below, the Contractor may suggest other subtasks, artifacts, or deliverables to improve the quality and success of the assigned tasks.

**Deliverables Summary Table\***

<b>ID #</b>	<b>Deliverable Description</b>	<b>Acceptance Criteria</b>	<b>Due Date / Frequency</b>
Section 2.2.2A	Weekly report overview of prior week’s activities	Microsoft document with details of weekly therapeutic activities, meetings, community outings, behavioral issues	Updates: Weekly by noon on Wednesday for the previous week
Section 2.2.2.C1 and Section 2.2.2.C2	Quarterly reports  1. Training and performance  2. Quality Assurance	Microsoft document with 1. information on staff training and on-the-job performance evaluations of staff 2. Behavioral requirements met for each individual in behavioral respite.	3-month period of the Contract, starting on the NTP Date); on the 15 <sup>th</sup> of each quarter
Section 2.2.2 (F)	Corrective Action Plan (CAP)	Microsoft document describing all actions it will take to ensure that all these requirements will be satisfied	Within 15 Calendar days after submission of a quarterly report showing such deficiencies
Section 2.3.6.A	Treatment plan	See section 2.3.6.A	Within 24 hours of admission
Section 2.3.6.B	Transition plan	See section 2.3.6.B	Within 48 hours of admission
Section 2.3.6.H	Fading Plan	See section 2.3.6.H	Initially: by 12:00 noon on the 1 <sup>st</sup> Tuesday after Admission  Ongoing: by 12:00 noon each Tuesday while in service

\*The deliverables summary table may not list every contractually required deliverable. Offerors and Contractors should read the RFP thoroughly for all Contract requirements and deliverables.

**2.5 Optional Features or Services, Future Work**

THIS SECTION IS INAPPLICABLE TO THIS SOLICITATION.

## **2.6 Service Level Agreement (SLA)**

THIS SECTION IS INAPPLICABLE TO THIS SOLICITATION.

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## 3 Contractor Requirements: General

### 3.1 Contract Initiation Requirements

- A. The Contractor must schedule and hold a kickoff meeting within fifteen (15) Business Days of the NTP Date. At the kickoff, the Contractor must submit a finalized work plan to meet all of the requirements of this RFP outlined in the Technical Proposal, along with an update project schedule describing the activities for the Contractor, the State, and any third parties for fully transitioning to the Contractor.
- B. Contractor will be provided at least a 45-day Start-up Period.
- C. The Contractor must participate in both face-to-face meetings and conference calls with the Department for the purposes of coordinating implementation activities on a needed basis.

### 3.2 End of Contract Transition

- 3.2.1 The Contractor shall provide transition assistance as requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor, for a period up to 9 days prior to Contract end date, or the termination thereof. Such transition efforts shall consist, not by way of limitation, of:
  - A. Provide additional services and support as requested to successfully complete the transition;
  - B. Maintain the services called for by the Contract at the required level of proficiency;
  - C. Provide updated System Documentation (see Appendix 1), as appropriate; and
  - D. Provide current operating procedures (as appropriate).
- 3.2.2 The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of the Contract.
- 3.2.3 The Contractor shall ensure that all necessary knowledge and materials for the tasks completed are transferred to the custody of State personnel or a third party, as directed by the Contract Monitor.
- 3.2.4 The Contractor shall support end-of-Contract transition efforts with technical and project support to include but not be limited to:
  - A. The Contractor shall provide a draft Transition-Out Plan 120 Business Days in advance of Contract end date.
  - B. The Transition-Out Plan shall address at a minimum the following areas:
    - 1) Any staffing concerns/issues related to the closeout of the Contract;
    - 2) Communications and reporting process between the Contractor, the Developmental Disabilities Administration and the Contract Monitor;
    - 3) Security and system access review and closeout;
    - 4) Any hardware/software inventory or licensing including transfer of any point of contact for required software licenses to the Developmental Disabilities Administration or a designee;
    - 5) Any final training/orientation of Developmental Disabilities Administration staff;

- 6) Connectivity services provided, activities and approximate timelines required for Transition-Out;
  - 7) Knowledge transfer, to include:
    - a) A working knowledge of the current system environments as well as the general business practices of the Developmental Disabilities Administration;
    - b) Review with the Developmental Disabilities Administration the procedures and practices that support the business process and current system environments;
    - c) Working knowledge of all technical and functional matters associated with the Solution, its architecture, data file structure, interfaces, any batch programs, and any hardware or software tools utilized in the performance of the Contract;
    - d) Documentation that lists and describes all hardware and software tools utilized in the performance of the Contract;
    - e) A working knowledge of various utilities and corollary software products used in support and operation of the Solution;
  - 8) Plans to complete tasks and any unfinished work items (including open change requests, and known bug/issues); and
  - 9) Any risk factors with the timing and the Transition-Out schedule and transition process. The Contractor shall document any risk factors and suggested solutions.
- C. The Contractor shall ensure all documentation and data including, but not limited to, System Documentation and current operating procedures, is current and complete with a hard and soft copy in a format prescribed by the Contract Monitor.
- D. The Contractor shall provide copies of any current daily and weekly back-ups to the Developmental Disabilities Administration, or a third party as directed by the Contract Monitor as of the final date of transition, but no later than the final date of the Contract.
- E. Access to any data or configurations of the furnished product and services shall be available after the expiration of the Contract as described in **Section 3.2.5**.

### **3.2.5 Return and Maintenance of State Data**

- A. Upon termination or the expiration of the Contract Term, the Contractor shall: (a) return to the State all State data in either the form it was provided to the Contractor or in a mutually agreed format along with the schema necessary to read such data; (b) preserve, maintain, and protect all State data until the earlier of a direction by the State to delete such data or the expiration of 90 days (“the retention period”) from the date of termination or expiration of the Contract term; (c) after the retention period, the Contractor shall securely dispose of and permanently delete all State data in all of its forms, such as disk, CD/DVD, backup tape and paper such that it is not recoverable, according to National Institute of Standards and Technology (NIST)-approved methods with certificates of destruction to be provided to the State; and (d) prepare an accurate accounting from which the State may reconcile all outstanding accounts. The final monthly invoice for the services provided hereunder shall include all charges for the 90-day data retention period.
- B. During any period of service suspension, the Contractor shall maintain all State data in its then existing form, unless otherwise directed in writing by the Contract Monitor.

- C. In addition to the foregoing, the State shall be entitled to any post-termination/expiration assistance generally made available by Contractor with respect to the services.

### **3.3 Invoicing**

#### **3.3.1 General**

- A. The Contractor shall e-mail the original of each invoice and signed authorization to invoice to the authoritative Contract Monitor, Meg Depasquale, at email address: meg.depasquale@maryland.gov.
- B. All invoices for services shall be verified by the Contractor as accurate at the time of submission.
- C. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:
  - 1) Contractor name and address;
  - 2) Remittance address;
  - 3) Federal taxpayer identification (FEIN) number, social security number, as appropriate;
  - 4) Invoice period (i.e., time period during which services covered by invoice were performed);
  - 5) Invoice date;
  - 6) Invoice number;
  - 7) State assigned Contract number;
  - 8) State assigned (Blanket) Purchase Order number(s);
  - 9) Goods or services provided;
  - 10) Amount due; and
  - 11) Any additional documentation required by regulation or the Contract.
- D. Invoices that contain both fixed price and time and material items shall clearly identify each item as either fixed price or time and material billing.
- E. The Developmental Disabilities Administration reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Developmental Disabilities Administration with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.
- F. Any action on the part of the Developmental Disabilities Administration, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.
- G. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.
- H. Invoices for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the

Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

### **3.3.2 Invoice Submission Schedule**

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

- A. For items of work for which there is one-time pricing (see **Attachment B** – Financial Proposal Form) those items shall be billed in the month following the acceptance of the work by the Developmental Disabilities Administration.
- B. For items of work for which there is annual pricing, see **Attachment B**– Financial Proposal Form, those items shall be billed in equal monthly installments for the applicable Contract year in the month following the performance of the services.

### **3.3.3 Deliverable Invoicing**

- A. Deliverable invoices shall be accompanied by notice(s) of acceptance issued by the State for all invoices submitted for payment. Payment of invoices will be withheld if a signed DPAF is not submitted (see online example at [https://doit.maryland.gov/contracts/Documents/\\_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf](https://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf)).
- B. Payment for deliverables will only be made upon completion and acceptance of the deliverables as defined in **Section 2.4**.

### **3.3.4 Time and Materials Invoicing**

- A. All time and material invoices shall be accompanied by a signed timesheet as described below Include for each person covered by the invoice the following, individually listed per person: name, hours worked, hourly labor rate, invoice amount and a copy of each person’s timesheet for the period signed by the Contract Monitor.

#### **B. Time Sheet Reporting**

Within three (3) Business Days after the 15th and last day of the month, the TO Contractor shall submit a semi-monthly timesheet for the preceding half month providing data for all resources provided under the Contract.

At a minimum, each semi-monthly timesheet shall show:

- 1) Title: “Time Sheet for “Name”;
  - 2) Issuing company name, address, and telephone number;
  - 3) For each employee /resource:
    - a) Employee / resource name, and
    - b) For each Period ending date, e.g., “Period Ending: mm/dd/yyyy” (Periods run 1st through 15th, and 16th through last day of the month.):
  - 4) Annual variance to date (Sum of periodic variances); and
  - 5) Signature and date lines for the Contract Monitor.
- C. Time sheets shall be submitted to the Contract Monitor prior to invoicing. The Contract Monitor shall sign the timesheet to indicate authorization to invoice.

### **3.3.5 For the purposes of the Contract an amount will not be deemed due and payable if:**

- A. The amount invoiced is inconsistent with the Contract;

- B. The proper invoice has not been received by the party or office specified in the Contract;
- C. The invoice or performance is in dispute, or the Contractor has failed to otherwise comply with the provisions of the Contract;
- D. The item or services have not been accepted;
- E. The quantity of items delivered is less than the quantity ordered;
- F. The items or services do not meet the quality requirements of the Contract;
- G. If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
- H. If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or
- I. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

### **3.3.6 Travel Reimbursement**

Travel will not be reimbursed under this RFP.

## **3.4 Liquidated Damages**

### **3.4.1 MBE Liquidated Damages**

THIS SECTION IS INAPPLICABLE TO THIS RFP.

### **3.4.2 Liquidated Damages other than MBE**

THIS SECTION IS INAPPLICABLE TO THIS RFP.

## **3.5 Disaster Recovery and Data**

The following requirements apply to the Contract:

### **3.5.1 Redundancy, Data Backup and Disaster Recovery**

- A. Unless specified otherwise in the RFP, Contractor shall maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and other confidential information, Contractor's processing capability and the availability of hosted services, in each case throughout the Contract term. Any force majeure provisions of the Contract do not limit the Contractor's obligations under this provision.
- B. The Contractor shall have robust contingency and disaster recovery (DR) plans in place to ensure that the services provided under the Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
  - 1) The Contractor shall furnish a DR site.
  - 2) The DR site shall be at least 100 miles from the primary operations site and have the capacity to take over complete production volume in case the primary site becomes unresponsive.
- C. The contingency and DR plans must be designed to ensure that services under the Contract are restored after a disruption within twenty-four (24) hours from notification and a recovery

point objective of one (1) hour or less prior to the outage in order to avoid unacceptable consequences due to the unavailability of services.

- D. The Contractor shall test the contingency/DR plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one (1) annual test shall include backup media restoration and failover/fallback operations at the DR location. The Contractor shall send the Contract Monitor a notice of completion following completion of DR testing.
- E. Such contingency and DR plans shall be available for the Developmental Disabilities Administration to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

### **3.5.2 Data Export/Import**

- A. The Contractor shall, at no additional cost or charge to the State, in an industry standard/non-proprietary format:
  - 1) perform a full or partial import/export of State data within 24 hours of a request; or
  - 2) provide to the State the ability to import/export data at will and provide the State with any access and instructions which are needed for the State to import or export data.
- B. Any import or export shall be in a secure format per the Security Requirements.

### **3.5.3 Data Ownership and Access**

- A. Data, databases and derived data products created, collected, manipulated, or directly purchased as part of an RFP are the property of the State. The purchasing State agency is considered the custodian of the data and shall determine the use, access, distribution and other conditions based on appropriate State statutes and regulations.
- B. Public jurisdiction user accounts and public jurisdiction data shall not be accessed, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of the Contract, including as necessary to perform the services hereunder or (4) at the State's written request.
- C. The Contractor shall limit access to and possession of State data to only Contractor Personnel whose responsibilities reasonably require such access or possession and shall train such Contractor Personnel on the confidentiality obligations set forth herein.
- D. At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- E. The Contractor shall not use any information collected in connection with the services furnished under the Contract for any purpose other than fulfilling such services.

- 3.5.4** Provisions in **Sections 3.5.1 – 3.5.3** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Sections 3.5.1-3.5.3** (or the substance thereof) in all subcontracts.

### **3.6 Insurance Requirements**

The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised:

- 3.6.1** The following type(s) of insurance and minimum amount(s) of coverage are required:
- A. Commercial General Liability - of \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.
  - B. Errors and Omissions/Professional Liability - \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.
  - C. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and the State of Maryland and the Department should be added as a “loss payee.”
  - D. Cyber Security / Data Breach Insurance – The Contractor must maintain the minimum amount of insurance coverage for each occurrence, during the period of the contract, including the optional periods, as well. The coverage must be valid at all locations where work is performed, data or other information concerning the States' claimants or employers, are processed or stored.
  - E. Worker’s Compensation - The Contractor shall maintain such insurance as necessary or as required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act, to not be less than one million dollars (\$1,000,000) per occurrence (unless a state’s law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.
  - F. Automobile or Commercial Truck Insurance - The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.6.2** The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers’ Compensation Insurance and professional liability.
- 3.6.3** All insurance policies shall be endorsed to include a clause requiring the insurance carrier provide the Procurement Officer, by certified mail, not less than 30 days’ advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.
- 3.6.4** Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.
- 3.6.5** The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the



Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Monitor.

### **3.6.6 Subcontractor Insurance**

The Contractor shall require any subcontractors to obtain and maintain comparable levels of coverage and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

## **3.7 Security Requirements**

The following requirements are applicable to the Contract:

### **3.7.1 Employee Identification**

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

### **3.7.2 Security Clearance / Criminal Background Check**

A security clearance is not required for Contractor Personnel assigned to the Contract.

- A. A criminal background check for each Contractor and Subcontractor for any Personnel providing work on the Contract shall be completed prior to each Contractor/ subcontractor Personnel providing any services under the Contract.
- B. The Contractor shall obtain at its own expense a Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, for all Contractor Personnel listed in sub-paragraph A. This check may be performed by a public or private entity.
- C. The Contractor shall obtain criminal background checks on candidates it sends for employment at the Developmental Disabilities Administration. At a minimum, these checks must contain convictions and probation before judgment (PBJ) pleadings within the State of Maryland. This check may be performed by a public or private entity.
- D. Persons with a criminal record may not perform services under the Contract unless prior written approval is obtained from the Contract Monitor. The Contract Monitor reserves the right to reject any individual based upon the results of the background check. Decisions of the Contract Monitor as to acceptability of a candidate are final. The State reserves the right to refuse any individual Contractor Personnel to work on State premises, based upon certain specified criminal convictions, as specified by the State.
- E. The CJIS criminal record check of each Contractor Personnel who will work on State premises shall be reviewed by the Contractor for convictions of any of the following crimes described in the Annotated Code of Maryland, Criminal Law Article:
  - 1) §§ 6-101 through 6-104, 6-201 through 6-205, 6-409 (various crimes against property);



- 2) any crime within Title 7, Subtitle 1 (various crimes involving theft);
  - 3) §§ 7-301 through 7-303, 7-313 through 7-317 (various crimes involving telecommunications and electronics);
  - 4) §§ 8-201 through 8-302, 8-501 through 8-523 (various crimes involving fraud);
  - 5) §§9-101 through 9-417, 9-601 through 9-604, 9-701 through 9-706.1 (various crimes against public administration); or
  - 6) a crime of violence as defined in CL § 14-101(a).
- F. Contractor Personnel with access to systems supporting the State or to State data who have been convicted of a felony or of a crime involving telecommunications and electronics from the above list of crimes shall not be permitted to work on State premises under the Contract; Contractor Personnel who have been convicted within the past five (5) years of a misdemeanor from the above list of crimes shall not be permitted to work on State premises.
- G. A particular on-site location covered by the Contract may require more restrictive conditions regarding the nature of prior criminal convictions that would result in Contractor Personnel not being permitted to work on those premises. Upon receipt of a location's more restrictive conditions regarding criminal convictions, the Contractor shall provide an updated certification regarding the Contractor Personnel working at or assigned to those premises.

### **3.7.3 On-Site Security Requirement(s)**

THIS SECTION IS INAPPLICABLE TO THIS RFP.

### **3.7.4 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.

The Contractor shall:

- 1) Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security such as those listed below (see **Section 3.7.5**);
- 2) Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the Contract; and
- 3) The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.

### **3.7.5 Data Protection and Controls**

- A. Contractor shall ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) provided or used in connection with the performance of the Contract and shall apply or cause application of appropriate controls so as to maintain such a secure environment (“Security Best Practices”). Such Security Best Practices shall comply with an accepted industry standard, such as the NIST cybersecurity framework.
- B. To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):
- 1) Establish separate production, test, and training environments for systems supporting the services provided under the Contract and ensure that production data is not replicated in test or training environment(s) unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements. The Contractor shall ensure the appropriate separation of production and non-production environments by applying the data protection and control requirements listed in **Section 3.7.5**.
  - 2) Apply hardware and software hardening procedures as recommended by Center for Internet Security (CIS) guides <https://www.cisecurity.org/>, Security Technical Implementation Guides (STIG) <https://public.cyber.mil/stigs/>, or similar industry best practices to reduce the systems’ surface of vulnerability, eliminating as many security risks as possible and documenting what is not feasible or not performed according to best practices. Any hardening practices not implemented shall be documented with a plan of action and milestones including any compensating control. These procedures may include but are not limited to removal of unnecessary software, disabling or removing unnecessary services, removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor’s system configuration files.
  - 3) Ensure that State data is not comingled with non-State data through the proper application of compartmentalization Security Measures.
  - 4) Apply data encryption to protect Sensitive Data at all times, including in transit, at rest, and also when archived for backup purposes. Unless otherwise directed, the Contractor is responsible for the encryption of all Sensitive Data.
  - 5) For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.
  - 6) Encryption algorithms which are utilized for encrypting data shall comply with current Federal Information Processing Standards (FIPS), “Security Requirements for Cryptographic Modules”, FIPS PUB 140-2:  
<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>  
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
  - 7) Enable appropriate logging parameters to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers and information security standards, including Maryland Department of Information Technology’s Information Security Policy.
  - 8) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and remediation, if required. The DDA shall have the right to inspect these policies and

- procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under the Contract.
- 9) Ensure system and network environments are separated by properly configured and updated firewalls.
  - 10) Restrict network connections between trusted and untrusted networks by physically or logically isolating systems from unsolicited and unauthenticated network traffic.
  - 11) By default, "deny all" and only allow access by exception.
  - 12) Review, at least annually, the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
  - 13) Perform regular vulnerability testing of operating system, application, and network devices. Such testing is expected to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the security policies applicable to the Contract. Contractor shall evaluate all identified vulnerabilities for potential adverse effect on security and integrity and remediate the vulnerability no later than 30 days following the earlier of vulnerability's identification or public disclosure, or document why remediation action is unnecessary or unsuitable. The DDA shall have the right to inspect the Contractor's policies and procedures and the results of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.
  - 14) Enforce strong user authentication and password control measures to minimize the opportunity for unauthorized access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current Maryland Department of Information Technology's Information Security Policy (<https://doit.maryland.gov/policies/Pages/default.aspx>), including specific requirements for password length, complexity, history, and account lockout.
  - 15) Ensure State data is not processed, transferred, or stored outside of the United States ("U.S."). The Contractor shall provide its services to the State and the State's end users solely from data centers in the U.S. Unless granted an exception in writing by the State, the Contractor shall not allow Contractor Personnel to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its Contractor Personnel to access State data remotely only as required to provide technical support.
  - 16) Ensure Contractor's Personnel shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State, which may be revoked at any time for any reason. 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.
  - 17) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under the Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation. The Contractor shall perform routine vulnerability scans and take corrective actions for any findings.
  - 18) Conduct regular external vulnerability testing designed to examine the service provider's security profile from the Internet without benefit of access to internal

systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service's security and integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The DDA shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.

### **3.7.6 Security Logs and Reports Access**

- A. For a SaaS or non-State hosted solution, the Contractor shall provide reports to the State in a mutually agreeable format.
- B. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State files related to the Contract.

### **3.7.7 Security Plan**

- A. The Contractor shall protect State data according to a written security policy ("Security Plan") no less rigorous than that of the State and shall supply a copy of such policy to the State for validation, with any appropriate updates, on an annual basis.
- B. The Security Plan shall detail the steps and processes employed by the Contractor as well as the features and characteristics which will ensure compliance with the security requirements of the Contract.
- C. The Security Plan shall address compliance with the PCI DSS for payment card processing).
- D. If any Security Plan information, including procedures, are different based on a Task Order, Contractor shall furnish such differences to the respective TO Manager.

### **3.7.8 Security Incident Response**

- A. The Contractor shall notify the Developmental Disabilities Administration in accordance with **Section 3.7.9A-D** when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident, or a Data Breach as follows:
  - 1) notify the Developmental Disabilities Administration within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Monitor, Developmental Disabilities Administration chief information officer and Developmental Disabilities Administration chief information security officer;
  - 2) notify the Developmental Disabilities Administration within two (2) hours if there is a threat to Contractor's Solution as it pertains to the use, disclosure, and security of State data; and
  - 3) provide written notice to the Developmental Disabilities Administration within one (1) Business Day after Contractor's discovery of unauthorized use or disclosure of State data and thereafter all information the State (or Developmental Disabilities Administration) requests concerning such unauthorized use or disclosure.
- B. Contractor's notice shall identify:
  - 1) the nature of the unauthorized use or disclosure;
  - 2) the State data used or disclosed,
  - 3) who made the unauthorized use or received the unauthorized disclosure;

- 4) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
  - 5) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
  - 6) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- C. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.
- D. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the State (or Developmental Disabilities Administration) and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

### **3.7.9 Data Breach Responsibilities**

- A. If the Contractor reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:
- 1) Notify the appropriate State-identified contact within 24 hours by telephone in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;
  - 2) Cooperate with the State to investigate and resolve the data breach;
  - 3) Promptly implement commercially reasonable remedial measures to remedy the Data Breach; and
  - 4) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services.
- B. If a Data Breach is a direct result of the Contractor's breach of its Contract obligation to encrypt State data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to the Contractor's limitation of liability.

**3.7.10** Additional security requirements may be established in a Task Order and/or a Work Order.

**3.7.11** The State shall, at its discretion, have the right to review and assess the Contractor's compliance to the security requirements and standards defined in the Contract.

**3.7.12** Provisions in **Sections 3.7.1 – 3.7.10** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Sections 3.7.4-3.7.10** (or the substance thereof) in all subcontracts.

### 3.8 Problem Escalation Procedure

- 3.8.1** 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.
- 3.8.2** 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.
- 3.8.3** The Contractor must provide the PEP no later than ten (10) Business Days after notice of recommended award. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
- A. The process for establishing the existence of a problem;
  - B. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
  - C. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
  - D. Expedited escalation procedures and any circumstances that would trigger expediting them;
  - E. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
  - F. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
  - G. A process for updating and notifying the Contract Monitor of any changes to the PEP.
- 3.8.4** 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.

### 3.9 SOC 2 Type 2 Audit Report

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

### 3.10 Experience and Personnel

#### 3.10.1 Preferred Offeror Experience

THIS SECTION IS INAPPLICABLE TO THIS RFP.

#### 3.10.2 Personnel Experience

The following experience is expected and will be evaluated as part of the Technical Proposal (see the capability of proposed resources evaluation factor from **Section 6.2**):

- A. Minimum of one (1) Master's Degree Level Psychologist, Licensed Certified Social Worker or Licensed Professional Counselor per Region licensed as provided by COMAR 10.22, to serve as a team leader. The single clinician that is designated as a team leader shall be deemed to be a Key Personnel. Any additional clinicians working under the Contract will not be considered a Key Personnel, unless so designated by the Contractor in its Technical Proposal



- B. Minimum of one (1) Master's Degree Level Psychology Associate (PA) per Region to serve as a team leader. The PAs shall be under the supervision of a Maryland Licensed Psychologist. The PAs must be licensed as provided by COMAR 10.05. The single PA that is designated as a team leader shall be deemed to be a Key Personnel. Any additional PAs working under the Contract will not be considered a Key Personnel, unless so designated by the Contractor in its Technical Proposal.
- C. Minimum of two (2) Behavioral Consultants per Region, licensed as provided by COMAR 10.05, to serve as a team leader. The Behavioral Consultants shall be a Licensed Psychologist, Licensed Certified Social Worker, Licensed Professional Counselor, Licensed Behavior Analysts or a master's degree Level Psychology Associates (PA) under the supervision of a Maryland Licensed Psychologist. The two BCs that are designated as team leaders shall be deemed to be Key Personnel. Any additional BCs working under the Contract will not be considered a Key Personnel, unless so designated by the Contractor in its Technical Proposal

### **3.11 Substitution of Personnel**

#### **3.11.1 Continuous Performance of Key Personnel**

When Key Personnel are identified for the Contract, the following apply:

- A. Key Personnel shall be available to perform Contract requirements as of the NTP Date. Unless explicitly authorized by the Contract Monitor or specified in the Contract, Key Personnel shall be assigned to the State of Maryland as a dedicated resource.
- B. Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under the Contract without the prior written approval of the Contract Monitor.
- C. The provisions of this section apply to Key Personnel identified in any Task Order proposal and agreement, if issued, and any Work Order Request and Work Order, if issued.

#### **3.11.2 Definitions**

For the purposes of this section, the following definitions apply:

- A. **Extraordinary Personal Event** – means any of leave under the Family Medical Leave Act; an Incapacitating injury or Incapacitating illness; or other circumstances that in the sole discretion of the State warrant an extended leave of absence, such as extended jury duty or extended military service that precludes the individual from performing his/her job duties under the Contract.
- B. **Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual's position in the RFP or the Contractor's Technical Proposal.

#### **3.11.3 Contractor Personnel General Substitution Provisions**

The following provisions apply to all of the circumstances of Contractor Personnel substitution described in **Section 3.11.4**.

- A. The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute has qualifications at least equal to those of the Contractor Personnel proposed to be replaced.
- B. The Contractor shall provide the Contract Monitor with a substitution request that shall include:

- 1) A detailed explanation of the reason(s) for the substitution request;
  - 2) The resume of the proposed substitute, signed by the substituting individual and his/her formal supervisor;
  - 3) The official resume of the current personnel for comparison purposes; and
  - 4) Evidence of any required credentials.
- C. The Contract Monitor may request additional information concerning the proposed substitution and may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
- D. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

### **3.11.4 Replacement Circumstances**

#### **A. Directed Personnel Replacement**

- 1) The Contract Monitor may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Monitor, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, DDA policies, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph **3.11.4.A.2**.
- 2) If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor may give written notice of any Contractor Personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written response to the remediation requirements in a Remediation Plan within ten (10) days of the date of the notice and shall immediately implement the Remediation Plan upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.
- 3) Should performance issues persist despite an approved Remediation Plan, the Contract Monitor may give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.
- 4) Replacement or substitution of Contractor Personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.
- 5) If the Contract Monitor determines to direct substitution under **3.11.4.A.1**, if at all possible, at least fifteen (15) days advance notice shall be given to the Contractor. However, if the Contract Monitor deems it necessary and, in the State's, best interests to remove the Contractor Personnel with less than fifteen (15) days' notice, the Contract Monitor may direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.



- 6) In circumstances of directed removal, the Contractor shall, in accordance with paragraph **3.11.4.A.1** of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

**B. Key Personnel Replacement**

- 1) To replace any Key Personnel in a circumstance other than as described in **3.11.4.B**, including transfers and promotions, the Contractor shall submit a substitution request as described in **Section 3.11.3** to the Contract Monitor at least fifteen (15) days prior to the intended date of change. A substitution may not occur unless and until the Contract Monitor approves the substitution in writing.
- 2) **Key Personnel Replacement Due to Sudden Vacancy**
  - a) The Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) days or more advance notice shall be treated as a replacement under **Section 3.11.4.B.1**.
  - b) Under any of the circumstances set forth in this paragraph B, the Contractor shall identify a suitable replacement and provide the same information and items required under **Section 3.11.3** within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.
- 3) **Key Personnel Replacement Due to an Indeterminate Absence**
  - a) If any Key Personnel has been absent from his/her job for a period of ten (10) days and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information and items to the Contract Monitor as required under **Section 3.11.3**.
  - b) However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor the Contract Monitor may, at his/her sole discretion, authorize the original personnel to continue to work under the Contract, or authorize the replacement personnel to replace the original personnel, notwithstanding the original personnel's ability to return.

**3.11.5 Substitution Prior to and Within 30 Days After Contract Execution**

Prior to Contract execution or within thirty (30) days after Contract execution, the Offeror may not substitute proposed Key Personnel except under the following circumstances (a) for actual full-time personnel employed directly by the Offeror: the vacancy occurs due to the sudden termination, resignation, or approved leave of absence due to an Extraordinary Personal Event, or the death of such personnel; and (b) for any temporary staff, subcontractors or 1099 contractors: the vacancy occurs due to an Incapacitating event or the death of such personnel. To qualify for such substitution, the Offeror must demonstrate to the State's satisfaction the event necessitating substitution. Proposed substitutions shall be of equal caliber or higher, in the State's sole discretion. Proposed substitutes deemed by the State to be less qualified than the originally proposed individual may be grounds for pre-award disqualification or post-award termination.

### 3.12 Minority Business Enterprise (MBE) Reports

THIS SECTION IS INAPPLICABLE TO THIS RFP.

### 3.13 Veteran Small Business Enterprise (VSBE) Reports

THIS SECTION IS INAPPLICABLE TO THIS RFP.

### 3.14 Work Orders

THIS SECTION IS INAPPLICABLE TO THIS RFP.

### 3.15 Additional Clauses

The Contractor shall be subject to the requirements in this section and shall flow down the provisions of **Sections 3.15.1 – 3.15.5** (or the substance thereof) in all subcontracts.

#### 3.15.1 Custom Software

- A. As described in the sample Contract (**Attachment M**), the State shall solely own any custom software, including, but not limited to application modules developed to integrate with a COTS, source-codes, maintenance updates, documentation, and configuration files, when developed under the Contract.
- B. Upon a Contractor's voluntary or involuntary filing of bankruptcy or any other insolvency proceeding, Contractor's dissolution, Contractor's discontinuance of support of any software or system, the Contractor shall convey to the State all rights, title, and interests in all custom software, licenses, software source codes, and all associated System Documentation that comprises any solutions proposed as a part of the Contract. These rights include, but are not limited to, the rights to use, and cause others to use on behalf of the State, said software, software documentation, licenses, software source codes, and System Documentation.

#### 3.15.2 Custom Source Code

- A. For all custom software provided to the State pursuant to any Contract, the Contractor shall either provide the source code directly to the State in a form acceptable to the State or deliver two copies of each software source code and software source code documentation to a State-approved escrow agent at no additional cost to the State following the terms set forth in the sample contract (**Attachment M**) and in **Section 3.15.1** below.
- B. The State shall have the right to audit custom software source code and corresponding software source code documentation for each software product that comprises the solution as represented by the Contractor. This audit shall be scheduled at any time that is convenient for the parties to be present. The State shall be provided with software or other tools required to view all software source code.
- C. The Contractor shall provide the current source code and documentation for all custom software to the State at the time of Contract termination.

#### 3.15.3 Purchasing and Recycling Electronic Products

- A. State Finance and Procurement Article, Md. Code Ann. § 14-414, requires State agencies purchasing computers and other electronic products in categories covered by EPEAT to purchase models rated EPEAT Silver or Gold unless the requirement is waived by the DoIT. This information is located on the DGS web site:  
<http://www.dgs.maryland.gov/Pages/GreenOperations/GreenPurchasing/Guidelines/electronics.aspx>

- B. Guidelines provided by DGS require planning and coordination of the proper disposition of Information Technology equipment. State Finance and Procurement Article, Md. Code Ann. § 14-415, requires State agencies awarding contracts for services to recycle electronic products to award the contract to a recycler that is R2, or e-Stewards certified. This information is located on the DGS web site:  
<http://www.dgs.maryland.gov/Pages/GreenOperations/GreenPurchasing/Guidelines/electronics.aspx>
- C. Guidelines provided by DoIT discuss information and guidance on the proper disposition of IT equipment, media sanitization, and protecting confidential information stored on media. This information is located in the State's Information Technology (IT) Security Policy  
<http://doit.maryland.gov/support/pages/securitypolicies.aspx>. **Section 6.5** Media Protection provides guidance on proper precautions to protect confidential information stored on media.

#### **3.15.4 Change Control and Advance Notice**

- A. Unless otherwise specified in an applicable Service Level Agreement, the Contractor shall give seven (7) days advance notice to the State of any upgrades or modifications that may impact service availability and performance.
- B. Contractor may not modify the functionality or features of any SaaS provided hereunder if such modification materially degrades the functionality of the SaaS.

#### **3.15.5 The State of Maryland's Commitment to Purchasing Environmentally Preferred Products and Services (EPPs)**

[Maryland's State Finance & Procurement Article §14-410](#) defines environmentally preferable purchasing as “the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose.” Accordingly, Bidders are strongly encouraged to offer EPPs to fulfill this contract, to the greatest extent practicable.

#### **3.15.6 No-Cost Extensions**

In accordance with BPW Advisory 1995-1 item 7.b, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

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## 4 Procurement Instructions

### 4.1 Pre-Proposal Conference

- 4.1.1 A Pre-Proposal Virtual Teleconference (Conference) will be held at the date and time as indicated on the Key Information Summary Sheet.
- 4.1.2 Attendance at the Teleconference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposal.
- 4.1.3 It is highly recommended that ALL Prime Contractors encourage their intended subcontractors, including MBE subcontractors, to attend the virtual Conference to ensure that all parties understand the requirements of the contract and the MBE Goal.
- 4.1.4 MBE subcontractors are encouraged to attend the Teleconference to market their participation to potential prime contractors.
- 4.1.5 Following the virtual Teleconference, the participation/sign-in record (consisting of the list of all calendar invitees) and summary of the virtual Teleconference will be distributed via the same mechanism described for amendments and questions (see **Section 4.2.1** eMMA).
- 4.1.6 In order to participate in the Teleconference, all interested parties shall e-mail the Pre-Proposal Virtual Teleconference Response Form (Attachment A) to Contract Officer, Chevelle McGinnis at [chevelle.mcginis@maryland.gov](mailto:chevelle.mcginis@maryland.gov) no later than two (2) Business Days prior to the Conference date listed on eMaryland Marketplace Advantage (eMMA). In addition, if there is a need for sign language interpretation or other reasonable accommodations due to a disability, please notify the Procurement Officer at least four (4) Business Days prior to the Conference date.

### 4.2 eMaryland Marketplace Advantage (eMMA)

- 4.2.1 eMMA is the electronic commerce system for the State of Maryland. The RFP, Conference summary and attendance sheet, Offerors' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMMA.
- 4.2.2 In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to [emma.maryland.gov](http://emma.maryland.gov), click on "New Vendor? Register Now" to begin the process, and then follow the prompts.

### 4.3 Questions

- 4.3.1 All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title (OCMP-23-00048 - Behavior Respite Services), and shall be submitted in writing via e-mail to the Procurement Officer no later than the date and time specified the Key Information Summary Sheet. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.
- 4.3.2 Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments and posted on eMMA.
- 4.3.3 The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the DDA unless it issues an amendment in writing.

#### 4.4 Procurement Method

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

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

- 4.5.1 Proposals, in the number and form set forth in **Section 5 Proposal Format**, must be received by the Procurement Officer no later than the Proposal due date and time indicated on the Key Information Summary Sheet in order to be considered.
- 4.5.2 Requests for extension of this date or time shall not be granted.
- 4.5.3 Offerors submitting Proposals should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the Key Information Summary Sheet will not be considered.
- 4.5.4 The date and time of an e-mail submission is determined by the date and time of arrival in the e-mail address indicated on the Key Information Summary Sheet.
- 4.5.5 Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the Key Information Summary Sheet for receipt of Proposals.
- 4.5.6 Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.
- 4.5.7 Potential Offerors 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).

#### 4.6 Multiple or Alternate Proposals

Multiple or alternate Proposals will not be accepted.

#### 4.7 Economy of Preparation

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

#### 4.8 Public Information Act Notice

- 4.8.1 The Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4 (See also RFP **Section 5.3.2.B** “Claim of Confidentiality”). This information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.
- 4.8.2 Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

## 4.9 Award Basis

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

## 4.10 Oral Presentation

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

## 4.11 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 150 days following the Proposal due date and time, best and final offers if requested (see **Section 6.5.2**), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

## 4.12 Revisions to the RFP

- 4.12.1 If the RFP is revised before the due date for Proposals, the DDA shall post any addenda to the RFP on eMMA and shall endeavor to provide such addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It remains the responsibility of all prospective Offerors to check eMMA for any addenda issued prior to the submission of Proposals.
- 4.12.2 Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal.
- 4.12.3 Addenda made after the due date for Proposals will be sent only to those Offerors that remain under award consideration as of the issuance date of the addenda.
- 4.12.4 Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice.
- 4.12.5 Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.

## 4.13 Cancellations

- 4.13.1 The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.
- 4.13.2 The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- 4.13.3 In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled, and the award processed in accordance with COMAR 21.01.03.01.A(4).



- 4.13.4** If the services that are the subject of the RFP are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the RFP may be cancelled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

#### **4.14 Incurred Expenses**

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

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

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

#### **4.16 Offeror Responsibilities**

- 4.16.1** Offerors must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror shall be responsible for Contract performance including any subcontractor participation.
- 4.16.2** All subcontractors shall be identified and a complete description of their role relative to the Proposal shall be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see **Section 4.26** "Minority Participation Goal" and **Section 4.27** "VSBE Goal").
- 4.16.3** If the Offeror is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g., insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's Proposal shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.
- 4.16.4** A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualifications of the parent are applicable to and shared with the Offeror, any stated intent by the parent to be directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

#### **4.17 Acceptance of Terms and Conditions**

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached hereto as **Attachment M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **All exceptions will be taken into consideration when evaluating the Offeror's Proposal. The Developmental Disabilities Administration reserves the right to accept or reject any exceptions.**



#### 4.18 Proposal Affidavit

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

#### 4.19 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as **Attachment N** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of recommended award. For purposes of completing section “B” of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

#### 4.20 Compliance with Laws/Arrearages

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

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

#### 4.21 Verification of Registration and Tax Payment

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

It is strongly recommended that any potential Offeror complete registration prior to the Proposal due date and time. The Offeror’s failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

#### 4.22 False Statements

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

**4.22.1** 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.
- C. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

**4.22.2** A person may not aid or conspire with another person to commit an act under **Section 4.22.1**.

**4.22.3** 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 (5) years or both.

#### 4.23 Payments by Electronic Funds Transfer

By submitting a Proposal in response to this solicitation, the Offeror, if selected for award:

- 4.23.1** Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.
- 4.23.2** Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:  
[http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/GADX10Form20150615.pdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf).

#### 4.24 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract, **Section 31** "Prompt Pay Requirements" (see **Attachment M**). Additional information is available on GOSBA's website at:  
<http://www.gomsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

#### 4.25 Electronic Procurements Authorized

- 4.25.1** Under COMAR 21.03.05, unless otherwise prohibited by law, the DDA may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2** Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.
- 4.25.3** "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://procurement.maryland.gov>), and electronic data interchange.
- 4.25.4** In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:

- A. The Procurement Officer may conduct the procurement using eMMA or e-mail to issue:
- 1) The RFP;
  - 2) Any amendments and requests for best and final offers;
  - 3) Pre-Proposal conference documents;
  - 4) Questions and responses;
  - 5) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
  - 6) Notices of award selection or non-selection; and
  - 7) The Procurement Officer's decision on any Proposal protest or Contract claim.

The Offeror or potential Offeror may use eMMA:

- 8) Submit Proposals;
- 9) Ask questions regarding the solicitation;
- 10) 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 through eMMA, but only on the terms specifically approved and directed by the Procurement Officer and;
- 11) Submit a "No Proposal Response" to the RFP.

The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.5** of this subsection, utilizing e-mail or other electronic means if authorized by the Procurement Officer or Contract Monitor.

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

- A. Filing of protests;
- B. Filing of Contract claims;
- C. Submission of documents determined by the DDA to require original signatures (e.g., Contract execution, Contract modifications); or
- D. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

**4.25.6** Any e-mail transmission is only authorized to the e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

## **4.26 MBE Participation Goal**

There is no MBE subcontractor participation goal for this procurement.

## **4.27 VSBE Goal**

There is no VSBE participation goal for this procurement.

## 4.28 Living Wage Requirements

- A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Maryland Department of Labor requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
- B. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.
- C. Additional information regarding the State's living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If the Offeror fails to complete and submit the required documentation, the State may determine the Offeror to not be responsible under State law.
- D. 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 a Tier 2 Area of the State. 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.
  - 1) 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. 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, the Contract will be determined to be a Tier (enter "1" or "2," depending on where the majority of the service recipients are located) Contract.
  - 2) The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
  - 3) 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.
  - 4) 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.

- E. 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. See COMAR 21.11.10.07.
- F. The Offeror shall identify in the Proposal the location from which services will be provided.
- G. **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change or a change in the State minimum wage.

#### **4.29 Federal Funding Acknowledgement**

This Contract does not contain federal funds.

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

- 4.30.1** The Offeror shall complete and sign the Conflict-of-Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Proposal.
- 4.30.2** By submitting a Conflict-of-Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.
- 4.30.3** Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services << under OR individual Task Orders issued under >> the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.
- 4.30.4** Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that “an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.” Any Offeror submitting a Proposal in violation of this provision shall be classified as “not responsible.” See COMAR 21.05.03.03.

#### **4.31 Non-Disclosure Agreement**

##### **4.31.1 Non-Disclosure Agreement (Offeror)**

A Non-Disclosure Agreement (Offeror) is not required for this procurement.

##### **4.31.2 Non-Disclosure Agreement (Contractor)**

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

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

Based on the determination by the Developmental Disabilities Administration that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45

C.F.R. §164.500 *et seq.* and set forth in **Attachment J**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Proposal. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Offeror with the next highest overall-ranked Proposal.

#### **4.33 Nonvisual Access**

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

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

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

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

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

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

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a DHS Hiring Agreement. A copy of this Agreement is included as **Attachment O**. This Agreement must be provided within five (5) Business Days of notification of recommended award.

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

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

#### **4.38 Maryland Healthy Working Families Act Requirements**

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All offerors should be aware of how this Act could affect your potential contract award with the State of Maryland. See the Department of Labor, Licensing and Regulations web site for Maryland Healthy Working Families Act Information: <http://dllr.maryland.gov/paidleave/>.

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## 5 Proposal Format

### 5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes (or envelopes):

- A. Volume I – Technical Proposal
- B. Volume II – Financial Proposal

### 5.2 Proposal Delivery and Packaging

- 5.2.1 Proposals delivered by facsimile and e-mail shall not be considered.
- 5.2.2 Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.
- 5.2.3 Offerors may submit Proposals through the State’s internet based electronic procurement system, eMMA.
- 5.2.4 The Procurement Officer must receive all electronic Proposal material by the RPF due date and time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.
- 5.2.5 Offerors shall provide their Proposals in two separate envelopes through eMMA following the [Quick Reference Guides](#) (QRG) labelled “**5 - eMMA QRG Responding to Solicitations (RFP)**” for double envelope submissions.
- 5.2.6 Two Part (Double Envelope) Submission:
  - A. Technical Proposal consisting of:
    - 1) Technical Proposal and all supporting material in Microsoft Word format, version 2007 or greater,
    - 2) Technical Proposal in searchable Adobe PDF format,
    - 3) a second searchable Adobe copy of the Technical Proposal, with confidential and proprietary information redacted (see **Section 4.8**), and
  - B. Financial Proposal consisting of:
    - 1) Financial Proposal entered into the price form spreadsheet within eMMA and all supporting material in Excel format,
    - 2) Financial Proposal in searchable Adobe PDF format,
    - 3) a second searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see **Section 4.8**).

### 5.3 Volume I - Technical Proposal

NOTE: Omit all **pricing information** from the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II).

- 5.3.1 In addition to the instructions below, responses in the Offeror’s Technical Proposal shall reference the organization and numbering of Sections in the RFP (e.g., “**Section 2.2.1** Response . . .; “**Section 2.2.2** Response . . .”). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page “x”).



5.3.2 The Technical Proposal shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:

A. Title Page and Table of Contents (Submit under TAB A)

The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.

B. Claim of Confidentiality (If applicable, submit under TAB A-1)

Any information which is claimed to be confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal, and if applicable, separately in the Financial Proposal. An explanation for each claim of confidentiality shall be included (see **Section 4.8 “Public Information Act Notice”**). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included.

C. Offeror Information Sheet and Transmittal Letter (Submit under TAB B)

The Offeror Information Sheet (see **Appendix 2**) and a Transmittal Letter shall accompany the Technical Proposal. The purpose of the Transmittal Letter is to transmit the Proposal and acknowledge the receipt of any addenda to this RFP issued before the Proposal due date and time. Transmittal Letter should be brief, be signed by an individual who is authorized to commit the Offeror to its Proposal and the requirements as stated in this RFP.

D. Executive Summary (Submit under TAB C)

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.”

In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see **Section 4.16 “Offeror Responsibilities”**).

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

E. Minimum Qualifications Documentation (If applicable, Submit under TAB D)

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP **Section 1**. If references are required in **RFP Section 1**, those references shall be submitted in this section and shall contain the information described in both **Section 1** and **Section 5.3.2.I**.

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

- 1) The Offeror shall address each RFP requirement (RFP **Section 2** and **Section 3**) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in **Section 2** and **Section 3** in order and shall contain a cross reference to the requirement.
- 2) Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.
- 3) The Offeror shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staffs, if applicable, to be used by the Offeror in providing the required goods and services as outlined in RFP **Section 2**, Contractor Requirements: Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
- 4) Implementation Schedule - Offeror shall provide the proposed implementation schedule with its Proposal.
- 5) The Offeror shall identify the location(s) from which it proposes to provide services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.
- 6) The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in **Section 3.8**.
- 7) The Offeror shall provide a Backup solution/ strategy recommendation as part of its Proposal.
- 8) Disaster Recovery and Security Model description - For hosted services, the Offeror shall include its DR strategy, and for on premise, a description of a recommended DR strategy.
- 9) The Offeror shall include a deliverable description and schedule describing the proposed Deliverables as mapped to the State SDLC and the Deliverables table in **Section 2.4.4**. The schedule shall also detail proposed submission due date/frequency of each recommended Deliverable.
- 10) Description of technical risk of migrating from the existing system.
- 11) Non-Compete Clause Prohibition:

The DDA seeks to maximize the retention of personnel working under the Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and maximize the maintenance of institutional knowledge accumulated by such personnel. To help achieve this objective of staff retention, each Offeror shall agree that if awarded the Contract, the Offeror's

employees and agents filling the positions set forth in the staffing requirements of **Section 3.10** working on the State contract shall be free to work for the contractor awarded the State contract notwithstanding any non-compete clauses to which the employee(s) may be subject. The Offeror agrees not to enforce any non-compete restrictions against the State with regard to these employees and agents if a different vendor succeeds it in the performance of the Contract. To evidence compliance with this non-compete clause prohibition, each Offeror must include an affirmative statement in its technical Proposal that the Offeror, if awarded a Contract, agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State business.

- 12) Product Requirements:
  - a) Offerors may propose open-source software; however, the Offeror must provide operational support for the proposed software.
  - b) Details for each offering: The Offeror shall provide the following information for each offering:
    - i) Offering Name;
    - ii) Offeror relationship with manufacturer (e.g., manufacturer, reseller, partner);
    - iii) Manufacturer;
    - iv) Short description of capability;
    - v) Version (and whether version updates are limited in any way);
    - vi) License type (e.g., user, CPU, node, transaction volume);
    - vii) Subscription term (e.g., annual);
    - viii) License restrictions, if any;
    - ix) Operational support offered (e.g., customer support, help desk, user manuals online or hardcopy), including description of multiple support levels (if offered), service level measures and reporting;
    - x) Continuity of operations and disaster recovery plans for providing service at 24/7/365 level;
    - xi) Ability of the offering to read and export data in existing State enterprise data stores. Offerors in their Proposals shall describe the interoperability of data that can be imported or exported from the Solution, including generating industry standard formats;
    - xii) Any processing or storage of data outside of the continental U.S;
    - xiii) Any limitations or constraints in the offering, including any terms or conditions (e.g., terms of service, ELA, AUP, professional services agreement, master agreement) – see also **Section 5.3.2**;
    - xiv) Compatibility with the State’s existing single sign-on system, SecureAuth or other single sign-on approaches;
    - xv) APIs offered, and what type of content can be accessed and consumed;

- xvi) Update / upgrade roadmap and procedures, to include planned changes in the next 12 months, frequency of system update (updates to software applied) and process for updates/upgrades;
- xvii) Frequency of updates to data services, including but not limited to, datasets provided as real-time feeds, and datasets updated on a regular basis (e.g., monthly, quarterly, annually, one-time);
- xviii) What type of third-party assessment (such as a SOC 2 Type II audit) is performed, the nature of the assessment (e.g., the trust services criteria and scope of assessment), and whether the results of the assessment pertinent to the State will be shared with the State. See also **Section 3.9**;
- xix) Offeror shall describe its security model and procedures supporting handling of State data. If more than one level of service is offered, the Offeror shall describe such services. Include, at a minimum:
  - (1) procedures for and requirements for hiring staff (such as background checks),
  - (2) any non-disclosure agreement Contractor Personnel sign,
  - (3) whether the service is furnished out of the continental U.S. (see security requirements in **Section 3.7**),
  - (4) Certifications such as FedRAMP,
  - (5) Third party security auditing, including FISMA,
  - (6) Published Security Incident reporting policy, and
  - (7) Cybersecurity insurance, if any, maintained.

**G. Experience and Qualifications of Proposed Staff (Submit under TAB F)**

As part of the evaluation of the Proposal for this RFP, Offerors shall propose exactly three (3) key resources and shall describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the DDA. All other planned positions shall be described generally in the Staffing Plan and may not be used as evidence of fulfilling company or personnel minimum qualifications.

The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract including information in support of the Personnel Experience criteria in **Section 3.10.2**. Specifically, the Offeror shall:

- 1) Describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan.
- 2) Include individual resumes for Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation.
- 3) Include letters of intended commitment to work on the project, including letters from any proposed subcontractor(s). Offerors

should be aware of restrictions on substitution of Key Personnel prior to RFP award (see Substitution Prior to and Within 30 Days After Contract Execution in **Section 3.11.5**).

- 4) Provide an Organizational Chart outlining Personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.
- 5) If proposing differing personnel work hours than identified in the RFP, describe how and why it proposes differing personnel work hours.

H. Offeror Qualifications and Capabilities (Submit under TAB G)

The Offeror shall include information on past experience with similar projects and services including information in support of the Offeror Experience criteria in **Section 3.10.1**. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

- 1) The number of years the Offeror has provided the similar goods and services;
- 2) The number of clients/customers and geographic locations that the Offeror currently serves;
- 3) The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under the Contract;
- 4) The Offeror's process for resolving billing errors; and
- 5) An organizational chart that identifies the complete structure of the Offeror including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

I. References (Submit under TAB H)

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

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

The DDA reserves the right to request additional references or utilize references not provided by the Offeror. Points of contact must be accessible and knowledgeable regarding Offeror performance.

J. List of Current or Prior State Contracts (Submit under TAB I)

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

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

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

**K. Financial Capability (Submit under TAB J)**

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

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

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

**L. Certificate of Insurance (Submit under TAB K)**

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in **Section 3.6**. See **Section 3.6** for the required insurance certificate submission for the apparent awardee.

**M. Subcontractors (Submit under TAB L)**

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

**N. Legal Action Summary (Submit under TAB M)**

This summary shall include:

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

**O. Economic Benefit Factors (Submit under TAB N)**

- 1) The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of the Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with the Offeror's Total Proposal Price from **Attachment B**, the Financial Proposal Form. See COMAR 21.05.03.03A (3).
- 2) Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.
- 3) Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.
- 4) As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.
- 5) In responding to this section, the following do not generally constitute economic benefits to be derived from the Contract:
  - a) generic statements that the State will benefit from the Offeror's superior performance under the Contract;
  - b) descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under the Contract; or
  - c) tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under the Contract.
- 6) Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded the Contract.



- 7) Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:
  - a) The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. **Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;**
  - b) The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave. If no new positions or subcontracts are anticipated as a result of the Contract, so state explicitly;
  - c) Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
  - d) Subcontract dollars committed to Maryland small businesses and MBEs; and
  - e) Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.
- P. Technical Proposal - Required Forms and Certifications (Submit under TAB O)
  - 1) All forms required for the Technical Proposal are identified in Table 1 of **Section 7** – RFP Attachments and Appendices. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the Technical Proposal, under TAB O.
  - 2) Offerors shall furnish any and all agreements and terms and conditions the Offeror expects the State to sign or to be subject to in connection with or in order to use the Offeror's services under this Contract. This includes physical copies of all agreements referenced and incorporated in primary documents, including but not limited to any software licensing agreement for any software proposed to be licensed to the State under this Contract (e.g., EULA, Enterprise License Agreements, Professional Service agreement, Master Agreement) and any AUP. The State does not agree to terms and conditions not provided in an Offeror's Technical Proposal and no action of the State, including but not limited to the use of any such software, shall be deemed to constitute acceptance of any such terms and conditions. Failure to comply with this section renders any such agreement unenforceable against the State.
  - 3) For each service, hardware or software proposed as furnished by a third-party entity, Offeror must identify the third-party provider and provide a letter of authorization or such other documentation demonstrating the authorization for such services. In the case of an

open-source license, authorization for the open source shall demonstrate compliance with the open-source license.

- 4) A Letter of Authorization shall be on letterhead or through the provider's e-mail. Further, each Letter of Authorization shall be less than twelve (12) months old and must provide the following information:
  - i) Third-party POC name and alternate for verification
  - ii) Third-party POC mailing address
  - iii) Third-party POC telephone number
  - iv) Third-party POC email address
  - v) If available, a Re-Seller Identifier

#### **5.4 Volume II – Financial Proposal**

The Financial Proposal shall contain all price information in the format specified in **Attachment B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself. Do not amend, alter, or leave blank any items on the Financial Proposal Form or include additional clarifying or contingent language on or attached to the Financial Proposal Form. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by the Developmental Disabilities Administration.

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## 6 Evaluation and Selection Process

### 6.1 Evaluation Committee

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

During the evaluation process, the Procurement Officer may determine at any time that a particular Offeror is not susceptible for award.

### 6.2 Technical Proposal Evaluation Criteria

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

#### 6.2.1 Offeror's Technical Response to Requirements and Work Plan (See RFP § 5.3.2.F)

The State prefers the Offeror's Technical Proposal to illustrate a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be performed. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

#### 6.2.2 Experience and Qualifications of Proposed Staff (See RFP § 5.3.2.G)

#### 6.2.3 Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP § 5.3.2.H)

#### 6.2.4 Economic Benefit to State of Maryland (See RFP § 5.3.2.O)

### 6.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (see **Section 6.5.2.D**) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment B** - Financial Proposal Form.

### 6.4 Reciprocal Preference

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

- A. The Maryland resident business is a responsible Offeror;
- B. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;
- C. The other state gives a preference to its resident businesses through law, policy, or practice; and

D. The preference does not conflict with a federal law or grant affecting the procurement Contract.

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

## **6.5 Selection Procedures**

### **6.5.1 General**

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

B. With or without discussions, the State may determine the Offeror to be not responsible or the Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award.

### **6.5.2 Selection Process Sequence**

A. A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and is properly completed if there is an MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and subcontractor Participation Schedule (**Attachment E-1**) is included and is properly completed, if there is a VSBE goal.

B. Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.

C. Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.

D. The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.

E. When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO. **Offerors may only perform limited substitutions of proposed personnel as allowed in Section 3.11 (Substitution of Personnel).**

### **6.5.3 Award Determination**

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most

advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive equal weight with financial factors.

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

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee shall complete and furnish the documents and attestations as directed in Table 1 of **Section 7 – RFP Attachments and Appendices**.

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## 7 RFP ATTACHMENTS AND APPENDICES

### Instructions Page

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

For documents required as part of the Proposal:

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

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

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

**Table 1: RFP ATTACHMENTS AND APPENDICES**

Applies?	When to Submit	Label	Attachment Name
Y	Before Proposal	A	Pre-Proposal Conference Response Form
Y	With Proposal	B	Financial Proposal Instructions and Form
Y	With Proposal	C	Bid/Proposal Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf</a> )
Y	With Proposal	F	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf</a> )
Y	With Proposal	H	Conflict of Interest Affidavit and Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf</a> )

Y	With Proposal	I	Non-Disclosure Agreement (Contractor) (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf</a> )
Y	With Proposal	J	HIPAA Business Associate Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf</a> )
Y	With Proposal	L	Location of the Performance of Services Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf</a> )
Y	5 Business Days after recommended award	M	Sample Contract (included in this RFP)
Y	5 Business Days after recommended award	N	Contract Affidavit (see link at <a href="https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf">https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf</a> )
Y	5 Business Days after recommended award	O	DHS Hiring Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf</a> )
<b>Appendices</b>			
<b>Applies?</b>	<b>When to Submit</b>	<b>Label</b>	<b>Attachment Name</b>
Y	n/a	1	Abbreviations and Definitions (included in this RFP)
Y	With Proposal	2	Offeror Information Sheet (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf</a> )
Y	Before Proposal, as directed in the RFP.	3	Non-Disclosure Agreement (Offeror) (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-3-Non-Disclosure-Agreement-Offeror-1.dotx">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-3-Non-Disclosure-Agreement-Offeror-1.dotx</a> )
<b>Additional Submissions</b>			
<b>Applies?</b>	<b>When to Submit</b>	<b>Label</b>	<b>Document Name</b>



Y	5 Business Days after recommended award	---	Evidence of meeting insurance requirements (see <b>Section 3.6</b> ); 1 copy
Y	10 Business Days after recommended award	---	PEP; 1 copy
Y	With deliverables	4	Deliverable Product Acceptance Form (DPAF) (see online at <a href="http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf">http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf</a> )
NA	n/a	5	Sample Behavior Respite Request Form

**Attachment A. Pre-Proposal Conference Response Form**

**Solicitation Number OCMP-23-00048**

Behavior Respite Services

A Pre-Proposal conference will be held on September 8, 2022, via Teleconference.

Please return this form by September 7, 2022, advising whether or not your firm plans to attend. The completed form should be returned via e-mail to the Contract Officer at the contact information below:

Chevelle McGinnis  
OCMP  
E-mail: chevelle.mcginis@maryland.gov

Please indicate:

- \_\_\_\_\_ Yes, the following representatives will be in attendance.  
Attendees (Please include Full Name, Name of Organization, Phone #, email address & MBE Yes or No)
- 1.
  - 2.
  - 3.
- \_\_\_\_\_ No, we will not be in attendance.

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

Offeror: \_\_\_\_\_  
*Offeror Name (please print or type)*

By: \_\_\_\_\_  
*Signature/Seal*

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

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

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

## Attachment B. Financial Proposal Instructions & Form

### B-1 Financial Proposal Instructions

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

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

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

**B-1 Financial Proposal Form**

The Financial Proposal Form shall contain all price information in the format specified on these pages. Complete the Financial Proposal Form only as provided in the Financial Proposal Instructions. Do not amend, alter or leave blank any items on the Financial Proposal Form. If option years are included, Offerors must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

See separate Excel Financial Proposal Form labeled “Attachment B-1 Financial Proposal Form”.

**Attachment C. Proposal Affidavit**

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

**Attachment D. Minority Business Enterprise (MBE) Forms**

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

**Attachment E. Veteran-Owned Small Business Enterprise (VSBE) Forms**

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



**Attachment F. Maryland Living Wage Affidavit of Agreement for Service Contracts**

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

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

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

**Attachment G. Federal Funds Attachments**

This solicitation does not include a Federal Funds Attachment.

**Attachment H. Conflict of Interest Affidavit and Disclosure**

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

**Attachment I. Non-Disclosure Agreement (Contractor)**

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

**Attachment J. HIPAA Business Associate Agreement**

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

**Attachment K. Mercury Affidavit**

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



**Attachment L. Location of the Performance of Services Disclosure**

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

**Attachment M. Contract**

MARYLAND DEPARTMENT OF HEALTH – DEVELOPMENTAL DISABILITIES  
ADMINISTRATION (DDA)  
“Behavioral Respite Services”  
OCMP-23-00048

THIS CONTRACT (the “Contract”) is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and between \_\_\_\_\_ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND DEVELOPMENTAL DISABILITIES ADMINISTRATION (DDA).

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

**1. Definitions**

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is \_\_\_\_\_ (Contractor’s primary address) and whose principal office in Maryland is \_\_\_\_\_ (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is \_\_\_\_\_ (Contractor’s FEIN), and whose eMaryland Marketplace Advantage vendor ID number is \_\_\_\_\_ BPM031370.
- 1.3 “Financial Proposal” means the Contractor’s [pick one: Financial Proposal or Best and Final Offer (BAFO)] dated \_\_\_\_\_ (Financial Proposal date or BAFO date).
- 1.4 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.
- 1.5 “RFP” means the Request for Proposals for Behavior Respite Services, Solicitation # OCMP-23-00048, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated. \_\_\_\_\_ (Technical Proposal date), as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

**2. Scope of Contract**

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – The Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_.  
(date of Attachment C)

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. 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 Without limiting the rights of the Procurement Officer under 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 DDA following any required prior approvals, including approval by the Board of Public Works if such approval is required (the "Effective Date") and shall continue for a five (5) year term. ("Initial Term").
- 3.2 The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.3 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, 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 DDA shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above **Section 2**), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

The total payment under a fixed price Contract or the fixed price element of a combined fixed price – time and materials Contract shall be the firm fixed price submitted by the Contractor in its Financial Proposal.

- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the DDA's receipt of a proper invoice from the Contractor as required by RFP section 3.3.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

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 DDA is not evidence that services were rendered as required under this Contract.

## **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 (as defined in **Section 7.2**), and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

**6. Exclusive Use**

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the DDA or developed by Contractor relating to the Contract, except as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.

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

- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent 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 pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the DDA or licensed by the DDA from third parties, including all information provided by the DDA to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the DDA will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities,

judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any third-party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third-party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.

- 7.4 Without limiting Contractor's obligations under **Section 5.3**, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open-source license.
- 7.7 The Contractor shall report to the DDA, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without the DDA's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the DDA shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

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

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor



Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract.

- 8.2 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 rightfully 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.

## **9. Loss of Data**

- 9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, 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. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.
- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **RFP Section 3.7**.
- 9.3 Protection of data and personal privacy (as further described and defined in **RFP Section 3.8**) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **RFP Section 3.7**.

## **10. Indemnification and Notification of Legal Requests**

- 10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 10.2. The State has no obligation: (i) 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 against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by



the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request. .

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

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

#### **12. Disputes**

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

#### **13. Maryland Law Prevails**

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

#### **14. Nondiscrimination in Employment**

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

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

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor to solicit or secure

the Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

**16. Non-Availability of Funding**

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

**17. Termination for Default**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect, 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. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

**19. Delays and Extensions of Time**

- 19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- 19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or

suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**20. Suspension of Work**

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

**21. Pre-Existing Regulations**

In accordance with the provisions of **Section 11-206** of the State Finance and Procurement Article, Annotated Code of Maryland, 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 **Section 13-221** of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business 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, \$200,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**23. Political Contribution Disclosure**

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

[http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

**24. Retention of Records**

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, , whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent, and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

**25. Right to Audit**

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.
- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The DDA may conduct these audits with any or all of its own internal resources or by securing the services of a third-party accounting or audit firm, solely at the DDA's election. The DDA may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the DDA has the right to audit such subcontractor(s).

## **26. Compliance with Laws**

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State and that it will take such action as, from time-to-time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term;
- c. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **27. Cost and Price Certification**

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

## **28. Subcontracting; Assignment**

The Contractor may not subcontract any of its obligations 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, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits

are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## **29. Limitations of Liability**

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 7 "Patents, Copyrights, Intellectual Property"** 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, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited.
  - (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.
- 29.2 Contractor's indemnification obligations for Third party claims arising under Section 10 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification 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.
- 29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

## **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 under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise 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.
- 30.3 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 Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 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 Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, 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.

- 30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the DDA, in all subcontracts.

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

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the DDA, 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 to the Contractor;
- (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 DDA concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, 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 DDA and the Contractor in any other proceeding; or
- (c) Result in liability against or prejudice the rights of the DDA.

- 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 MBE program.

- 31.5 To ensure compliance with certified MBE subcontract participation goals, the DDA may, consistent with COMAR 21.11.03.13, take the following measures:

- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
  - i. Inspecting any relevant records of the Contractor;
  - ii. Inspecting the jobsite; and

- iii. Interviewing subcontractors and workers.

Verification shall include a review of:

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

### **32. Living Wage**

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

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

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

### **34. Risk of Loss; Transfer of Title**

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

### **35. Effect of Contractor Bankruptcy**

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code")



(11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

**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.
- 36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.
- 36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g., and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

**37. Contract Monitor and Procurement Officer**

- 37.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The DDA may change the Contract Monitor at any time by written notice to the Contractor.
- 37.2 The Procurement Officer has responsibilities as detailed in the Contract and is the only State representative who can authorize changes to the Contract. The DDA may change the Procurement Officer at any time by written notice to the Contractor.

**38. 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:

Meg DePasquale, Director of Clinical Services  
Developmental Disabilities Administration (DDA)  
201 W. Preston Street  
Baltimore, MD 212021

E-Mail: [meg.depasquale@maryland.gov](mailto:meg.depasquale@maryland.gov)

With a copy to:

Jim Beauchamp, Director  
Office of Contract Management and Procurement (OCMP)  
201 W. Preston Street  
Baltimore, MD 21201  
E-Mail: [jim.beauchamp@maryland.gov](mailto:jim.beauchamp@maryland.gov)

If to the Contractor:

(Contractor's Name)  
(Contractor's primary address)  
Attn: \_\_\_\_\_

[[Delete the following if a parent company guarantee is inapplicable:]]

Parent Company Guarantor

Contact: \_\_\_\_\_  
Attn: \_\_\_\_\_

### 39. 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, lawsuit or proceeding against \_\_\_\_\_ (Contractor), \_\_\_\_\_ (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

### 40. 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 DDA 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.

### 41. Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law

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

#### **42. Hiring Agreement**

- 42.1 The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Services (DHS) Hiring Agreement (Attachment O). The Hiring Agreement is to be executed by the Offeror and delivered to the Procurement Officer within ten (10) Business Days following receipt of notice by the Offeror that it is being recommended for Contract award. The Hiring Agreement will become effective concurrently with the award of the Contract.
- 42.2 The Hiring Agreement provides that the Contractor and DHS will work cooperatively to promote hiring by the Contractor of qualified individuals for job openings resulting from this procurement, in accordance with Md. Code Ann., State Finance and Procurement Article §13-224.

#### **43. Limited English Proficiency**

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

#### **44. Maryland's Green Purchasing Reporting Requirements**

The State of Maryland reserves the right to request from the Contractor quarterly sales data over the life of this contract. This information must include details about the recycled content, third-party sustainability certifications, and other environmental attributes of products and services sold on this price agreement per the contract specifications.

This information will enable Maryland State agencies to comply with Article §14-405 of the Annotated Code of Maryland and COMAR 21.13.01.14, effective October 1, 2014, which requires Maryland state agencies to report to the Department of General Services on their procurement of environmentally preferable products and services.

To facilitate consistent reporting on targeted contracts, the Contractor will be provided with a VENDOR GREEN SALES REPORT template by the Maryland Department of General Services.

SIGNATURES ON NEXT PAGE

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

Contractor

State of Maryland  
Maryland Department of Health (MDH)

By:

By: <<agencyContractSigner>>,  
<<agencyContractSignerTitle>>

Date

PARENT COMPANY (GUARANTOR) (if applicable)

By:

\_\_\_\_\_

\_\_\_\_\_

By:

Date

\_\_\_\_\_

Date

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

\_\_\_\_\_

Assistant Attorney General

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

(Date) (BPW Item #)

**Attachment N. Contract Affidavit**

See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf>

**Attachment O. DHS Hiring Agreement**

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

## Appendix 1. – Abbreviations and Definitions

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

- A. **Acceptable Use Policy (AUP)** - A written policy documenting constraints and practices that a user must agree to in order to access a private network or the Internet.
- B. **Access** – The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any information system resource.
- C. **Activities of Daily Living (ADL)** - A series of basic activities performed by individuals on a daily basis necessary for independent living at home or in the community.
- D. **Application Program Interface (API)** – Code that allows two software programs to communicate with each other.
- E. **Behavior Assessment (BA)** - Identifies or confirms an individual’s challenging behaviors and identifies any co-occurring mental health issues that cause those behaviors, by collecting and reviewing relevant data, discussing the information with the individual’s support team, and developing the Behavior Plan that best address the function of the behavior, if needed. A behavioral assessment is performed by a qualified clinician
- F. **Behavioral Consultant (BC)** - Master’s Degree Level Psychology Associates (PA) under the supervision of a Maryland Licensed Psychologist, Licensed Certified Social Worker, Licensed Professional Counselor, or Licensed Behavior Analyst, who must be licensed as provided by COMAR 10.05 and whose responsibility it is to design, implement and train agency staff on highly specific positive behavior support plans to reduce inappropriate behavior while enhancing adaptive skills to replace problematic behavior.
- G. **Behavioral Consultation Services (BCS)** - Behavioral Consultation Services oversees and monitors the implementation of recommendations developed under the Behavior Assessment as indicated in the Behaviors Plan
- H. **Behavioral Respite (BR)**- Behavioral Respite is a highly structured intervention that provides intensive behavioral services in a well- controlled, behaviorally managed residential environment with the primary purpose of reducing the frequency, intensity, and duration of challenging behaviors and/or manage co-occurring mental health issues so that the individual is able to return to a community-based placement either through a DDA provider or family/caregiver.
- I. **Behavioral Respite Services (BRS)** - Transferring an individual who is currently receiving DDA services from their current living environment to a more highly structured and positive environment for a time-limited period where their challenging behavior(s) can be managed in a positive, safe, and effective manner. Also, a shortened version of Behavioral Respite Services.
- J. **Behavioral Respite Services Billable Interval** – A billable interval of Behavioral Respite is when a person has received services for at least 6 hours in an approved Behavioral Respite setting. Anything less than 6 hours in an approved Behavioral Respite setting or any duration in a non-approved Behavioral Respite setting is not billable
- K. **Behavior Support Services (BSS)** – An array of services to assist participants who without such supports are experiencing or are likely to experience difficulty in community living as a result of behavioral, social, or emotional issues. These services help understand an individual’s challenging behavior and what need it is communicating in order to develop a Behavior Plan to enhance the individual’s independence and inclusion in his/her community.

- L. **BP** – Behavior Plan
- M. **Behavioral Tech** - Paraprofessional that is able to implement Behavior Plans or other recommended levels of support (Tier 1, Tier 2 or Tier 3), record behaviors and provide a safe and supportive environment.
- N. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
- O. **COMAR** – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
- P. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
- Q. **Contract Monitor** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. The DDA may change the Contract Monitor at any time by written notice to the Contractor.
- R. **Contractor** – The selected Offeror that is awarded a Contract by the State.
- S. **Contractor Personnel** – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this RFP.
- T. **Corrective Action Plan (CAP)** - CAP is a document notifying a business area or a vendor of deficiencies identified through monitoring, auditing, or a CIR requiring corrective action. The CAP consists of improvements to health plan processes or vendor processes taken to eliminate causes of non-compliance or other issues.
- U. **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.
- V. **Data Breach** – The unauthorized acquisition use, modification or disclosure of State data, or other Sensitive Data.
- W. **Issuing Agency** - Maryland Department of Health or (MDH) or the Developmental Disabilities Administration (DDA).
- X. **eMMA** – eMaryland Marketplace Advantage (see RFP **Section 4.2**).
- Y. **Enterprise License Agreement (ELA)** – An agreement to license the entire population of an entity (employees, on-site contractors, off-site contractors) accessing a software or service for a specified period of time for a specified value.
- Z. **Fade-out (Fading) Plan** – A gradual process that gives the individual time to adjust to the changes in supervision and enables the individual to experience the success they are achieving. The plan needs to be described in a step-by-step fashion that ends up with 1:1 or 2:1 supervision being discontinued.



- AA. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation.
- BB. **Information System** – A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
- CC. **Information Technology (IT)** – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.
- DD. **Key Personnel** – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See RFP **Sections 3.10**.
- EE. **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.
- FF. **MD START** – Maryland Systemic-Therapeutic – Assessment -Resources- and Treatment (START). A community based proprietary care crisis intervention system that DDA will be piloting in July 2019.
- GG. **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.
- HH. **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.
- II. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- JJ. **NTP Date** – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
- KK. **Offeror** – An entity that submits a Proposal in response to this RFP.
- LL. **The Office of Health Care Quality (OHCQ)** - The Office of Health Care Quality (OHCQ) is the agency within the Maryland Department of Health charged with monitoring the quality of care in Maryland's health care facilities and community-based programs.
- MM. **Personally, Identifiable Information (PII)** – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- NN. **Positive Behavioral Supports and Trauma** - is a set of research-based strategies used to increase quality of life and decrease problem behavior by teaching new skills and making changes in the person's environment.

- OO. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**) and is the only State representative who can authorize changes to the Contract. The DDA may change the Procurement Officer at any time by written notice to the Contractor.
- PP. **Proposal** – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
- QQ. **Protected Health Information (PHI)** – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- RR. **Psychiatric Services** - Psychiatric Services means the diagnosis, treatment, and management of a mental disorder.
- SS. **Request for Proposals (RFP)** – This Request for Proposals issued by the Developmental Disabilities Administration (DDA), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
- TT. **Security Incident** – A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. “Imminent threat of violation” is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.
- UU. **Security or Security Measures** – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
- VV. **Sensitive Data** - Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- WW. **Service Level Agreement (SLA)** - Commitment by the Contractor to the DDA that defines the performance standards the Contractor is obligated to meet.
- XX. **SLA Activation Date** - The date on which SLA charges commence under this Contract, which may include, but to, the date of (a) completion of Transition in, (b) a delivery, or (c) releases of work.
- YY. **Software** - The object code version of computer programs licensed pursuant to this Contract. Embedded code, firmware, internal code, microcode, and any other term referring to software that is necessary for proper operation is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections. Software also includes any upgrades, updates, bug fixes or modified versions or backup copies of the Software licensed to the State by Contractor or an authorized distributor.
- ZZ. **Software as a Service (SaaS)** - A software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. For the purposes of

this RFP, the terms SaaS and PaaS are considered synonymous, and the term SaaS will be used throughout this document.

- AAA. **Solution** - All Software, deliverables, services and activities necessary to fully provide and support the RFP scope of work. This definition of Solution includes all System Documentation developed as a result of this Contract. Also included are all Upgrades, patches, break/fix activities, enhancements and general maintenance and support of the Solution and its infrastructure.
- BBB. **START Coordinator** – Systematic, Therapeutic, Assessment, Resources and Treatment (START) Services.
- CCC. **State** – The State of Maryland.
- DDD. **Start-up Period** – The period of time, if any, between Contract Commencement (see Definition) and the Contract Go-Live Date (see Definition). During any Start-up Period the Contractor is to undertake whatever actions are needed to begin the successful performance of the Contract as of the Go-Live Date. Unless special Start-up pricing is requested in Attachment B, the Financial Proposal Form, there will be no payment made to the Contractor for any Start-up activities.
- EEE. **Step Down**- A gradual process of reducing staffing ratios and/or other support activities for an individual receiving Behavioral Respite Services (BRS) as those individual evidences a reduction in challenging behavior. Step-Down is largely the same as the defined terms of Fading or Fade-out.
- FFF. **Source Code** – Executable instructions for Software in its high level, human readable form which are in turn interpreted, parsed and/or compiled to be executed as part of a computing system.
- GGG. **System Availability** – The period of time the Solution works as required excluding non-operational periods associated with planned maintenance.
- HHH. **System Documentation** – Those materials necessary to wholly reproduce and fully operate the most current deployed version of the Solution in a manner equivalent to the original Solution including, but not limited to:
- 1) Source Code: This includes source code created by the Contractor or subcontractor(s) and source code that is leveraged or extended by the Contractor for use in the Contract;
  - 2) All associated rules, reports, forms, templates, scripts, data dictionaries and database functionality;
  - 3) All associated configuration file details needed to duplicate the run time environment as deployed in the current deployed version of the system;
  - 4) All associated design details, flow charts, algorithms, processes, formulas, pseudo-code, procedures, instructions, help files, programmer’s notes and other documentation;
  - 5) A complete list of Third Party, open source, or commercial software components and detailed configuration notes for each component necessary to reproduce the system (e.g., operating system, relational database, and rules engine software);
  - 6) All associated user instructions and/or training materials for business users and technical staff, including maintenance manuals, administrative guides and user how-to guides; and

- 7) Operating procedures.
- III. **Task Order** – A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, and which may not require a Contract Modification. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Task Order.
- JJJ. **Technical Safeguards** – The technology and the policy and procedures for its use that protect State Data and control access to it.
- KKK. **Third Party Software** – Software and supporting documentation that:
- 1) are owned by a third party, not by the State, the Contractor, or a subcontractor;
  - 2) are included in, or necessary or helpful to the operation, maintenance, support or modification of the Solution; and
  - 3) are specifically identified and listed as Third-Party Software in the Proposal.
- LLL. **Total Proposal Price** - The Offeror’s total price for goods and services in response to this solicitation, included in Financial Proposal **Attachment B** – Financial Proposal Form.
- MMM. **Trauma Informed Care** – An organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of trauma on individuals.
- NNN. **Treatment Plan** - A written comprehensive, progressive, personalized plan that includes all prescribed Behavioral Respite services. It is person-centered, trauma informed, culturally competent and addresses personalized goals and objectives. The objective is to reduce the duration and intensity of maladaptive behaviors to the least intrusive level possible while sustaining overall health.
- OOO. **Upgrade** - A new release of any component of the Solution containing major new features, functionality and/or performance improvements.
- PPP. **Veteran-owned Small Business Enterprise (VSBE)** – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- QQQ. **Work Order** – A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, and which may not require a Contract Modification. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Work Order.

## **Appendix 2. – Offeror Information Sheet**

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder\\_OfferorInformationSheet.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf).

**Appendix 3. – Non-Disclosure Agreement (Offeror)**

(see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-3-Non-Disclosure-Agreement-Offeror-1.dotx>)

**Appendix 4. – Deliverable Product Acceptance Form (DPAF)**

(see online at  
[http://doit.maryland.gov/contracts/Documents/\\_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf](http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf))

**Appendix 5. – Sample Behavioral Respite Request Form**

The Contractor will continue to utilize these forms during the entirety of the BEHAVIORIAL RESPITE SERVICES (BRS) Contract.

**Behavioral Respite Request Form**

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

DOB: \_\_\_\_\_

Intake Date/Time: \_\_\_\_\_

Agency/Setting: \_\_\_\_\_

Resource Coordinator Name: \_\_\_\_\_

Region: \_\_\_\_\_

Staff requesting Behavioral Respite/phone/email:

\_\_\_\_\_

Projected requested time frame: \_\_\_\_\_

Has Team Meeting been held? \_\_\_\_\_

Have Team Meeting Minutes been sent to Regional Office?

\_\_\_\_\_

Brief explanation of need for respite:

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

Desired outcome of respite (what's to be achieved during respite)

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

Projected Discharge Date: \_\_\_\_\_

Projected Discharge Site: \_\_\_\_\_

For DDA Regional Office Use Only (Signature of Regional Office Representative)



Approved: \_\_\_\_\_

Denied: \_\_\_\_\_

Details of Decision:

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## Appendix 6 – Behavior Assessment

### I. DEMOGRAPHIC INFORMATION

**Name:**

**Date of Birth:**

**Residential Provider/Family Home:**

**Vocational Provider:**

**Target Environment:**

**Current Level of Supervision (As Reflected by IP):**

**Referral Source:**

**Date of Annual IP Meeting:**

**Date of Assessment- Final:**

### II. REASON FOR REFERRAL

Identify the individual, the agency, and the person making the referral. Describe what the referral is for (behavioral assessment and/or consultation), the behavior to be addressed, and the impact that the behavior has on the individual's quality of life.

### III. ASSESSMENT PROCEDURES

- **Obtain Pre-existing Data from Agency (Data sheets, Incident reports, etc.).**
- Record Review (list the records e.g., psychological, medical, educational assessment, incident reports, anecdotal reports, the IP, previous behavior plans, therapeutic treatments, the individual's present functional and adaptive behavior.)
- Functional Assessment: (Identify behavior assessment tools (e.g., Humanim FBI-2006, Functional Assessment Interview Form (O'Neill, et. al. – 1997)
- Environmental Assessment (e.g., Contextual Assessment Inventory Carr, E.G., McAtee, M., and Schultz, C.)
- FAST, QABF, MAS (Choose appropriate tool/s)
- Trial-based Functional Analysis
- Informal Interviews
- Verbal Behavior Assessment
- Preference Assessment
- Skill Assessment
- Observation of the Individual (Complete ABC Analysis) in all primary settings
- BSS COMAR Agency Compliance Questionnaire

### IV. BACKGROUND INFORMATION

**Description of the Individual**

- Age, Gender, Ethnicity
- Height/Weight

**Review of the individual's IP (strengths, needs assessment, and results of Person-Centered Planning)**

- Skill Assessment

**Description of the Individual's History**

- Developmental History
- Psychological History
  - DSM-V Diagnosis (dates)
  - Results of Psychological Test (dates)
- Medical History
  - Medical challenges and how they are being addressed
- Medical and physical variables that might affect behavior (e.g., sleep cycle, eating routine, diets, visual impairments, hearing loss, etc.)
- Educational/Employment/Family History
- Current living conditions/cohabitants
- Regular activities/what the individual does well
- History of the behaviors of concern, previous programs designed to address behaviors and the results
- Current psychotropic medications include the following:

Medication: Name, dosage, level etc.

Prescribed by:

Prescribed for:

Side Effects:

**Reduction Plan:** For example: The prescribing physician will review behavior data and relevant clinical information every 90 days. At that time, the physician will make a determination regarding the lowest effective dosage that can be prescribed. Potential side effects as reported by the physician will be monitored by the staff and reported to the physician to ensure that the potential side effects do not outweigh the consequences of the behavior that will occur without the use of the medication.

**V. ULTIMATE OBJECTIVE**

Based on a review of Individual's IP goals and communication with the individual's team, the following lifestyle improvements will be the focus of a treatment plan and/or service strategies:

1. [(Individual and/or stakeholders) will, to the best of their ability, describe changes relevant to any or all of the following life goals: (i.e., acquisition of skills which allow the individual to improve their repertoires of socially significant behaviors which would result in an appropriate habilitation ratio). For example:

- Physical well-being, e.g., safety, privacy, health changes (e.g., learning to engage in safe behaviors, asking for privacy, make healthy choices
- Increased choice, control, and/or personal freedom, e.g., planning schedule and complete verbal behavior repertoire
- Participation in social/community leisure activities, e.g., attending church, being able to make change, order food, take public transportation, etc.
- Development of skills that promote independence, e.g., self-care, work enhanced relationships and ability to interact]]

**VI. ASSESSMENT RESULTS**

- Observations of the individual in primary environments;
  - Describe type & quality of interactions with staff and other individuals.
  - Results of ABC Analysis.
- Environment Assessment
  - Identify the assessment and describe setting stimuli, controlling stimuli, and ecological events
- Preference Assessment
  - Describe things and activities that might serve as reinforcers.
- The Individual Plan
  - Summarize the results of the Individual Plan (IP) and review the strengths and needs identified in the IP.
- Skill Assessment
  - Describe adaptive skills/functional skills in the individual's repertoire
- Verbal Behavior Assessment – Use Verbal Behavior Interview Form (e.g., Sundberg M.L., **Verbal Behavior Workshop** (p.36-38) ABAI Convention, Atlanta 2006)
  - Describe verbal behavior repertoire and/or the primary means of communication that the individual utilizes (e.g., tugging, pulling, pointing, PECS, gestures, verbalizations etc.)
- Results of the Functional Assessment
  - Describe or identify procedures that the assessment is based on.
  - Summarize the results of the assessment.
    - Rational: Indicate why the behavior is challenging and problematic
    - If the behavior is part of a functional response class operationally define (i.e., describe the topography) the response class and provide examples of the behavior
    - Operationally define of each of the behaviors that compose the functional response class
    - If the behavior is not a functional response class, operationally define the behavior and provide examples of the behavior
    - Report the current frequency and duration of the behaviors
    - Report the severity of the behavior and the rating scale for severity
    - Report on the variability of the behavior and cyclicity
    - Describe the antecedents for the behavior (i.e., describe the controlling stimuli both contextual and discriminative and the motivating operations) Identify possible setting stimuli.

- Describe the consequence that maintains the target behavior
  - Describe the hypothesized function of the behavior and identify the type of reinforcer maintaining the behavior with examples from the assessment.
  - ABC Analysis (Direct Observation and results of FBI)
  - Specify and describe functional alternative for each target behavior
- Baseline
    - Report the current baseline data provided by the agency and provide results of direct observation (e.g., an updated ABC Data sheet with the antecedents and consequences identified by the Functional Assessment identified on the data sheet).

#### Tier One – Universal Strategies

- Tier One Strategies: (Universal strategies, focused on enhancing quality of life, supporting staff, training, environmental manipulation, positive reinforcement. Teaching strategies. Asset.

What to focus on - Proactive, preventive, positive, teaching-based strategies to use consistently and continuously

When should these strategies be used - ALL THE TIME (e.g., offering choice, consistently ensuring positive interactions occur on a regular basis, setting expectations, using schedules, reinforcing positive behavior, etc.)?

#### Tier Two Strategies

- Tier Two Strategies: Targeted Supports are intended to support an individual(s) who is at risk of a reduced quality of life due to actions or the actions of another person. The reasons for initiating Targeted Supports may include life events (e.g., death in family, romantic breakup, job loss, chronic work avoidance, etc.) and/or behaviors that are not immediately high risk such as: an increase in teasing, or the disruption of others.
- A change in social responsiveness such as chronically avoiding work or social events; increase in teasing or disruption of others; clinically known risk factors for the individual such as a change in baseline habits (e.g., sleep, eating, toileting, etc. or; individuals requests for additional support; in stressful life events combined with the individual's prior history of serious challenging behavior.
- (Increased targeted instruction/intervention for those individuals currently "At-Risk") Targeted - at risk individuals, where universal prevention alone does not work, to prevent a problem from becoming a big problem.

What to focus on - Focused teaching strategies (Positive Behavior Support services – social skills training, utilization of self-regulatory techniques like anger management relaxation training -teaching to request a break, group-based intervention - example a day program work team with interpersonal conflicts / group problem solving or conflict management, changing a class schedule, adding more breaks, all developed and implemented by stake holders in the community. Teaching replacement behaviors strategies

When should these strategies be used - When specific skill deficits are resulting in problem behavior at specific times or during specific activities e.g., social skill training to improve interactions with opposite sex in the community e.g., coping skills to improve interactions with roommates when disagreements arise

- Outcomes that are to be assessed – Incident reports / Request for Service Change / ABC analysis – direct observation / daily-weekly data collection (progress notes) / other screening tools.

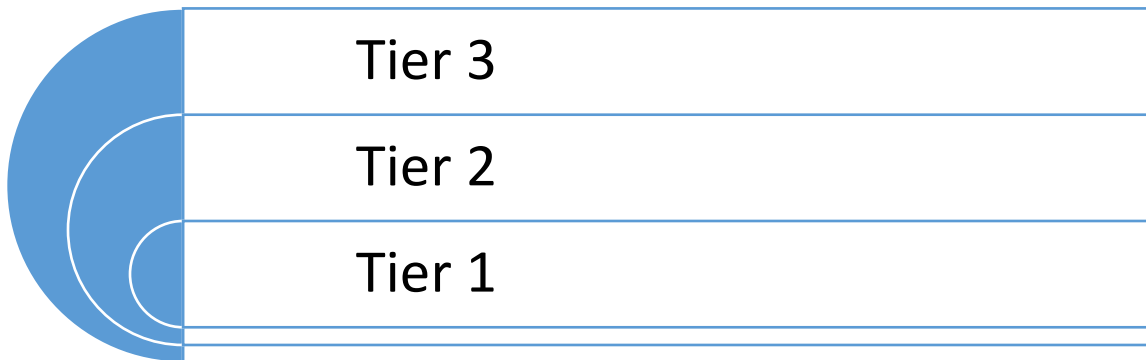
Tier Three Strategies

- Tier Three Strategies - Intensive (Increase in duration of interventions to focus on the “High-Risk” individual, reduced group size, instruction and intervention based upon the individual need. Intensive and individualized interventions – Assessment/evaluation based.  
What to focus on - Applied Behavior Analysis services – Functional assessment, intensive behavioral supports developed in collaboration with the individual’s team  
When should these strategies be used - When behavior is causing risk for significant harm, behaviors cause limited access to the community, and there is police involvement or hospitalizations required.
- Outcomes that are to be assessed – Incident reports - Appendix IVs / direct observation ABC analysis / behavior implementation ratings – rating scales / FBA forms and process / Changes to the behavior plan based upon data.

Clinical Opinion:

Provide the rationale for Tier assignments - The rationale should clearly describe the behavioral strengths and weaknesses (if appropriate) upon which the decision for Tier assignment is based and identify the recommended treatment strategies. Provide an analysis and summary of all the data on which the decision is based on.

Check the highest level of support indicated by the assessment:



This behavioral assessment was reviewed with the interdisciplinary team on (date), and the team agreed to implement the aforementioned strategy.

Team members present, as follows: (list all)

Signature of team leader:

Date of Signature:

Signature of behavior consultant:  
(Psychology Associate/LCPC/LCSW-C/LBA)

Date of Signature:

Signature Licensed Psychologist:

Date of Signature: