



STATE OF MARYLAND

MARYLAND DEPARTMENT OF HEALTH (MDH)

REQUEST FOR PROPOSALS (RFP)

**COMPREHENSIVE STATEWIDE TOBACCO PREVENTION AND CONTROL
COMMUNICATION SERVICES**

RFP NUMBER: OCMP#23-19696

EMMA# BPM032355

ISSUE DATE: OCTOBER 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: Comprehensive Statewide Tobacco Prevention and Control Communication Services
Solicitation No: OCMP#23-19696**

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
MARYLAND DEPARTMENT OF HEALTH (MDH)
KEY INFORMATION SUMMARY SHEET

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| Request for Proposals | Services-Comprehensive Statewide Tobacco Prevention and Control Communication Services |
| Solicitation Number: | OCMP#23-19696 |
| RFP Issue Date: | October 26, 2022 |
| RFP Issuing Office: | Maryland Department of Health (MDH) Prevention and Health Promotion Administration Center for Tobacco Prevention and Control |
| Procurement Officer: e-mail: | Jim Beauchamp, Director 201 W Preston Street Baltimore, MD 21201 mdh.solicitationquestions@maryland.gov |
| Proposals are to be sent to: | 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: https://procurement.maryland.gov/wp-content/uploads/sites/12/2021/01/5-eMMA-QRG-Responding-to-Solicitations-Double-EnvelopeRFP.pdf |
| Pre-Proposal Conference: | November 4, 2022, 10:00 AM EST Local Time via Teleconference See Attachment A for directions and instructions. |
| Questions Due Date and Time | November 21, 2022, 2:00 PM EST Local Time |
| Proposal Due (Closing) Date and Time: | December 5, 2022, 2:00 PM EST Local Time Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see page iv). |
| MBE Subcontracting Goal: | 10% with no subgoals |
| VSBE Subcontracting Goal: | 1% |
| Contract Type: | Firm fixed price |
| Contract Duration: | Five (5) year base period with one (1) year option period |
| Primary Place of Performance: | 201 W Preston Street, Baltimore, MD 21201 |
| SBR Designation: | No |
| Federal Funding: | Yes |

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1 Minimum Qualifications

1.1 Offeror Minimum Qualifications

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

1.1.1 The Department has determined that a history of working for the tobacco industry presents a conflict of interest with respect to the delivery of services. Therefore, the Offeror shall not be currently providing services to an entity that is a part of the tobacco industry, as either a manufacturer of tobacco products or a distributor thereof and shall not have provided such services to such an entity since November 1998. The successful Offeror is prohibited from performing services for the tobacco industry or related entity throughout the entire term of the Contract resulting from this RFP.

Required Documentation: As proof of meeting this requirement, the Offeror shall provide a completed Attachment P *Conflict of Interest Affidavit for Services Performed for the Tobacco Industry* and submit this attachment as part of its Technical Proposal to satisfy this requirement.

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2 Contractor Requirements: Scope of Work

2.1 Summary Statement

- 2.1.1** The Maryland Department of Health (MDH or the Department), Center for Tobacco Prevention and Control (CTPC or Center), is issuing this Request for Proposals (RFP) to expand and conduct the mass-reach health communication component of the Maryland Tobacco Control Program. CTPC is seeking a full-service agency to develop, implement, and evaluate comprehensive media campaigns; advise local health departments (LHDs) and other partners; coordinate with CTPC; and build upon Maryland's already successful mass-reach communications. The agency shall incorporate evidence-based, culturally and linguistically appropriate, high-impact and sustained messages that address key tobacco control related issues to reduce health disparities and increase health equity. These campaigns shall inform and educate the public, decision-makers, and other stakeholders about the dangers of commercial tobacco use, exposure to secondhand smoke, youth initiation of tobacco products and emerging products, availability of cessation support services, and the role of the tobacco industry's advertising and promotion efforts in order to shift to tobacco-free norms. The agency shall adopt a whole-health approach that considers the diverse factors impacting health or disease, such as historical inequities, laws and policies, social norms, and access to services. References to tobacco do not include the ceremonial and traditional use of tobacco in American Indian or Alaska Native communities.
- 2.1.2** It is the State's intention to obtain goods and services, as specified in this RFP, from a Contract between the selected Offeror and the State.
- 2.1.3** The Department intends to make a single award, as a result of this RFP. See RFP Section 4.9 Award Basis for more Contract award information.
- 2.1.4** An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all 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.
- 2.1.5** A Contract award does not ensure a Contractor will receive all or any State business under the Contract.

2.2 Background, Purpose, and Goals

Since the 1964 Surgeon General's report, over 20 million Americans have died prematurely from smoking, and of those, nearly 2.5 million deaths were from exposure to secondhand smoke.¹ In Maryland, approximately 7,500 adults die from tobacco related illnesses every year. In 2020, 20% of former adult tobacco users in Maryland reported being diagnosed with cancer, about 56% higher than Maryland adults

¹Office of the Surgeon General, Health Consequences of Smoking, Surgeon General - Fact Sheet, January 2014, Department of Health and Human Services, June 14, 2021 <<https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/consequences-smoking-factsheet/index.html>>.

who never smoked.² Lung cancer continues to be the leading cause of cancer death among both men and women in Maryland. Although smoking rates are declining (11% statewide smoking prevalence), about 24% of all 10,796 cancer deaths reported in 2017 were caused by lung cancer. There are over 728,000 Maryland adults and over 65,000 Maryland youth who use tobacco products, including electronic smoking devices (ESDs).³ In 2021, an online survey of Maryland high school students ages 14 to 19 found that 5% used smokeless tobacco, 6% used cigars, and 7% used cigarettes in the last 30 days. Nineteen percent (19%) of surveyed students had ever used e-cigarettes, and 11% had used e-cigarettes in the last 30 days. The most common reasons for using e-cigarettes included curiosity, having a friend or family member use them, and feeling anxious, stressed, or depressed.⁴

The Center for Tobacco Prevention and Control (CTPC) is modeled after the CDC Best Practices for Comprehensive Tobacco Control Programs and addresses four areas:⁵

1. Prevent initiation of tobacco use among youth and young adults.
2. Eliminate exposure to secondhand smoke (SHS).
3. Promote quitting among adults and youth.
4. Advance health-equity by identifying and eliminating commercial tobacco product related inequities and disparities.

Mass-reach health communication efforts are a necessary best practice within CTPC's tobacco control program. CTPC is issuing this solicitation to award a Contract to a full-service agency who can develop, implement and evaluate comprehensive media campaigns; advise LHDs and other partners; coordinate with CTPC whole-health efforts such as health systems improvements, youth initiatives, and community outreach; and build upon Maryland's already successful mass-reach communications. See Appendix 1 for a complete description of the program.

CTPC is seeking a Contractor who will collaborate with CTPC, partners, and Maryland community members to deliver evidence-based, culturally and linguistically appropriate, high-impact and sustained messages. These messages should educate the public, decision-makers and other stakeholders about the dangers of tobacco use, exposure to secondhand smoke, youth initiation and emerging products, availability of cessation support services, and the tobacco industry's advertising and promotion efforts. The Contractor shall allocate resources and make decisions to ensure communities most impacted by tobacco use and the tobacco industry receive mass-reach health communication campaigns aligned to their needs.

2.2.1 Project Goals

- A.** The Contractor shall provide strategic and comprehensive health communication plans and implement effective mass-reach health communication campaigns to change knowledge, attitudes, and beliefs related to tobacco use; reduce initiation and tobacco

² Behavioral Risk Factor Surveillance System. 2020. Unpublished data.

³ Behavioral Risk Factor Surveillance System. 2020. Unpublished data.

⁴ 2021 Maryland Youth Pandemic Behavior Survey (YPBS-21) Detailed Report. Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, Center for Tobacco Prevention and Control. October 2021. <https://health.maryland.gov/phpa/ohpetup/Documents/2021%20Youth%20Pandemic%20Behavior%20Survey%20Detailed%20Report.pdf>

⁵ Centers for Disease Control and Prevention. Best Practices for Comprehensive Tobacco Control Programs. Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, 2014. Accessed September 2 2021 from https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf

use prevalence among youth and young adults; encourage quitting tobacco use and increase knowledge of available cessation services among adults; and develop messages to reach populations disproportionately affected by tobacco use.

- B.** The Contractor shall use current research to design, develop, and implement strategic and comprehensive mass-reach health communication campaigns. Campaigns should include effective, creative concepts with high quality production standards produced in the most cost-effective manner. The Contractor shall utilize CDC's *Best Practices User Guide: Health Communications in Tobacco Prevention and Control* as a foundation when planning and implementing campaigns.⁶ State- and jurisdiction-specific data shall be reviewed so that interventions are data-driven and reflective of the diversity of populations disproportionately impacted by tobacco use.^{7,8}
- C.** The Contractor shall provide opportunities for local health departments, community members, and other collaborating organizations to meaningfully engage in planning processes and formative research for health communication campaigns.
- D.** The Contractor shall develop campaigns based on priority issues. Priority issues will be identified by CTPC and Contractor in consultation with data, best practices, and community input. Refer to Sections 2.3.1.1 and 2.3.2.2 for current priority issues. There should be a focus on achieving health equity for populations disproportionately affected by tobacco use. Health equity should be guided by CDC's *Health Equity in Tobacco Prevention and Control* and ChangeLab Solutions' *Framing Tobacco Disparities* resources (see Appendix 1). The Contractor shall assist CTPC with developing a health equity framework in messaging and materials by involving, as appropriate, intended audience and developing culturally and linguistically acceptable adaptations as required.
- E.** The Contractor shall develop, produce, edit, buy, and execute, with conceptual input and creative direction from CTPC, a mix of traditional, social, and digital media (see Appendix 2). This may include messaging and graphics, video/social media, radio and/or print. Media activities should be cost efficient and maximize outreach to all target markets based on formative research. Formative research will include presenting market analysis about specific target audiences, market segmentation, and the marketing activities and strategies of the tobacco industry. It will also include conducting surveys and focus groups, identifying the most effective media placement recommendations (e.g., cultural, linguistic), conducting advertising effectiveness analysis, and assessing the relative merit of selected strategies and messages. Contractor will provide recommendations for evaluation methods.
- F.** While the size of individual campaigns is dependent on the budget allocated each Contract Period, for planning purposes for each Contract Period after the first, the Contractor shall plan on implementing a minimum of four (4) paid advertising

⁶ Centers for Disease Control and Prevention, *Best Practices User Guide: Health Communications in Tobacco Prevention and Control* (2014) Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, June 22, 2021 <<https://www.cdc.gov/tobacco/stateandcommunity/bp-health-communications/pdfs/health-communications-508.pdf>>

⁷ Maryland Department of Health. *Maryland Comprehensive Cancer Control Plan 2021-2025*. Baltimore: Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, June 2021. <https://phpa.health.maryland.gov/cancer/cancerplan/SiteAssets/Pages/publications/Cancer-MD-Maryland_FINAL%20-1.pdf>

⁸ Maryland Department of Health. *Center for Tobacco Prevention and Control Reports*. Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, June 2021. https://health.maryland.gov/phpa/ohpetup/Pages/tob_reports.aspx

campaigns annually, all of which will offer the greatest quality and reach possible for the designated budget.

- G.** The campaign audience will include, but is not limited to, Marylanders who are disproportionately impacted by tobacco, the chronic diseases caused or related to tobacco, and a lack of access to medical, behavioral, and social services.

2.2.2 State Staff and Roles

Implementation of mass-media health communications requires collaboration with many partners. In addition to the Procurement Officer and Contract Monitor, who are the main contacts for this Contract, upon award the Contractor shall communicate and work closely with the other agencies and entities listed below.

- A. Maryland Department of Health Office of Communications.** The Contractor shall coordinate with the MDH Office of Communications to ensure mass-reach campaigns align with MDH Communication brand standards.
- B. Maryland Correctional Enterprises.** Upon request, the Contractor will coordinate with Maryland Correctional Enterprises for printing, distribution, and other applicable tasks.
- C. Local Health Departments.** Upon request, the Contractor may assist LHD staff with local level tobacco control mass-reach health communications efforts, with the goal of a concerted statewide message. Advising LHDs may include producing toolkits or other relevant resources, offering consultation through phone calls and virtual meetings, presenting at a meeting, and tagging ads for local use.
- D. Maryland Department of Health Office of Information Technology:** The Contractor shall coordinate with the MDH Office of Information Technology to ensure all managed websites adhere to MDH guidelines. Contractor will follow MDH Office of Information Technology guidance during any network security incidents or other cyber incidents.
- E. CTPC Contractors:** The Contractor shall coordinate with CTPC contractors, which may include organizations operating the Maryland Tobacco Quitline, leading youth engagement efforts, providing technical assistance, and reaching out to communities disproportionately impacted by tobacco.

2.2.3 Other State Responsibilities

MDH is responsible for providing required information (such as publicly available data, relevant media resources, and other reports) to facilitate the Contractor's performance of the work and will provide such additional assistance and services as is specifically set forth.

2.3 Responsibilities and Tasks

The Contractor shall deliver all requirements outlined in this RFP, including:

2.3.1 Defined Messaging Priorities (Contract Period One)

- 2.3.1.1** During Contract Period One (Contract Commencement through June 30, 2023), the Contractor shall utilize, enhance (as necessary), and execute a minimum of

two (2) campaigns using existing materials. Material will either be previously developed by CTPC, available through the CDC Media Campaign Resource Center (MCRC), and/or be existing media from other state or federal campaigns. At a minimum, the campaign topics for Contract Period One shall address two of the following:

- a) A responsible retailer/youth access campaign, such as promoting the [“21 or None”](#) retailer campaign
- b) A campaign promoting the benefits of quitting tobacco and resources available, including the Maryland Tobacco Quitline, such as promoting the [“Make This The Quit that Sticks”](#) campaign
- c) A campaign promoting the benefits of quitting tobacco use for people with behavioral health conditions, such as promoting the [“Continue the Good”](#) campaign
- d) A campaign addressing youth/young adult ESD use, such as [The Vape Experiment](#) campaign

2.3.1.2 For Contract Period One, the Contractor shall research existing materials and make recommendations for most applicable materials. The Contractor shall plan to include a mix of paid and earned media components and offer the greatest quality and reach for the designated budget.

2.3.1.3 In Contract Period One, the Contractor will assist in updating “21 or None” retailer materials. This will include updating text and formatting in a variety of documents to align with federal, state, and local tobacco control laws.

2.3.1.4 For Contract Period One, the Contractor shall consult transition and strategic planning documents prepared by the 2017-2021 mass-media contractor. These documents will be supplied by the Contract Monitor.

2.3.2 Selection of Campaigns (Contract Periods Two - Five)

2.3.2.1 For Contract Periods Two through Five, the Contractor shall make recommendations for utilizing and enhancing already developed campaigns or creating new material. Campaigns shall take into consideration the most effective and efficient media channels to reach the target audience based on the budget allocation(s). This may include but is not limited to broadcast, online channels, social media networks or leveraging credible sources to deliver the message. The Contractor shall consider a broad mix of channels.

2.3.2.2 For Contract Periods Two through Five, examples of campaigns that can be considered include, but are not limited to:

- 1) Promoting tobacco use dependence treatment, including the Maryland Tobacco Quitline and other cessation programs to: Medicaid populations, youth, LGBTQ populations, behavioral health populations, pregnant smokers, and others who experience tobacco-related health disparities.
- 2) Tobacco use prevention campaigns aimed at youth (12-18 years old) and young adults (18-24 years old). This may include ESD/emerging product use prevention and treatment; addressing the linkage between tobacco use and adverse childhood experiences (ACEs); social media and digital

advertising on tobacco use prevention and cessation; and countering tobacco industry advertising and promotional efforts.

- 3) Campaigns aimed at tobacco retail environments include messaging of the Tobacco 21 laws to retailers and policy-related campaigns highlighting the tobacco industry's presence of retail locations in low-income neighborhoods, near schools, and price and other targeted promotions to specific populations.
- 4) Promoting tobacco-free behavioral health facilities; multi-unit housing/living, especially among those of lower socio-economic status and public housing residents. Promoting tobacco-free outdoor areas (beaches, worksite campuses, playgrounds, parks, etc.) to promote equal opportunities for clean air and better health.
- 5) Promoting topics that emerge from discussions with Contract Monitor, including relevant, timely topics such as tobacco products flavored with menthol, linkages to chronic diseases, and linkages to cannabis use.

2.3.2.3 For Contract Periods Two through Five, the Contractor shall conduct formative research as appropriate and market analysis to determine suitable themes, develop, test, and refine campaign messages, and collect information about specific target audiences to determine how to best reach these populations. Market analysis may include determining trends, audience demographics, opinions, and behavior. Formative research can include qualitative (such as focus groups) and quantitative (such as surveys) methods. In response to formative research and market analysis findings, the Contractor shall provide two to three (2 to 3) campaign options to the Contract Monitor. The Contract Monitor shall select one (1) option, and Contractor shall make requested changes prior to finalizing the campaign.

2.3.2.4 The Contractor and any subcontractor shall organize and gain MDH Institutional Review Board (IRB) approval for formative research. The IRB approval process includes submission of required documents and follow-up to the IRB and any other required approval processes. The Contract Monitor will review and approve the applications and all necessary documents completed by the Contractor prior to the Contractor submitting the application to the IRB. Information on the IRB's Proposal Application Process may be found at: <https://health.maryland.gov/oig/irb/Pages/IRB.aspx>. After the application and its components are approved by the Department and submitted to MDH IRB by the Contractor, the Contractor shall plan for at least 4 weeks for review and approval from the MDH IRB. Upon IRB approval, the Contractor shall utilize sub-contracted services, meaning the evaluation processes may not be facilitated by a member of the Contractor's staff, a subsidiary, etc.

2.3.3 Development of Campaigns (Contract Periods Two - Five)

2.3.3.1 Contractor shall develop a comprehensive strategic approach to advertising outreach; create messaging to be used for targeted audiences through various platforms; handle all creative and graphic design; and update messaging and/or platforms as desired. The Contractor must employ best practices to reach Maryland residents.

- 2.3.3.2** For each campaign produced in Contract Periods Two through Five, the Contractor will prepare a creative brief. The Contractor shall describe in detail the development process, media strategy, and supporting research for each proposal. The Contractor shall provide detailed production schedules with task milestones for each campaign. The Contractor shall plan creative development schedules that allow sufficient time to develop and present campaigns, edit and revise, obtain final approval from CTPC, produce the final product(s), and deliver the finished product(s).
- 2.3.3.3** For Contract Periods Two through Five, the Contractor will provide an estimate of campaign development expenses, including, but not limited to: talent, photography, music, storage, and interactive digital content, maintenance and updates of an existing web site. The estimate will be included in the creative brief.
- 2.3.3.4** The Contractor shall be responsible for all creative services necessary for production, including, but not limited to, filming, dubbing, recording, editing, and photographic services/photo shoots, as necessary. All project details, including casting, shall be discussed with CTPC prior to finalization and approved by CPTC prior to implementation. Final products must be ready for the perpetual use of the Department for future campaigns at no additional cost. The Contractor shall purchase all rights to any images, photos, pictures, music, etc. used in conjunction with the TV and print ads. The Department will own the rights for all materials purchased. If talent will be used in the ads, all associated talent fees (union or non-union) must be covered by the Contractor for indefinite use by the Department. All arrangements and coordination for production and talent shall be made by the Contractor, and these costs shall be included in the financial proposal. Copies of all agreements and contracts must be provided to CTPC to have on file.
- 2.3.3.5** The Contractor shall submit media campaign materials to the Contract Monitor; edits may be required after review. The Contractor shall have no more than two weeks from the return date to make suggested revisions and re-submit to the Contract Monitor for written approval. The Contractor will obtain approval from the Contract Monitor for all components of the development and execution of campaigns.
- 2.3.3.6** All campaign materials must comply with the branding and communication standards of the Maryland Department of Health. Campaign media materials shall be tagged with the Department logos, and/or other mandatory tags or disclaimers requested by the Department. MDH brand standards must be used. CTPC will provide any required logos and other mandatory tags, or disclaimers as needed to be placed in ads.
- 2.3.3.7** The Contractor shall provide appropriate storage of all documents and materials produced, including outtakes, footage, unproduced concepts and print, digital, and social media assets. All final elements/products shall be delivered in requested formats appropriate for the platform to CTPC for the purpose of

archiving. Files shall comply with CTPC formatting requirements, which will be provided by Contract Monitor.

- 2.3.3.8** The Contractor shall provide to the Contract Monitor a summary document outlining all specs (i.e., colors, fonts, etc.) used in final files, so the Department may use the ads in the future at no additional costs. All materials developed, in part or in whole, for these campaigns remain the property of the State of Maryland. The Contractor shall establish and implement a secure media delivery/file sharing system for all final files in a format as appropriate for the platform and approved by the Contract Monitor. For further information regarding “works for hire” and final product requirements, see Section 2.3.13.2.

2.3.4 Accessibility for Current and New Campaigns

- 2.3.4.1** The Contractor shall ensure applicable digital assets are Section 508 compliant and accessible.
- 2.3.4.2** The Contractor will develop comprehensive campaigns which consider socio-economic status, health literacy, age, language, and culturally appropriate messaging to reach the target audiences and goals defined by CTPC.
- 2.3.4.3** The Contractor will provide translation and adaptation services for campaign media materials. The Contractor must provide in-language communication assets, as requested by CTPC.
- 2.3.4.4** For newly developed campaigns, the Contractor will develop an online, password-protected repository with final campaign material. Materials will be suitable for use by local health departments and CTPC partners.

2.3.5 Community Member Compensation

- 2.3.5.1** The Contractor shall include adequate funds in the budget for community member compensation whenever Maryland residents are consulted for formative research, advisory roles, campaign planning, or other input related to the scope of work. See Section 2.2.1.C for the importance of community involvement.
- 2.3.5.2** As applicable, the Contractor shall provide compensation to community members based upon the amount of time, responsibility, and degree of participation requested, in the form of payment agreed upon by the community member and Contractor. The form of compensation will be approved by the Contract Monitor prior to payment being made.
- 2.3.5.3** The Contractor will clearly communicate compensation amounts and payment options to community members before participation begins.

2.3.6 Placement of Ads, Spots, and Earned Media

- 2.3.6.1** The Contractor shall research, analyze, and provide a written analysis of the most effective media placement options. The Contractor shall present this

analysis at an annual media plan presentation. In Contract Year 1, the presentation will be held in the first 30 days of the contract year. In Contract Years 2 - 5, the presentation will be held in the last 60 days of the preceding contract year. Contractor shall describe proposed media buys, placement schedules, and rationale for type of communication strategies selected, including the number, length, size, and impressions of each strategy that best reach the target populations. The Contractor will make revisions based upon Contract Monitor feedback. The media plan will be approved by the Contractor within 30 days of the presentation.

- 2.3.6.2** The Contractor shall place developed media messages in identified media channels such as electronic, print, radio, television, outdoor, online/social media venues, and/or other media in accordance with CDC Best Practices recommendations.
- 2.3.6.3** The Contractor shall prepare a flowchart for each campaign. Flowchart will include media type, timing, projected reach, and estimated costs. Final determination of media buys and placement schedules will be determined in coordination with the Contract Monitor. Placement schedules shall be finalized with approval from the Contract Monitor at least two weeks prior to placement of any media. The Contractor will ensure all media continues to run in accordance with the predetermined schedule if funding is available.
- 2.3.6.4** The Contractor shall ensure that all media was broadcast or published according to any contracts or placement instructions. The Contractor shall provide proof of placement for all media placements on an ongoing basis. For any ads not placed as proposed, the Contractor shall coordinate for a new ad run (e.g., 'make-goods') and share this information with the Contract Monitor.
- 2.3.6.5** The Contractor shall provide and execute earned media opportunities and value-added media to enhance paid campaigns. The Contractor shall leverage media dollars to ensure value-added media is included in all media buys. Earned media initiatives must be approved by the Contract Monitor. All press release and interview opportunities will be coordinated with the MDH Office of Communications.
- 2.3.6.6** Tobacco-related observances should be incorporated into the media placement plans.
- 2.3.7 Supplemental Activities: Assistance and Training Support**
 - 2.3.7.1** The Contractor shall utilize their capacity as media experts to advise LHD tobacco control programs, partner organizations, and grantees designated by CTPC.
 - 2.3.7.2** The Contractor should plan to advise LHD tobacco control programs who operate more limited media budgets. The Contractor should plan to tag ads for LHDs, recommend media approaches to partners, and provide workshops on media placement.

2.3.7.3 Select files will be shared with LHDs and partners through an online toolkit. The Contractor shall provide CTPC with “ready-to-use” files in broadcast quality format for social media and various alternative media outlets such as, Gas Station TV, movie screen media, and print ads, as well as any other necessary files required by CTPC.

2.3.7.4 The Contractor will be available to present at local, regional, and national webinars on CTPC’s media campaigns and strategy. Presentation dates and details will be coordinated with the Contract Monitor.

2.3.8 Websites Maintenance and Social Media

2.3.8.1 The Contractor shall oversee a thorough redesign and/or platform transition of the SmokingStopsHere.com website, including adding/removing information, updating layout and graphics, and responding to feedback from CTPC and partners.

2.3.8.2 The Contractor shall maintain program-related websites (TheVapeExperiment.com, SmokingStopsHere.com), develop, execute, and maintain sites for campaigns, and coordinate social media efforts with the Department. Maintaining websites will include arranging and paying for hosting, domain names, and SSL certificates. Approval from the Contract Monitor is required prior to the Contractor posting information on websites or social media. The Contractor shall work with the Department’s Office of Information Technology and Office of Communications as necessary. Currently, additional websites include The Cigar Trap (www.TheCigarTrap.com), Toxic Tobacco Litter (www.NoTobaccoLitter.com), and the Responsible Tobacco Retailer Initiative (www.NoTobaccoSalesToMinors.com).

2.3.8.3 Provide ongoing evaluation and monitoring of websites and social media including, but not limited to, traffic driven back to website(s), influence and reach, as well as user interactions and engagement. Information shall be provided as part of the monthly reports (see Section 2.3.10.2). Google Analytics has been established for most websites to assist with tracking.

2.3.9 Evaluation

2.3.9.1 The Contractor shall provide a clearly articulated Strategic Plan (“roadmap”) developed in consultation with the Contract Monitor. The Plan will outline how health communication will educate leaders, decision-makers, and the public about the dangers of tobacco use and secondhand smoke exposure, available cessation support and resources, and how these communications will advance health equity within this focus area. The Strategic Plan shall include clearly defined objectives, strategies and short- and long-term outcome measures, a detailed description of major tasks, and a timeline. The Strategic Plan shall be due to the Contract Monitor no later than 30 days after the Kick-Off meeting in Contract Period One. The Strategic Plan will be reviewed annually and updated as needed with approval by the Contract Monitor.

2.3.9.2 The Contractor shall collaborate with CTPC to format monthly reports, annual evaluation report, and other reports so that CTPC staff can easily transfer material into other reports

2.3.9.3 The Contractor shall provide an annual evaluation of activities conducted from each Annual Work Plan (Section 2.3.12), including information to assist the Department with measuring increased public and decision-maker knowledge about the dangers of tobacco use, exposure to secondhand smoke, tobacco-related disparities, and demonstration that health communications are reaching populations disproportionately affected by tobacco use. This evaluation shall be included with the annual report (see Section 2.3.10.3); however, the Department may request information prior to the submission of the annual report and/or information to be used in additional Departmental and federal reporting. A final evaluation report shall be included with the final report (Section 2.3.10.4).

2.3.10 Reporting Schedule

2.3.10.1 The Contractor shall provide reports in a format acceptable to CTPC that summarize the development, execution, and effectiveness of the media campaigns and completion of Contract deliverables on a monthly and annual basis, as well as a final report at the end of the Contract term. CTPC may also request the Contractor provide additional information for use to prepare other reports and requests as needed. CTPC will review all reports for acceptability and may request edits and further information, as needed.

2.3.10.2 The Contractor shall submit monthly reports. The report shall include a detailed summary of tasks completed and progress on projected and actual expenditures, summary of all meeting notes, media placement details (Section 2.3.6), proof of placement, key staff involvement, pre-test reports/formative research summaries, cost containment efforts, summary of the effectiveness and evaluation of the campaigns, when applicable, and any other accomplishments and/or challenges to date. If any tasks/deliverables are not on schedule, an explanation as to why, as well as a remedial plan, must be provided by the Contractor. The report format will be determined by CTPC upon Contract Commencement. The monthly reports shall be due to the Contract Monitor on the 15th of every month for the prior month's activity. When media was active for the reporting month, the reports shall include:

- 1) Data applicable to the advertising medium (such as impressions, click-through rates, cost per click, and actual rating delivered)
- 2) Proof of placement applicable to the advertisement medium
- 3) Target demographics, e.g., age, gender, racial/ethnic group used for planning and reconciling media performance
- 4) Days aired and time(s) of day, including make-goods, as applicable
- 5) For campaign websites, traffic driven to website, user interactions, and engagement. Include baseline measures to compare how CTPC campaign is doing compared to norm.

- 6) Data on calls and web registrations for the Maryland Tobacco Quitline when Quitline-related media is running
- 7) Third party measurement and detailed viewer data, as available, when requested by CTPC.

2.3.10.3 The Contractor shall submit annual reports. The annual report shall summarize the monthly reports and include detailed expenditures, copies of all media files and summaries, resources, and other materials developed. The annual report shall also include an overview of Contract content and accomplishments from the year, success stories, lessons learned, and specific recommendations for subsequent years. An evaluation report shall be included to demonstrate the effectiveness of the media campaigns (Section 2.3.9). For Contract Periods One through Five, the Contractor shall submit a draft annual report to the Contract Monitor by July 1st of every year; the Contract Monitor will review the report for acceptability and will request revisions (if any). The approved annual report shall be due no later than July 31st of each Contract Period. The annual report should include a shareable 2-pager or infographic style report.

2.3.10.4 The final report shall summarize the annual reports and describe all deliverables completed, along with accomplishments, lessons learned, and specific recommendations for sustaining mass-reach health communications. The Contractor shall submit a draft final report to the Contract Monitor by May 1 of the final Contract Year; CTPC will review the report for acceptability and will request revisions (if any). The final report shall be submitted no later than June 1 of the final Contract Year.

2.3.11 Meetings

2.3.11.1 At least one Contractor representative shall participate in monthly media network webinars, each typically lasting 90 minutes, offered through the CDC Office on Smoking and Health.

2.3.11.2 Within one week after Contract Commencement, the Contractor shall hold a Kick-off meeting with the Contract Monitor and other CTPC staff (see Section 3.1) to review and make any necessary modifications to the Annual Work Plan submitted for Contract Period One as part of the Contractor's proposal, as well as discuss the development of a Strategic Plan for CTPC's media efforts. (Section 2.3.9)

2.3.11.3 The Contractor shall organize and participate in meetings. Meetings will be weekly or biweekly depending on current media activities. Contract Monitor will determine the meeting schedule. The meetings may include contract progress, upcoming activities, next steps, outstanding deliverables, etc. The meetings should include all members of the Contractor's staff who are actively involved in the campaign; however, at a minimum, these meetings must be attended by the Contractor's Key Personnel. At least 24 hours before the monthly meeting, the Contractor shall send the meeting agenda to Contract Monitor. Within 48 hours of meeting, the Contractor shall send meeting notes to the Contract Monitor.

2.3.11.4 Meetings may be either virtual or in-person. The meeting setting will be determined by the Contract Monitor in consultation with the Contractor. The meeting setting may change based upon COVID-19 restrictions or other factors.

2.3.12 Annual Work Plan

2.3.12.1 The Contractor shall submit cohesive, comprehensive, researched, and data-driven annual work plans. The finalized work plans for Contract Period One shall be submitted no later than 15 days after the Kick-Off Meeting. For Contract Periods Two (2) through Five (5), the work plans should be submitted no later than May 15th of each year.

2.3.12.2 The Contractor shall submit an overall work plan that describes all campaigns proposed for the following year and individual work plans for each campaign.

2.3.12.3 The Contractor shall provide all necessary services and media campaign materials and perform them in accordance with the approved Work Plans. Upon approval from the Contract Monitor, the detailed Annual Work Plan will become part of the contract Scope of Work for that Contract Period.

2.3.12.4 The work plans shall describe logical, achievable strategies for organizing, implementing, and accomplishing all deliverables, with a clear rationale, timelines, and explanation of how the proposed materials will meet the goals. The individual work plans shall include:

- 1) Campaign and media strategies, goals, objectives, and rationale
- 2) A description of the services and deliverables to be conducted for the corresponding contract period.
- 3) Process and short-term outcome evaluation measures
- 4) A detailed timeline for completion of the activities, services and deliverables, with identification of potential barriers to timely completion, and time critical elements.
- 5) Any requirements from CTPC or MDH to complete the deliverables
- 6) The use of a subcontractor(s) proposed for the delivery of a service or other deliverable
- 7) A listing of the Account Team members (including subcontractors) that are responsible for the completion of the services and deliverables
- 8) A detailed budget and budget narrative for the project costs by line item. The Contractor shall recommend ways to generate cost savings wherever possible.

2.3.12.5 In addition to the items described in 2.3.12.4, the overall work plan shall include:

- 1) Development and implementation of strategic comprehensive mass-reach health communication campaign components to reach the Department's goals
- 2) A recommended course of action and explanation shall be provided if deliverables were not completed for the prior Contract Period (as needed)

2.3.13 Additional Contract Parameters

- 2.3.13.1** The timeline for Contract Period One shall run from Contract Commencement through June 30, 2023, for completing deliverables. Subsequent Contract Periods will run from July 1 – June 30 of the five subsequent 365- day (or 366- day, if the period includes February 29) periods.
- 2.3.13.2** Work produced as a result of this solicitation, in part or in whole, is and shall remain the sole property of the Department. The Contractor agrees that, at all times during the term of this Contract and thereafter, the works created, and services performed shall be “works made for hire” as that term is interpreted under the federal copyright law. All materials developed will remain the property of the State of Maryland. All design and production related fees must be included in the Total Proposal Price, as indicated in the Contractor's Financial Proposal Forms (Attachment B: Financial Proposal Form). All work conducted under this Contract is considered and becomes the property of the Department, including all materials related to the campaign brand, pre- and post-production materials. The Contractor shall provide appropriate storage of all documents and materials produced, and formative evaluation reports for CTPC. The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, and preservation of CTPC's property. Any materials, ads, plans, or other specific project work requested by CTPC shall be for CTPC's exclusive use. The Contractor shall not release anything to any person or entity other than CTPC without the specific written consent of the Contract Monitor.
- 2.3.13.3** Final products must be available for the perpetual use at the discretion of the Department and its designees for future campaigns at no additional cost and with no limits on times or formats. If talent is used, the Contractor must secure and pay all talent fees and other related costs for talent and directors (if necessary) for the indefinite use by the Department and its designees. Signed contracts, written releases, and proof of talent buy-out must be provided to the Contract Monitor. For any fonts, stock photo and artwork that are purchased, the proof of buy-out, extended license agreements, and other relevant documentation and details must be provided to the Contract Monitor.
- 2.3.13.4** Proposed Creative will be reviewed and approved by the Contract Monitor. Approval may also be required by higher governmental authorities; final edits required by this review process will be the responsibility of the Contractor.
- 2.3.13.5** Through the course of the Contract, it may become necessary to modify Annual Work Plan tasks. The Department shall at all times maintain control and direction over the scope of work being performed. The Department reserves the

right to change the scope of work and to adjust specific tasks within the Work Plan to be performed by the Contractor. If the full funding amount provided in this solicitation does not become available, is reduced, or the Department determines it does not need all of the services described in an approved Annual Work Plan, the Department reserves the right to request an amended Work Plan from the Contractor for reduced services. The Contractor and the Department shall discuss and agree upon any necessary changes in writing prior to proceeding. Upon written approval from the Contract Monitor, any modifications become part of the Contract.

2.3.13.6 The Contractor may not use Contract funds to finance tobacco use cessation (counseling or products) or to finance lobbying for legislation.

2.3.13.7 The Contractor may be asked to consult with other contractors and partners in order to maintain consistent statewide programming. CTPC funds additional contracts and grants, including statewide Resource Centers, Counter Tools, Maryland Tobacco Quitline contractor, various health systems, LHDs, youth outreach organization, and others that assist with program implementation and evaluation. In addition, the Contractor may need to consult with relevant state, regional, and national organizations, such as the Truth Initiative, Campaign for Tobacco Free Kids, CDC, and the FDA Center for Tobacco Products, to determine opportunities for collaboration with existing or upcoming campaigns and activities.

2.4 Deliverables

2.4.1 Deliverable Submission

- A.** For every deliverable, the Contractor shall request the Contract Monitor confirm receipt of that deliverable by sending an e-mail identifying the deliverable name and date of receipt.
- B.** Unless specified otherwise, written deliverables shall be compatible with Microsoft Office 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.
- C.** A standard deliverable review cycle will be elaborated and agreed-upon between the State and the Contractor. This review process is entered into when the Contractor completes a deliverable.
- D.** 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. 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 submission.
- 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*

| ID # | Deliverable Description | Acceptance Criteria | Due Date / Frequency |
|-------------|------------------------------------|---|--|
| 1 | Kick-Off Meeting | Review and make any necessary modifications to the work plan submitted for Contract Period One as well as discuss the development of a Strategic Plan | Meeting held within one (1) week after Contract Commencement |
| 2 | Contract Period 1 Annual Work Plan | Work plan shall describe logical, achievable strategies for organizing, implementing, and accomplishing all deliverables, with a clear rationale, timelines, and explanation of how proposed materials will meet goals and objectives. | Submitted within 15 days after the Kick-Off meeting |
| 3 | Strategic Plan | Includes clearly defined objectives, strategies and process, short- and long-term outcome measures that support the goals of the Department | Submitted 30 days after Kick-Off meeting |
| 4 | Annual Work Plans | Work plans shall describe logical, achievable strategies for organizing, implementing, and accomplishing all deliverables, with a clear rationale, timelines, and explanation of how proposed materials will meet goals and objectives. | After Contract Year 1, work plans due by May 15 th each year |
| 5 | Annual Media Plan Presentation | A summary of Contractor's research into the most effective media placement options for the contract year. | In Contract Year 1, presentation will be in first 30 days of contract year. In Contract Years 2 - 5, presentation will be held in last 60 days of the preceding contract year. |
| 6 | Annual Evaluation Report | Includes report of activities conducted from each Annual Work Plan. See Section 2.3.9.3. | Draft submitted by July 1 of Contract Years 1-5; final submitted by July 31 of Contract Years 1-5 |

| | | | |
|----|----------------|--|---|
| 7 | Monthly Report | Include a detailed summary of tasks completed and progress of updated projected and actual expenditures, summary of all meeting notes, media placement details, key staff involvement, pre-test reports /formative research summaries, technical assistance activities, cost containment efforts, summary of the effectiveness and evaluation of the campaigns, and accomplishments/challenges to date | Submitted by 15 th of the month for previous month |
| 8 | Annual Report | Summarize monthly reports and include detailed expenditures, copies of all media files and summaries, resources, and other materials developed. Include overview of Contract content and accomplishments from the year, success stories, “lessons learned,” and specific recommendations for subsequent years | Draft submitted by July 1 of Contract Years 1-5; final submitted by July 31 of Contract Years 1-5 |
| 9 | Final Report | Summarize the annual reports and describe all deliverables completed, along with accomplishments, “lessons learned,” and specific recommendations for sustaining the mass-reach health communications component | Draft submitted by May 1 of final Contract Year; final submitted by June 1 of final Contract Year |
| 10 | Meetings | Meetings held weekly or biweekly (depending on Contract Monitor decision). | Contractor provides meeting agenda at least 24 hours prior to all scheduled meetings, and meeting minutes shall be sent by the Contractor within 48 hours post meeting. |

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

2.5 Service Level Agreement (SLA)

THIS SECTION IS INAPPLICABLE TO THIS RFP.

3 Contractor Requirements: General

3.1 Contract Initiation Requirements

- A.** Contractor shall schedule and hold, as feasible, an in-person kickoff meeting at MDH headquarters located at 201 W. Preston Street, Baltimore MD 21201 within 10 Business Days of the Notice to Proceed (NTP) date. A virtual kickoff meeting may be held based upon current health and safety guidance. The Contractor, subcontractor Key Personnel, any third parties for fully transitioning to the Contractor's Solution, and CTPC staff shall be in attendance. Topics to be discussed at the kickoff meeting will include but are not limited to the following: an overview of CTPC, an overview of the Contractor, the scope of work, and a discussion of the Contractor's Year One work plan. A Final Work Plan will be due no later than 30 days after the kickoff meeting.

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 90 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 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 Department 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 Department or a designee.
 - 5) Any final training/orientation of Department 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 Department.
 - b) Review with the Department 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 Department 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 email the original of each invoice and signed authorization to invoice to the Contract Monitor at e-mail address: <<e-mail address>>.
- 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 Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise 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 Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.
- 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 Department.
- 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.
- C. Media Buys shall be “at cost,” that is, the amount charged shall equal only the amount that is charged for the Media Buy without any commission, fees, or other charges. The Contractor shall invoice only for the amount equal to the actual costs for all media bought, up to an amount not to exceed the percentage of the budget allocated for Media Buys for each Contract Period. Receipts of media purchases showing expenditure amounts shall be included with the invoice as back up documentation, and invoices for Media Buys shall be submitted no later than the 15th of the month for all Media Buys in the previous month, as applicable.
- D. On each monthly invoice, the Contractor shall itemize all “administrative costs” to document that its spending on “administrative costs” does not exceed ten percent (10%) of each actual Contract Period budget, excluding Media Buys. The Contractor shall not receive a separate payment for “administrative costs.” Instead, the Contractor must account for “administrative costs” in its price for each Contract Period. However, the Contractor shall provide evidence that its spending on “administrative costs” over the course of each Contract Period does not exceed 10% of that Contract Period’s actual budget (excluding Media Buys) by separately listing all administrative expenses on each invoice. If the Contractor’s “administrative costs” as itemized on its invoices exceed 10% of the Contract Period budget, the Contractor will not be paid for any amount in excess

of 10% of the actual Contract Period budget, and any amount in excess of 10% will be withheld from payment amounts to the Contractor.

3.3.3 Deliverable Invoicing

- A. Payment for deliverables will only be made upon completion and acceptance of the deliverables as defined in **Section 2.4**.

3.3.4 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.

3.3.5 Travel Reimbursement

Travel will not be reimbursed under this RFP.

3.4 Liquidated Damages

3.4.1 MBE Liquidated Damages

MBE liquidated damages are identified in Attachment M.

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 Department to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

3.5.2 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 a 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 Department should be added as a "loss payee."
- D.** Cyber Security / Data Breach Insurance – (For any service offering hosted by the Contractor) ten million dollars (\$10,000,000) per occurrence. The coverage must

be valid at all locations where work is performed or data or other information concerning the State's claimants or employers is 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. The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check. The Contractor shall obtain at its own expense a Maryland State Police and/or FBI background check and shall provide the Contract Monitor with completed checks on all new employees prior to assignment. The Contractor may not assign an employee with a criminal record to work under this Contract unless prior written approval is obtained from the Contract Monitor.

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 – 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 – 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 Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under 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 Department 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 Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under 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.

3.7.8 Security Incident Response

- A. The Contractor shall notify the Department in accordance with **Section 3.7.9A-B** 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 Department within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or electronic

correspondence to the Contract Monitor, Department chief information officer and Department chief information security officer;

- 2) notify the Department 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 Department within one (1) Business Day after Contractor's discovery of unauthorized use or disclosure of State data and thereafter all information the State (or Department) 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 Department) 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 Contract's limitation of liability.

3.7.10 Additional security requirements may be established in a Task 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 – 3.7.9** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Sections 3.7.4-3.7.9** (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

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

- A.** Prior experience with message development and campaign implementation and experience with public health behavior change initiatives and/or tobacco control.
- B.** Demonstrated competency through past creative samples/campaigns to communicate effective messaging to prompt behavior change among target audiences.
- C.** Prior experience focusing on health topics with health disparities and incorporating a health equity framework.
- D.** Demonstrated competency placing media buys, facilitating relationships with media outlets, and obtaining value-added bonuses for media placements.
- E.** Not be currently providing services to an entity that is a part of the tobacco industry, as either a manufacturer of tobacco products or a distributor thereof and shall not have provided such services to such an entity since November 1998. See Attachment P.

- F. Personnel working on this campaign should have at least three years of experience in message development and campaign implementation, have some experience with public health behavior change initiatives and/or tobacco control issues demonstrated by individual resumes for key personnel. If the Contractor's staff has no tobacco control experience, the Contractor must describe how proposed staff will gain sufficient knowledge to execute the requirements of the RFP.
- G. The Contractor shall provide the level of service (number and experience of employees and corresponding number of full-time equivalents) as specified in its proposal and shall maintain at least that level of service throughout the term of the Contract.
- H. The Contractor shall have sufficient fiscal and administrative staff capacity to support fiscal and reporting requirements,

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. The Contractor shall have personnel that possess sufficient education and experience in the field of communications; marketing; Media Buying; and experience with public health and/or behavior change/health education campaigns or related field of study in order to perform the services effectively under this Contract
- B. Personnel working on this campaign should have at least three (3) years' experience in message development and campaign implementation.
- C. Personnel working on this Contract should have a breadth of knowledge in public health behavior change initiatives, health disparities and health equity, and/or tobacco control issues demonstrated by individual resumes for key personnel.
- D. If the Offeror's staff has no tobacco control experience, the Offeror must describe how its staff proposed to work under the Contract will gain a sufficient knowledge base to execute the requirements of the RFP. (Section 5.3.2)

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, Department 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 **Section 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

If this solicitation includes an MBE Goal (see **Section 4.26**), the Contractor shall:

- A. Submit the following reports by the 10th of each month to the Contract Monitor and the Department's MBE Liaison Officer:
 - 1) A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D - 4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made: and
 - 2) (If Applicable) An MBE Prime Contractor Report (Attachment D - 4B) identifying an MBE prime's self-performing work to be counted towards the MBE participation goals.
- B. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D- 5**) by the 10th of each month to the Contract Monitor and the Department's MBE Liaison Officer that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding

reporting period month, as well as any outstanding invoices, and the amounts of those invoices.

- C. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- D. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- E. Upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

3.13 Veteran Small Business Enterprise (VSBE) Reports

If this solicitation includes a VSBE Goal (see **Section 4.27**), the Contractor shall:

- A. Submit the following reports by the 10th of the month following the reporting period to the Contract Monitor and the Department VSBE representative:
 - 1) VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report (Attachment E-3) listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice and the reason payment has not been made: and
 - 2) **Attachment E-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.
- B. Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly by the 10th of the month following the reporting period to the Contract Monitor and Department VSBE representative a report that identifies the prime contract and lists all payments received from Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amount of those invoices (**Attachment E-4**).
- C. Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- D. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the VSBE participation obligations. The Contractor

must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the Contract.

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

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 J**).
- 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

This section does not apply to this solicitation.

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.

4 Procurement Instructions

4.1 Pre-Proposal Conference

- 4.1.1 A pre-Proposal conference (Conference) will be held at the date, time, and location indicated on the Key Information Summary Sheet.
- 4.1.2 Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals. If the solicitation includes an MBE goal, failure to attend the Conference will be taken into consideration as part of the evaluation of an offeror's good faith efforts if there is a waiver request.
- 4.1.3 It is highly recommended that ALL Prime Contractors bring their intended subcontractors to the Conference/Site Visit 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 Conference to market their participation to potential prime contractors.
- 4.1.5 Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see **Section 4.2.1 eMMA**).

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, 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 (**MDH OCMP#23-19696-Comprehensive Statewide Tobacco Prevention and Control Communication Services**), and shall be submitted in writing via e-mail to the Procurement Officer at least five (5) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.
- 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 Department 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 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** “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: 120 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 Department 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.
- 4.13.1** The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- 4.13.2** 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).
- 4.13.3** 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 Department 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.

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.gomdsmbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

4.25 Electronic Procurements Authorized

- 4.25.1** Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2** Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. 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.
- B.** The Offeror or potential Offeror may use eMMA or e-mail to:
- 1) Submit Proposals (eMMA only).

- 2) Ask questions regarding the solicitation.
- 3) 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.
- 4) Submit a "No Proposal Response" to the RFP.

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

4.25.6 Any 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

4.26.1 Establishment of Goal and Subgoals

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

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

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

An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 4.26 implies that it is requesting a full or partial waiver for the remainder of the MBE goal or subgoals as applicable and, if recommended for award, shall submit documentation supporting

its good faith efforts to meet the MBE goal made prior to submission of its proposal as outlined in Attachment D-1B, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP may result in the State's rejection of the Offeror's Proposal.

4.26.2 Attachments.

- A.** D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:
1. Attachment D-1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Proposal)
 2. Attachment D-1B Waiver Guidance
 3. Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request
 4. Attachment D-2 Outreach Efforts Compliance Statement
 5. Attachment D-3A MBE Subcontractor Project Participation Certification
 6. Attachment D-3 MBE Prime Project Participation Certification
 7. Attachment D-4A Prime Contractor Paid/Unpaid MBE Invoice Report
 8. Attachment D-4 MBE Prime Contractor Report
 9. Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report
- B.** The Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:
1. The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
 2. The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
 3. The Offeror requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

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

being selected for award, unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04.

- 4.26.3** Offerors are responsible for verifying that each MBE (including any MBE prime and MBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.
- 4.26.4** Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer.
- A.** Outreach Efforts Compliance Statement (**Attachment D-2**);
 - B.** MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
 - C.** Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.
 - D.** Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

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

- 4.26.5** A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**
- 4.26.6** The Offeror that requested or implied to request a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.
- 4.26.7** All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by

reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – **Attachment M, Section 2.1**).

- 4.26.8** The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment M, Liquidated Damages for MBE, section 39**).
- 4.26.9** As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract.

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

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Refer to MBE forms (**Attachment D**) for additional information.

4.27 VSBE Goal

4.27.1 Purpose

- A.** The Contractor shall structure its procedures for the performance of the work required in the Contract to attempt to achieve the VSBE participation goal stated in this solicitation. VSBE performance must be in accordance with this section and **Attachment E**, as authorized by COMAR 21.11.13. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and **Attachment E**.
- B.** A certified Veteran-Owned Small Business Enterprises (VSBE) must be verified by the State Department of Veterans Affairs or US Department of Veterans Affairs [Vets First Verification Program](#) (VetBiz) and registered as a VSBE on the State's eProcurement platform, eMaryland Marketplace Advantage (eMMA). The listing of VSBEs is available through the "Vendor Search" on [eMMA](#).

4.27.2 VSBE Goal

- A.** A VSBE participation goal of the total Contract dollar amount has been established for this procurement as identified in the Key Information Summary Sheet.

- B.** By submitting a response to this solicitation, the Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by verified veteran-owned small business enterprises.

4.27.3 Solicitation and Contract Formation

- A.** In accordance with COMAR 21.11.13.05 C (1), this solicitation requires Offerors to:
- 1)** Identify specific work categories within the scope of the procurement appropriate for subcontracting;
 - 2)** Solicit VSBEs before Proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;
 - 3)** Attempt to make personal contact with the VSBEs solicited and to document these attempts;
 - 4)** Assist VSBEs to fulfill, or to seek waiver of, bonding requirements; and
 - 5)** Attempt to attend preProposal or other meetings the procurement agency schedules to publicize contracting opportunities to VSBEs.
- B.** The Offeror must include with its Proposal a completed VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment E-1**) whereby the Offeror:
- 1)** Acknowledges it: a) intends to meet the VSBE participation goal; or b) requests a full or partial waiver of the VSBE participation goal. If the Offeror commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal; and
 - 2)** Responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBEs at the time of Proposal submission. The Offeror shall specify the percentage of contract value associated with each VSBE prime/subcontractor identified on the VSBE Participation Schedule.
- C.** As set forth in COMAR 21.11.13.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the VSBE Prime Contractor performs with its own work force towards meeting up to one hundred percent (100%) of the VSBE goal.
- D.** In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (**Attachment E-1**) and include information regarding the work it will self-perform. For any remaining portion of the VSBE goal that is not to be performed by the VSBE Prime, the VSBE Prime must also identify verified VSBE subcontractors used to meet the remainder of the goal.
- E.** Within 10 Business Days from notification that it is the apparent awardee, the awardee must provide the following documentation to the Procurement Officer:
- 1)** VSBE Project Participation Statement (**Attachment E-2**);

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

If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not reasonably susceptible of being selected for award.

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.dlir.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**) 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

- 4.29.1 There are programmatic conditions that apply to the Contract due to federal funding (see **Attachment G**).
- 4.29.2 The total amount of federal funds allocated for the Prevention & Health Promotion Administration is \$402,201,255 in Maryland State fiscal year 2023. This represents 65% of all funds budgeted for unit in that fiscal year. This does not necessarily represent the amount of funding available.
- 4.29.3 The Contract contains federal funds. The source of these federal funds is the Centers for Disease Prevention and Control (CDC). The CFDA number is: 93.387. The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment G**. Any additional conditions that apply to this particular federally funded contract are contained as supplements to Federal Funds **Attachment G** and Offerors are to complete and submit these Attachments with their Proposals as instructed in the Attachments. Acceptance of this agreement indicates the Offeror’s intent to comply with all conditions, which are part of the Contract.

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 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)

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

4.32 HIPAA - Business Associate Agreement

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

4.33 Nonvisual Access

The bidder or offeror warrants that the information technology offered under this bid or proposal (1) provides equivalent access for effective use by both visual and nonvisual means consistent with the standards of § 508 of the federal Rehabilitation Act of 1973 and Code of Maryland Regulations 14.33.02; (2) provides an individual with disabilities with nonvisual access in a way that is fully and equally accessible to and independently usable by the individual with disabilities so that the individual is able to acquire the same information, engage in the same interactions, and enjoy the same services as users without disabilities, with substantially equivalent ease of use; (3) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (4) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (5) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The bidder or offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than 15 percent.

If the information technology procured under this solicitation does not meet the nonvisual access standards set forth in the Code of Maryland Regulations 14.33.02, the State will notify the bidder or offeror in writing that the bidder or offeror, at its own expense, has 12 months after the date of the notification to modify the information technology in order to meet the nonvisual access standards. If the bidder or offeror fails to modify the information technology to meet the nonvisual access standards within 12 months after the date of the notification, the bidder or offeror may be subject to a civil penalty of a fine not exceeding \$5,000 for a first offense, and a fine not exceeding \$10,000 for a subsequent offense.

The bidder or offeror shall indemnify the State for liability resulting from the use of information technology that does not meet the applicable nonvisual access standards.

For purposes of this regulation, the phrase 'equivalent access' means the ability to receive, use, and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

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

This solicitation does not require a DHS Hiring Agreement.

4.37 Small Business Reserve (SBR) Procurement

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

4.38 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):

- Volume I – Technical Proposal
- Volume II – Financial Proposal

5.2 Proposal Delivery and Packaging

- 5.2.1** Proposals delivered by facsimile and e-mail shall not be considered. All proposals must be submitted to EMMA. Any questions may be referred to MDH.solicitationquestions@maryland.gov.
- 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 RFP 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 4**) 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) Implementation Schedule - Offeror shall provide the proposed implementation schedule with its Proposal.
- 4) 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.
- 5) 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**.
- 6) The Offeror shall provide a Backup solution/ strategy recommendation as part of its Proposal.
- 7) 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.
- 8) The Offeror shall include a deliverable description and schedule describing the proposed Deliverables as mapped to the Deliverables table in **Section 2.4.4**. The schedule shall also detail proposed submission due date/frequency of each recommended Deliverable.
- 9) Scenarios: The Offeror must include a succinct, complete and thorough response to both scenarios below. These are for evaluation purposes and should not be included as part of the Work Plan or budget. The Department will accept altered formatting, E.g.,

tables, charts, etc. for scenarios. However, fonts in charts/tables may be no smaller than 10 points and must be readable.

Scenario #1

Individuals with behavioral health conditions (including substance use and mental health conditions) have historically been targeted by the tobacco industry. As a result of industry actions, people with behavioral health conditions are more likely to use tobacco products than the general public. Many people with behavioral health conditions want to quit tobacco use and can be successful in their efforts. Promoting 100% tobacco-free behavioral health facilities is an important step in promoting tobacco-free recovery and healthier environments for clients and staff. The Department wants to encourage behavioral health facilities in Maryland to implement 100% tobacco-free policies. Assuming a budget of \$350,000, describe the campaign, including resources, media mediums, materials, partners, and websites utilized to reach the goals of the campaign and track its effectiveness

Scenario #2

For several decades, the tobacco industry has targeted lesbian, gay, bisexual, transgender, and queer (LGBTQ+) communities. Because of this targeted marketing, LGBTQ+ communities have higher tobacco usage rates than the general public. The Department wants to empower LGBTQ+ communities in Maryland to live tobacco-free lives, including utilizing the Maryland Tobacco Quitline for tobacco cessation. Describe a campaign approach, including earned media, to share a tobacco-free norm and Quitline information. The campaign approach should acknowledge the diversity of the LGBTQ+ community in Maryland and societal factors (such as stress and discrimination) that can be barriers to tobacco cessation. Present an outline of the campaign and budget, not to exceed \$50,000.

10) Annual Work Plans

The Offeror shall submit a Contract Period One Work Plan. The Work Plan shall describe how the Offeror will provide required services as outlined in Section 2.3, Scope of Work. The Offeror shall describe their approach to implement strategic campaigns utilizing or enhancing existing campaign material. The Offeror should plan a mix of paid and earned media to offer the greatest quality and reach possible for the target populations. The Offeror shall provide key activities, timelines, specific methodology and techniques to be used. Deadlines considered contract deliverables must be recognized in the work plan. Based on past media buys and the Offeror's expertise, the Offeror shall include a realistic sample media placement plan with estimated reach and explanation as to why this placement would be most effective to reach the target audiences. A general overview of anticipated activities for Contract Periods Two through Five shall also be included.

NOTE #1: Other than sample budgets included with Scenarios (see Section 5.3.2.F.9 above) and Campaign Samples/Case Studies (see Section 5.3.2.H.6), no budget or pricing information should be included in the Annual Work Plans or anywhere in the technical proposal.

NOTE #2: The actual five-year Strategic Plan is not required as part of the proposal; however, a general overview should be included to describe the process for developing this plan.

NOTE #3: Proposals will be scored lower if RFP language is merely repeated.

NOTE #4: Speculative creative work is not requested; however, the Offeror shall provide overall rationale and concepts for approaching media campaigns to reach these populations with enough detail so the Department has a clear understanding of the capabilities of the Offeror.

NOTE #5: It is strongly encouraged for the Offeror to review the resources in Appendix 1.

11) Added Value

- a) The Offeror may propose additional services as added value to the proposed contract.
- b) The Offeror may note these additional services in the proposed timeline and deliverables table for the added value project.

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

The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract 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 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; including the number of years' experience within the last 10 years it has in message development and campaign implementation, and experience with public health behavior change initiatives and/or tobacco control issues;
- 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;
- 5) An organizational chart that identifies the complete structure of the Offeror including any parent company, headquarters, regional offices, and subsidiaries of the Offeror; and
- 6) Campaign Samples. The Offeror shall provide 2-3 examples from past or current client campaigns, developed after January 1, 2018, that demonstrate the Offeror's ability (and sub-contractors, if applicable) to develop, test, execute, and place strategic, multimedia communication campaigns. The Offeror shall describe the strategic placement of ads to reach the target population, and the evaluation conducted to determine the effectiveness of the campaign.

For each campaign submitted, the Offeror shall describe the marketing objective, target market, campaign strategy, ad placements/Media Buy/executed media placement schedule, value-added bonuses to media buys, evaluation, and results. The production and placement budgets for these samples should be included. At least one of the campaigns shall be over \$500,000. If the Offeror experienced difficulties or setbacks while implementing the campaigns, describe how these were overcome. The Offeror shall distinguish what was completed 'in-house' and what was subcontracted.

Should any of the staff who worked on these campaigns be proposed to work on the project outlined in this RFP, please indicate as such.

NOTE: Other than budgets included with Campaign Samples (Section 5.3.2.H.6 above), and Scenarios (Section 5.3.2.F.9), no budget or pricing information should be included in the Annual Work Plans or anywhere in the technical proposal.

I. References (Submit under TAB H)

At least three (3) references are requested from customers who can document 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 Department 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 Department.

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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 Department 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.

6.2.1.1 To what extent does the Offeror demonstrate a sound ability and approach to implementing the Scope of Work and Specifications of the Contract?

6.2.1.2 To what extent does the Contract Period One Annual Work Plan succeed in meeting the requirements and time frames of the RFP? Are the proposed time frames/timelines and plans realistic?

6.2.1.3 To what extent do the Offeror's proposed Contract Period One Annual Work Plan provide strategies that meet the Department's goals, objectives, and performance measures?

6.2.1.4 To what extent do the Offeror's responses to both Scenarios demonstrate their ability to address the needs outlined in Section 5.3.2.F.10 in an effective manner?

6.2.1.5 To what extent do the Offeror's proposed campaign plans for Contract Period One and responses to both Scenarios illustrate competencies and creative abilities in designing, enhancing, and executing behavioral health change communication campaigns?

6.2.1.6 To what extent are the proposed plans likely to provide the desired outcomes of expanding communication efforts through media campaigns to the target audiences?

6.2.1.7 To what extent do the Offeror's plans provide the most advantageous reach and/or number of impressions?

6.2.1.8 To what extent is the methodology used to carry out the Work Plan sound?

6.2.1.9 To what extent is the process to monitor the delivery of contract deliverables sound?

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

6.2.2.1 How much experience and education do the proposed staff have that is applicable to the project?

6.2.2.2 How well are the named individuals matched to their proposed roles in this project, according to their past experience and credentials?

6.2.2.3 If no tobacco control experience is listed, to what extent is the process described by the Offeror to gain such knowledge sound?

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

6.2.3.1 To what extent has the organization demonstrated a commitment to providing quality services?

6.2.3.2 Based on the description given in their proposal, to what extent are the overall capabilities of the Offeror sound, as related to the requirements in the RFP, i.e., organizational size, finances, experience, other work load responsibilities/time requirements, etc.?

6.2.3.3 To what extent do the Offeror's past Creative samples/campaigns demonstrate their ability to communicate effective messaging to prompt behavior change among target audiences?

6.2.3.4 To what extent does the Offeror demonstrate background and expertise with message development and campaign implementation, and experience with public health behavior change initiatives and/or tobacco control?

6.2.3.5 To what extent does the Offeror demonstrate strong past experiences in placing Media Buys, facilitating relationships with media outlets, and obtaining value-added bonuses for their media placements (See Section 2.3.6)?

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

6.2.4.1 To what extent is the percentage of Contract dollars to be recycled into the Maryland economy adequate?

6.2.4.2 To what extent has the Offeror demonstrated they will create jobs for Maryland residents? What collateral job creation or retention may result from an award to this Offeror?

6.2.4.3 To what extent has the Offeror demonstrated a substantial estimated percentage of dollars committed to small or minority businesses?

6.2.4.4 To what extent has the Offeror demonstrated anticipated tax revenue for the State and local subdivisions, etc.?

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 a 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.

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 http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf) |
| Y | With Proposal | D | MBE Forms D-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) IMPORTANT: If this RFP contains different Functional Areas or Service Categories. A separate Attachment D-1A is to be submitted for each Functional Area or Service Category where there is a MBE goal. |
| Y | 10 Business Days after recommended award | D | MBE Forms D-1B, D-1C, D-2, D-3A, D-3B (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) |

| | | | |
|---|---|---|--|
| | | | Important: Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award. |
| Y | As directed in forms | D | MBE Forms D-4A, D-4B, D-5 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) |
| Y | With Proposal | E | Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf) IMPORTANT: If this RFP contains different Functional Areas or Service Categories. A separate Attachment E-1A is to be submitted for each Functional Area or Service Category where there is a VSBE goal. |
| Y | 5 Business Days after recommended award | E | VSBE Forms E-1B, E-2, E-3 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf) Important: Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award. |
| Y | With Proposal | F | Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf) |
| Y | With Proposal | G | Federal Funds Attachments (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf) |
| Y | With Proposal | H | Conflict of Interest Affidavit and Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf) |

| | | | |
|-------------------|--|--------------|---|
| Y | 5 Business Days after recommended award – However, suggested with Proposal | I | Non-Disclosure Agreement (Contractor) (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf) |
| N | 5 Business Days after recommended award – However, suggested with Proposal | J | HIPAA Business Associate Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf) |
| N | With Proposal | K | Mercury Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf) |
| Y | With Proposal | 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) |
| 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 http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf) |
| Y | 5 Business Days after recommended award | O | DHS Hiring Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf) |
| Y | With Proposal | P | Conflict of Interest Affidavit, Services Performed for the Tobacco Industry |
| Appendices | | | |
| Applies? | When to Submit | Label | Attachment Name |
| N | | 1 | Abbreviations and Definitions |

| Y | With Proposal | 2 | Offeror Information Sheet (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf) |
|------------------------|--|-------|--|
| N | | 3 | Additional Background Information and Key Resources |
| N | | 4 | Expectations for Traditional and Social and Digital Media |
| Additional Submissions | | | |
| Applies? | When to Submit | Label | Document Name |
| Y | 5 Business Days after recommended award | | Evidence of meeting insurance requirements (see Section 3.6); 1 copy |
| Y | 10 Business Days after recommended award | | PEP; 1 copy |

Attachment A. Pre-Proposal Conference Response Form

Solicitation Number OCMP#23-19696

Comprehensive Statewide Tobacco Prevention and Control Communication Services

A Pre-Proposal conference will be held on November 4, 2022 at 10: 00 am EST Local Time via Teleconference.

Please return this form by October 31,2022 at 2:00 pm EST Local Time advising whether or not your firm plans to attend. The completed form should be returned via e-mail to the Procurement Officer at the contact information below:

Dana Wright
Prevention and Health Promotion Administration (PHPA)
E-mail: dana.wright@maryland.gov

Please indicate:

| |
|--|
| <p>Yes, the following representatives will be in attendance.</p> <p>Attendees (Check the RFP for limits to the number of attendees allowed):</p> <ol style="list-style-type: none">1.2.3. <p>No, we will not be in attendance.</p> |
|--|

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) Begin with the Excel spreadsheet tab labeled "Contract Period One" and continue through "Contract Period Five". All data inputted on these spreadsheets will auto-populate to the "Financial Proposal Summary".
- B) Complete, review, and provide the required electronic signature and date on the "Financial Proposal Summary" Excel spreadsheet.
- C) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- D) 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.
- E) All calculations shall be rounded to the nearest cent, e.g., .344 shall be .34 and .345 shall be .35.
- F) 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**.
- G) 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.
- H) 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.
- I) 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. COMAR may be searched here: <http://www.dsd.state.md.us/COMAR/ComarHome.html>
- J) 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.
- K) 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.

- L) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the Department does not guarantee a minimum or maximum number of units or usage in the performance of the Contract.
- M) 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 “OCMP#23-19696 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.

Attachment D. Minority Business Enterprise (MBE) Forms

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

This solicitation includes a Minority Business Enterprise (MBE) participation goal of 10% percent and no subgoals.

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

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

This solicitation includes a VSBE participation goal of 1%.

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

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

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

This solicitation does not require a HIPAA Business Associate Agreement.

Attachment K. Mercury Affidavit

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

Attachment L. Location of the Performance of Services Disclosure

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 (MDH)

“Comprehensive Statewide Tobacco Prevention and Control Communication Services”

OCMP 23-19696

THIS CONTRACT (the “Contract”) is made this ____ day of _____, 20__ by and between _____ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND <<ISSUINGAGENCYNAME>> (“MDH” or the “Department”).

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 (eMMA Number).
- 1.3 “Financial Proposal” means the Contractor’s Best and Final Offer (BAFO)] dated _____.
- 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 Services: **Comprehensive Statewide Tobacco Prevention and Control Communication Services**, Solicitation # **OCMP# 23-19696**, 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 Department following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue until five (5) years thereafter ("Initial Term").
- 3.2 In its sole discretion, the Department shall have the unilateral right to extend the Contract for one (1) successive (one) 1 year renewal options (each a "Renewal Term") at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s).
- 3.3 The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.4 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 Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2), 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 Department'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 Department 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 Department 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 Department or licensed by the Department from third parties, including all information provided by the Department 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 Department 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 Department, 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 Department's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Department 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.

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 Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy 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 Department 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.

30.2 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.

30.3 The Contractor shall include the language from 30.1, or similar clause approved in writing by the Department, in all subcontracts.

31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
 - (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
 - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due 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 Department 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 Department and the Contractor in any other proceeding; or
 - (c) Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor.
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.Verification shall include a review of:
 - i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.

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

32. Living Wage

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

33. Use of Estimated Quantities

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

34. 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 Department 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 Department 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:

Dana Moncrief
Director, Center for Tobacco Prevention and Control
Maryland Department of Health
201 W. Preston Street
Baltimore, MD 21201
E-Mail: dana.moncrief@maryland.gov

With a copy to:

Jim Beauchamp
Procurement Officer
Maryland Department of Health
201 W. Preston Street, Room 416A
Baltimore, MD 21201
E-Mail: 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. Liquidated Damages for MBE

- 39.1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.
- 39.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): **\$35.00 per day** per day until the monthly report is submitted as required.
 - (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): **\$85.00 per** MBE subcontractor.
 - (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific

MBE firm and the dollar value of the work performed by that MBE firm for the Contract.

- (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- (e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: **\$100.00 per day** until the undisputed amount due to the MBE subcontractor is paid.

39.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

40. 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.

41 Federal Department of Health and Human Services (DHHS) Exclusion Requirements

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

42 Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law

HIPAA clauses do not apply to this Contract.

43. Hiring Agreement

43.1 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.

- 43.2 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.

44. 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.

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

Attachment O. DHS Hiring Agreement

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

Attachment P. Conflict of Interest Affidavit Services Performed for Tobacco Industry

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title] _____
and the duly authorized representative of [name of business] _____

_____ and that I
possess the legal
authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. AFFIRMATION THAT NO PRIOR SERVICES HAVE BEEN PERFORMED FOR OR ON BEHALF OF THE TOBACCO INDUSTRY OR RELATED ENTITIES

BY CHECKING THIS BOX I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101 (b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, or any of its employees has ever performed services directly or indirectly, for or on behalf of a tobacco product manufacturer, distributor, wholesaler, marketer, or any other entity which is part of the tobacco industry or related thereto.

C. AFFIRMATION THAT SOME PRIOR SERVICES MAY HAVE BEEN PERFORMED FOR OR ON BEHALF OF THE TOBACCO INDUSTRY OR RELATED ENTITIES

BY CHECKING THIS BOX I ACKNOWLEDGE THAT I AM UNABLE TO MAKE THE AFFIRMATION SET FORTH IN "B" ABOVE, AND IN ITS' PLACE, I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101 (b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, or any of its employees may have performed services in the past, either directly or indirectly, for or on behalf of a tobacco product manufacturer, distributor, wholesaler, marketer, or any other entity which is part of the tobacco industry or related thereto. To the best of my knowledge, information, and belief, and after due diligence in attempting to ascertain such knowledge and information, the listing of services performed for past and current tobacco industry or related entities which I have attached to this affidavit and make a part hereof by reference, constitutes the complete record of such services. I understand that this listing shall include for each instance of service, the following information: (1) dates services performed; (2) name of entity or person for which services were performed; (3) descriptive name of project or service provided; (4) brief description of services provided; (5) names of key personnel involved in delivering services; and (6) total remuneration received for providing such services. If ongoing services were provided as opposed to discrete projects, each calendar year during which such services were provided shall be treated as distinct projects.

When any item of information is lacking, I understand that I shall so state in the listing and describe what attempts were made to find the missing information.

D. AFFIRMATION THAT NO SERVICES WILL BE PERFORMED FOR THE TOBACCO INDUSTRY OR RELATED ENTITIES DURING THE TERM OF CONTRACT AWARD

I FURTHER AFFIRM THAT:

Absent the express written consent of the Maryland Department of Health, neither I, the above business (as is defined in Section 16-101 (b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, or any of its employees will perform services either directly or indirectly for or on behalf of the tobacco industry or related entities during the term of any contract awarded as a result of this RFP or any extensions or renewals thereof.

E. ACKNOWLEDGMENT

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

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

Date: _____ By: _____
(Authorized Representative and Affiant)

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. Branding - The marketing practice of creating a name, symbol or design that identifies and differentiates a product from other products.
- D. 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).
- E. CDC - Centers for Disease Control and Prevention, federal entity.
- F. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
- G. Contract – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
- H. Contract Commencement - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section I .4.
- I. 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 Department may change the Contract Monitor at any time by written notice to the Contractor.
- J. Contract Period - The period of time for which the Contractor must hold its price as indicated on Attachment B: Financial Proposal Form Solicitation 17-17355 for the services provided in response to this RFP.
- K. Contractor – The selected Offeror that is awarded a Contract by the State.
- L. 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.
- M. Creative - The body of work that while used in original form, it can encompass total bodies of work the Contractor produces, which is called "Creative" and is always used in singular form, as is referenced most often in this document.
- N. CTPC - Center for Tobacco Prevention and Control, the issuing office for this RFP.

- O. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
- P. Department or MDH – Maryland Department of Health.
- Q. Earned Media - Coverage of a story without payment for media placements. Media campaign(s) messages shall be further disseminated through outreach to state and local partners and the media to generate news coverage. Such coverage is called "earned media" because it is achieved through development of materials (e.g., letters to the editor, op-eds, etc.), working with reporters (e.g., by holding press conferences, proactively contacting reporters), and expending resources (although not directly for message placement in stories). Earned media can also be gained through public relations, by the relationships and activities built with media gatekeepers and stakeholders.
- R. eMMA – eMaryland Marketplace Advantage (see RFP **Section 4.2**).
- S. 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.
- T. Health disparities - preventable differences in the burden of disease, injury, violence, or opportunities to achieve optimal health that are experienced by socially disadvantaged populations.
- U. Health equity - every person has the opportunity to “attain his or her full health potential” and no one is “disadvantaged from achieving this potential because of social position or other socially determined circumstances.”
- V. Information System – A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
- W. Information Technology (IT) – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.
- X. 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**.
- Y. 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.
- Z. MCRC - Media Campaign Resource Center. The Media Campaign Resource Center provides tobacco- control organizations with tools for finding, learning about, and ordering CDC-licensed tobacco counter- advertisements. The MCRC collection includes television, radio, print, and out-of-home ads as well as Earned Media and collateral materials in a variety of formats.
- AA. Media Buy - The purchase of advertisement space and time in various media, including, but not limited to, TV, radio, billboard, transit, and online platforms.
- BB. 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.

- CC. 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 – keyword: State Holidays.
- DD. 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.
- EE. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
- FF. Offeror – An entity that submits a Proposal in response to this RFP.
- GG. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**), and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
- HH. Proposal – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
- II. Request for Proposals (RFP) – This Request for Proposals issued by the Department of Health (Department), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
- JJ. 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.
- KK. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
- LL. 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.
- MM. 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.

- NN. 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.
- OO. State – The State of Maryland.
- PP. Tag - Information identifying an organization sponsoring an ad or a local agency associated with a sponsor. A tag can include contact information such as a telephone number, logos, or Web site. May also be seen in this document as "tagging".
- QQ. Technical Safeguards – The technology and the policy and procedures for its use that protect State Data and control access to it.
- RR. 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.
- SS. 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.
- TT. Traditional Media - Referring to tools such as television, radio, print newspaper, and out of home (transit and billboards) used to broadcast information before the arrival of digital and social media channels.
- UU. Upgrade - A new release of any component of the Solution containing major new features, functionality and/or performance improvements.
- VV. Value-Added Media - Referring to additional media leveraged as a match for paid media placements in television, radio, print, and internet buys. Value-added media can include but is not limited to, bonus buys, bonus billboard announcements, print and broadcast public service announcements, and ads posted on corresponding websites of TV and radio stations.
- WW. 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.

Appendix 2 Offeror Information Sheet

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf.

Appendix 3 Additional Background and Key Resources

A. Impact of Tobacco Use

Everyone deserves the opportunity to live a healthy life. However, some Marylanders are more exposed to tobacco marketing than others. People with behavioral health conditions, those with lower incomes, and people of color are some of the communities facing higher exposure to advertising for addictive tobacco products like cigarettes, cigars, chew, and e-cigarettes. People from these communities have a higher risk of dying from tobacco-related illnesses. We must share the facts about addictive tobacco products until everyone has a fair chance to live a healthy life.

Tobacco use remains the most common cause of preventable death and disease in the United States. More than 480,000 Americans die each year from smoking-related causes.⁹ Almost 90 percent of these smokers started using tobacco products before age 18, and many experience life-changing health problems at a relatively early age. For every one smoking-related death, about 30 individuals are living with one or more serious illnesses caused by smoking. For every adult who dies prematurely from smoking-related causes, there are more than two young people who become “replacement smokers”. If current trends continue, 5.6 million youth now under the age of 18 will ultimately die prematurely in their adult lives from smoking.¹⁰

Cigarette smoke contains over 7,000 chemicals, with at least 70 known to cause cancer. The 2014 Surgeon General’s report links Type 2 diabetes, rheumatoid arthritis, stroke, liver and colorectal cancers to the already long list of diseases caused by smoking and secondhand smoke.¹¹ Tobacco companies continue to increase the addictiveness and appeal of tobacco products, spending roughly \$22.5 million *per day* promoting and marketing these products.¹² Despite the known dangers, nearly one in seven American adults use tobacco products, and every day over 300 youth under 18 become daily smokers.¹³

In addition to the health burden and mortality caused from tobacco use, these addicting products also incur large economic tolls. The number of Maryland adults using tobacco and/or suffering from cancers and disease caused by smoking has decreased. However, total medical expenditures to treat these conditions has continued to grow. The cost of medical treatment in 2000 was estimated at \$1.4 billion. It has grown to an estimated annual \$2.7 billion spent treating cancer and other diseases caused by tobacco.¹⁴

B. Tobacco Use in Maryland (MD)

Due to comprehensive tobacco control programs, strong policies, and cessation services, tobacco use in MD has decreased dramatically since 2000. As great strides have been made nationally and statewide,

⁹ U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

¹⁰ U.S. Department of Health and Human Services. The Health Consequences of Smoking.

¹¹ U.S. Department of Health and Human Services. The Health Consequences of Smoking.

¹² Centers for Disease Control and Prevention, Smoking and Tobacco Use, Fast Facts, Costs and Expenditures. Retrieved May 6, 2022 from https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm#beginning

¹³ Centers for Disease Control and Prevention, Smoking and Tobacco Use, Fast Facts, Costs and Expenditures.

¹⁴ Maryland Department of Health. Monitoring Changing Tobacco Use Behaviors: 2000–2016. Summary Report. Baltimore: Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, Center for Tobacco Prevention and Control, December 2018.

many believe that the tobacco epidemic has been ‘solved. However, 7,500 adults in MD still die each year due to tobacco-related causes, and hundreds of thousands more suffer from tobacco-related diseases such as COPD, emphysema and cancers.¹⁵ Non-smokers –especially young children and even pets – are affected by tobacco through exposure to toxins in secondhand and third hand smoke.

MD Youth Tobacco Use

Youth and young adults encounter tobacco marketing in retail stores, on social media, and in their neighborhoods. The developing brain is particularly sensitive to nicotine, making it easier for youth people to become addicted to tobacco products. There has been a substantial decline in tobacco use by youth in MD over the last 20 years. In the 2018-2019 school year, the prevalence of youth cigarette smoking hit an all-time low of 5.0 percent, down from 23.7 percent in 2000-2001. Youth cigar use decreased from 13.0 percent in 2000-2001 to 6.0 percent in 2018-2019. Youth tobacco use initiation also decreased from 17.9 percent in 2012-2013 to 6.5 percent in 2018-2019.¹⁶

However, youth use of tobacco changes based on location and community. Use of cigarettes among high school youth varies considerably among MD’s 24 major political jurisdictions, from a low of 2.7 percent in Howard County to a high of 13.7 percent in Garrett County.¹⁷ Youth who identify as lesbian, gay, or bisexual are more likely to use tobacco than heterosexual peers; youth who are transgender use tobacco at higher rates than their cisgender peers.¹⁸ Among racial and ethnic groups, youth who are American Indian/Alaska Native, Native Hawaiian/Pacific Islander, or multiracial/Hispanic are most likely to use tobacco products.¹⁹

Despite a decline in cigarette use among youth, emerging tobacco products threaten to addict a new generation of youth. Electronic smoking devices (ESDs) are a diverse and ever-changing group of products. While often promoted as containing harmless water vapor, the emissions inhaled by the user, and by those around the user, are an aerosol – small droplets of various chemicals and in some instances particles of metal.²⁰ Emerging research shows that ESD use is associated with serious health risks, including nicotine addiction and inhalation of ultrafine particles, heavy metals, and cancer-causing chemicals.²¹ The EVALI (electronic cigarette, or vaping, product use–associated lung injury) outbreak of 2019-2020 demonstrated how severe illnesses can result from inhaling untested and unknown substances into the lungs. Furthermore, youth who use ESDs may be more likely to use other tobacco products like

¹⁵ Campaign for Tobacco Free Kids. The Toll of Tobacco in Maryland. Retrieved May 6, 2022 from http://www.tobaccofreekids.org/facts_issues/toll_us/maryland

¹⁶ Maryland Department of Health. Youth Risk Behavior Survey/Youth Tobacco Survey (YRBS/YTS) 2018-2019. <https://phpa.health.maryland.gov/ccdpc/Reports/Pages/YRBS2018.aspx>

¹⁷ Maryland Department of Health. Youth Risk Behavior Survey/Youth Tobacco Survey (YRBS/YTS) 2018-2019.

¹⁸ Maryland Department of Health. Monitoring Changing Tobacco Use Behaviors: 2000–2016. Summary Report.

¹⁹ Maryland Department of Health. Monitoring Changing Tobacco Use Behaviors: 2000–2016. Summary Report.

²⁰ Centers for Disease Control and Prevention. Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults. Retrieved May 6, 2022 from https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html

²¹ Centers for Disease Control and Prevention. Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults

cigarettes.²² ESDs are frequently marketed as smoking cessation devices, but these devices have not been approved by the Food and Drug Administration (FDA) for that purpose.²³

Maryland youth are using emerging tobacco products at alarming rates. In 2021, an online survey of Maryland high school students ages 14 to 19 found that 5% used smokeless tobacco, 6% used cigars, and 7% used cigarettes in the last 30 days. Nineteen percent (19%) of surveyed students had ever used e-cigarettes, and 11% had used e-cigarettes in the last 30 days. The most common reasons for using e-cigarettes included curiosity, having a friend or family member use them, and feeling anxious, stressed, or depressed.²⁴ ESDs appeal to youth through social media marketing and an almost infinite variety of flavors, including those that mimic candy, fruit, and dessert. Among youth who have ever used an ESD, 96 percent usually use a flavoring other than tobacco.²⁵

The use of other tobacco products, such as little cigars and cigarillos, has decreased but remains concerning. Youth are much more likely than adults to use multiple tobacco products.²⁶ Little cigars and cigarillos are offered in attractive fruit and candy flavors and are often sold as singles (decreasing the price point), making them attractive, affordable, and accessible to youth.²⁷ Across the state, 6 percent of youth report cigar use. Smokeless tobacco is also a concern; 4.6 percent of youth reported smokeless tobacco use in the 2018-2019 school year.²⁸ Many people believe cigar products and smokeless tobacco products are less harmful than cigarettes, but they are just as addictive and toxic as cigarettes.

Many also believe that hookah, or water pipe, is another less harmful alternative to cigarettes. However, during a 60-minute hookah session, smokers are exposed to about 100 times the volume of smoke inhaled from a single cigarette, and the tobacco used in a hookah contains harmful carcinogens and nicotine.²⁹ Youth and especially young adults are attracted to these products because of flavored tobacco and marketing hookah as ‘exotic’. Tobacco companies continue to introduce new products that may be appealing to youth, including snus, oral nicotine pouches, and ‘heat-not-burn’ products. For youth people, cigarette smoking is highly associated with risk behaviors including underage use of alcohol, marijuana, abuse of prescription drugs, and use of other illegal drugs.³⁰ The younger a person starts smoking, the more likely he or she is to engage in these risk behaviors.

Youth Perception of Tobacco Use

²² National Academies of Sciences, Engineering, and Medicine 2018. Public Health. Consequences of E-Cigarettes. Washington, DC: The National Academies Press. <https://doi.org/10.17226/24952>.

²³ Centers for Disease Control and Prevention. About Electronic Cigarettes (E-Cigarettes). Retrieved May 6, 2022 from https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html#e-cigarettes-help-adults-quit-cigarettes

²⁴ 2021 Maryland Youth Pandemic Behavior Survey (YPBS-21) Detailed Report. Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, Center for Tobacco Prevention and Control. October 2021. <https://health.maryland.gov/phpa/ohpetup/Documents/2021%20Youth%20Pandemic%20Behavior%20Survey%20Detailed%20Report.pdf>

²⁵ Maryland Department of Health. Youth Risk Behavior Survey/Youth Tobacco Survey (YRBS/YTS) 2018-2019.

²⁶ Maryland Department of Health. Monitoring Changing Tobacco Use Behaviors: 2000–2016. Summary Report.

²⁷ Maryland Department of Health. Maryland Comprehensive Cancer Control Plan 2021-2025. Baltimore: Maryland Department of Health, Prevention and Health Promotion Administration, Cancer and Chronic Disease Bureau, January 2021. https://phpa.health.maryland.gov/cancer/cancerplan/SiteAssets/Pages/publications/Cancer-MD-Maryland_FINAL%20-1.pdf

²⁸ Maryland Department of Health. Maryland Comprehensive Cancer Control Plan 2021-2025.

²⁹ Centers for Disease Control and Prevention, Hookahs. Retrieved May 6, 2022 from http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/index.htm#info

³⁰ Maryland Department of Health. Monitoring Changing Tobacco Use Behaviors: 2000–2016. Summary Report.

Since 2000, youth attitudes have shown an increasingly positive view of tobacco use. The positive perceptions associated with youth smoking are the highest they have ever been since MD began collecting this data in 2000. Among youth who do not smoke, the belief that smoking helps youth ‘fit in’ or ‘look cool’ increased by 86.7 percent from 2000 to 2019, and the belief that smokers have more friends than nonsmokers increased by 99.5 percent since 2000. Among youth who smoke, the belief that smoking helps youth ‘fit in’ or ‘look cool’ increased by 70.3 percent since 2000; similarly, the belief that smokers have more friends than nonsmokers increased by 62.6 percent since 2000.³¹

One tobacco control goal is to decrease positive perceptions of tobacco use among underage youth. These perceptions arise from portrayals of tobacco use in movies, social media, advertising, as well as peer and adult role models. Without messaging that counters these often for-profit portrayals of tobacco use, underage MD youth are left only with messages about the dangers of tobacco use as part of school curricula. CDC’s *Best Practice for Comprehensive Tobacco Control Programs* recommends a comprehensive approach – school-based programming must be combined with community interventions, policy implementation, and mass-reach health communication interventions in order to make a meaningful impact on decreasing youth tobacco use initiation.³²

Underage Youth Tobacco Purchase

Federal law prohibits tobacco sales to anyone under 21. This policy includes ESDs and their component parts. Retailers are required to check identification for everyone under 30.

Despite this policy, youth and young adults under age 21 report purchasing tobacco products from retailers. Youth obtain cigarettes by direct purchase from a store, giving another person money to make the purchase, borrowing, or theft.³³ Among high school students who tried to buy cigarettes in the last 30 days, only 25.7 percent reported that someone refused the sale because of their age.³⁴ Asking for photo identification reduces underage youth access to tobacco. However, a substantial proportion of youth who were asked for photo identification were still sold tobacco. The emergence of ESDs has expanded avenues for underage purchase, with many youth and young adults reporting making purchases through online retailers and social media.³⁵

In May 2016, a rule was finalized extending the FDA’s authority to all tobacco products, including e-cigarettes, cigars, hookah tobacco and pipe tobacco, among others.³⁶ Beginning in August 2016, the following provisions regarding youth access went into effect nationwide: requiring age verification by photo ID; banning the sale of covered tobacco products in vending machines (unless in an adult-only facility); and banning the distribution of free samples. The rule also provides the FDA with the authority to expand their provisions moving forward.

³¹ Maryland Department of Health. Youth Risk Behavior Survey/Youth Tobacco Survey (YRBS/YTS) 2018-2019.

³² Centers for Disease Control and Prevention. Best Practices for Comprehensive Tobacco Control Programs—2014. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.
http://www.cdc.gov/tobacco/stateandcommunity/best_practices

³³ Maryland Department of Health. Monitoring Changing Tobacco Use Behaviors: 2000–2016.

³⁴ Maryland Department of Health. Youth Risk Behavior Survey/Youth Tobacco Survey (YRBS/YTS) 2018-2019.

³⁵ Campaign for Tobacco Free Kids. Where Do Youth Get Their E-Cigarettes? Accessed May 6, 2022 from <https://www.tobaccofreekids.org/assets/factsheets/0403.pdf>

³⁶ U.S. Food and Drug Administration. (2016, May 10.) Extending Authorities to All Tobacco Products, Including E-Cigarettes, Cigars, and Hookah. Retrieved May 6, 2022 from <https://www.federalregister.gov/documents/2016/05/10/2016-10685/deeming-tobacco-products-to-be-subject-to-the-federal-food-drug-and-cosmetic-act-as-amended-by-the>

MD Adult Tobacco Use (Age 21 and Older)

More than 865,000 MD adults currently use one or more types of tobacco. Cigarettes remain the most popular product, with 12.5 percent of MD adults reporting use, followed by cigars (4.6 percent), ESDs (4.3 percent), smokeless tobacco (2.0 percent) and other tobacco products (1.4 percent).³⁷

While cigarette use overall has declined in recent years, certain populations are exposed to more tobacco advertising and marketing, leading to higher rates of use than the general population. Marylanders who live in rural communities, those with lower socioeconomic status, LGBTQ+ communities, and racial and ethnic minorities experience higher rates of tobacco use and tobacco-related illness and death. People with behavioral health conditions are much more likely to use tobacco. About one-third of adults receiving mental health services use cigarettes, and almost 70 percent of adults receiving substance use services smoke cigarettes. Black and African American adults in MD are less likely to use tobacco than White adults but die from lung and bronchus cancers at similar rates. Just 8.9 percent of college graduates currently use tobacco as compared to 28.4 percent of those without a high school diploma.³⁸

In 2018, the majority of current smokers in MD stated that they wanted to stop. Approximately 60 percent had attempted to quit.³⁹ The Maryland Tobacco Quitline, 1-800-QUIT-NOW, has consistently seen significant increases in callers in response to campaigns that educate smokers on the benefits of quitting sooner than late, and promote the availability of evidence-based aids to increase the likelihood of a successful quit attempt.

C. Comprehensive Statewide Tobacco Control Program

The Center for Tobacco Prevention and Control (CTPC) within the Maryland Department of Health oversees a comprehensive statewide tobacco control program. The CTPC structure is based upon the five core components in the Centers for Disease Control and Prevention (CDC) *Best Practices for Comprehensive Tobacco Control Programs (2014)* – (1) State and Community Interventions, (2) Mass-Reach Health Communication Interventions, (3) Cessation Interventions, (4) Surveillance and Evaluation, and (5) Infrastructure, Administration and Management.⁴⁰

CTPC's overall goals include (1) prevent initiation among youth and young adults, (2) promote quitting among adults and youth, (3) eliminate exposure to secondhand smoke, and (4) identify and eliminate tobacco-related disparities among population groups. To reach its goals, MD has created an infrastructure that encompasses:

- Two statewide resource centers
 - Legal Resource Center for Public Health Policy
www.law.umaryland.edu/programs/publichealth/index.html
 - Maryland Tobacco Control Resource Center (Maryland TCRC) <https://marylandtcrc.org/>
- Maryland Tobacco Quitline, 1-800-QUIT-NOW, (www.smokingstopshere.com)
- Local health department tobacco control programs in MD's 24 major political jurisdictions
- Network of statewide partners

³⁷ Maryland Department of Health. Maryland Comprehensive Cancer Control Plan 2021-2025.

³⁸ Maryland Department of Health. Maryland Comprehensive Cancer Control Plan 2021-2025.

³⁹ Maryland Department of Health. Maryland Comprehensive Cancer Control Plan 2021-2025.

⁴⁰ U.S. Food and Drug Administration. (2016, May 10.). Extending Authorities to All Tobacco Products, Including E-Cigarettes, Cigars, and Hookah.

- Community-based programming and youth engagement activities
- Health communications activities
- Support for health systems to incorporate smoking cessation counseling

Statewide and nationwide partners promote and educate residents and policymakers about the importance of tobacco control initiatives, which has resulted in several key policies:

- Increase in cigarette tax to \$3.75/pack;
- Add a 12 percent sales tax to ESDs and 60 percent sales tax to ESD liquid 5 ml or less;
- Prohibit the sale of tobacco products, including ESDs, to anyone under the age of 21;
- Institute the Clean Indoor Air Act which prohibits smoking in virtually all public places, including bars and restaurants;
- Prohibit smoking through local-level policies at worksite outdoor campuses, within multi-unit housing complexes, and at parks and beaches;
- Institute smoke-free policies at several college/university campuses;
- The Family Prevention and Tobacco Control Act, enacted on June 22, 2009 and amended on May 5, 2016, gives unprecedented authority to the FDA to regulate all tobacco products; and
- The Child Nicotine Poisoning Prevention Act of 2015 requires all liquid nicotine containers used for ESDs and other vaping devices to be sold in child-resistant packaging.

As part of a comprehensive tobacco control program, the CDC recommends including mass-reach health communication interventions, as these are “powerful tools for preventing the initiation of tobacco use, promoting and facilitating cessation, and shaping social norms related to tobacco use.”⁴¹ The Community Guide for Preventive Services recommends mass-reach health communication campaigns as an evidence-based strategy.⁴² Community-based education in conjunction with health communications campaigns reinforces messaging, reaching audiences at both a global and community level to increase awareness of an issue and promote behavior change. Traditional mass-reach media avenues (TV, radio, print, and out-of-home) continue to be an effective way to reach residents and providing supporting messages via social media serves to “expand reach, foster engagement, and increase access to science-based health messages.”⁴³

Mass-Reach Health Communications

Within the CDC *Best Practices*, mass-reach health communication interventions are noted as an essential program component for preventing the initiation of tobacco use, promoting and facilitating cessation, and shaping social norms related to tobacco use.⁴⁴ Media issue outreach and education is used to shape public debate, encourage communities to rethink norms, and educate decision makers in an effort to build support for effective tobacco control action. Effective mass-reach health communication avenues include television, radio, print and digital advertising, out-of-home (transit, billboards), and social media. Earned

⁴¹ Centers for Disease Control and Prevention. Best Practices for Comprehensive Tobacco Control Programs—2014.

⁴² Guide to Community Preventive Services. Reducing Tobacco Use and Secondhand Smoke Exposure: Mass-reach Health Communication Interventions. <https://www.thecommunityguide.org/findings/tobacco-use-mass-reach-health-communication-interventions>

⁴³ U.S. Department of Health and Human Services. The Health Communicator’s Social Media Toolkit. Centers for Disease Control and Prevention, Office of the Associate Director for Communication, 2011. Retrieved from http://www.cdc.gov/socialmedia/tools/guidelines/pdf/socialmediatoolkit_bm.pdf

⁴⁴ Centers for Disease Control and Prevention. Best Practices for Comprehensive Tobacco Control Programs—2014.

media efforts include press releases/conferences, local events, health promotion activities (such as working with health care professionals), promoting Quitlines and free nicotine replacement therapy, and reducing or replacing tobacco industry sponsorship or promotions.

The CDC *Best Practices* also states that “an effective state-level, mass-reach health communication intervention delivers strategic, culturally appropriate, and high-impact messages through sustained and adequately funded campaigns that are integrated into a comprehensive state tobacco control program.”⁴⁵ The Community Preventive Services Task Force recommends mass-reach health communication on the basis of strong evidence of effectiveness for decreasing the prevalence of tobacco use, increasing cessation and use of available cessation services (e.g., Quitlines), and decreasing initiation of tobacco use among young people.⁴⁶

For an overall campaign to be effective, it is estimated that advertisements should reach 75 percent to 85 percent of the target audience each quarter of the year, with a minimum average per quarter of 1,200 gross rating points (GRPs) during the introduction of a campaign and a minimum average of 800 GRPs per quarter thereafter.⁴⁷ GRPs track a campaign’s total reach and frequency. A campaign should run at least 3 to 6 months to achieve awareness of the issue, 6 to 12 months to influence attitudes, and 12 to 18 months to influence behavior.

In addition to paid media, the CDC *Best Practices* states that “comprehensive Earned Media efforts are an essential part of the strategic plan. Additionally, each major campaign element and activity should have an Earned Media component. Although paid media benefits from the ability to control the message and the placement, news media coverage is important because it can help set the public agenda, influence what people are talking about, and further broaden and add credibility to paid messages.”⁴⁸

D. Key MDH and National Resources

Center for Tobacco Prevention and Control:

https://health.maryland.gov/phpa/ohpetup/Pages/tob_home.aspx

Maryland Comprehensive Cancer Control Plan

https://phpa.health.maryland.gov/cancer/cancerplan/SiteAssets/Pages/publications/Cancer-MD-Maryland_FINAL%20-1.pdf

Maryland Department of Health. *Monitoring Changing Tobacco Use Behaviors: 2000 -2016.* Baltimore: Maryland Department of Health, Prevention and Health Promotion Administration, Center for Tobacco Prevention and Control, May 2018.

https://phpa.health.maryland.gov/ohpetup/Documents/2000-2016%20Summary%20Report_Monitoring%20Changing%20Tobacco%20Use%20Behaviors.pdf

Maryland Smoke-Free Living

<http://mdsmokefreeliving.org>

⁴⁵ Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs—2014.*

⁴⁶ Guide to Community Preventive Services. *Reducing Tobacco Use and Secondhand Smoke Exposure: Mass-reach Health Communication Interventions*

⁴⁷ Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs—2014.*

⁴⁸ Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs—2014.*

Maryland Tobacco Quitline, 1-800-QUIT-NOW

www.smokingstopshere.com

Maryland Youth Tobacco Risk Behavior Survey

<https://phpa.health.maryland.gov/ohpetup/Pages/YTRBS.aspx>

Responsible Tobacco Retailer Program

www.NoTobaccoSalesToMinors.com

The Vape Experiment

www.TheVapeExperiment.com

Campaign for Tobacco Free Kids

<http://www.tobaccofreekids.org/>

Centers for Disease Control and Prevention: Best Practices for Comprehensive Tobacco Control Programs, 2014

http://www.cdc.gov/tobacco/stateandcommunity/best_practices/

Centers for Disease Control and Prevention: Designing and Implementing an Effective Tobacco Counter-Marketing Campaign

<https://www.cdc.gov/tobacco/stateandcommunity/counter-marketing/index.htm>

Centers for Disease Control and Prevention: Resources & Style Guides for Framing Health Equity & Avoiding Stigmatizing Language

<https://www.cdc.gov/healthcommunication/Resources.html>

Centers for Disease Control and Prevention, Media Campaign Resource Center

<https://nccd.cdc.gov/mrc/index.aspx>

Centers for Disease Control and Prevention, Office on Smoking and Health

<http://www.cdc.gov/tobacco/about/>

Centers for Disease Control and Prevention: Tips from Former Smokers

<http://www.cdc.gov/tobacco/campaign/tips/>

Centers for Disease Control and Prevention, Best Practices Users Guide, Health Equity in Tobacco Prevention and Control.

<https://www.cdc.gov/tobacco/stateandcommunity/best-practices-health-equity/pdfs/bp-health-equity.pdf>

ChangeLab Solutions, Framing Tobacco Disparities

<https://www.changelabsolutions.org/product/framing-tobacco-disparities>

Guide to Community Preventive Services: Tobacco Use Prevention and Control

<https://www.thecommunityguide.org/topic/tobacco>

The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General, 2014

https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf

National Academies of Sciences, Engineering, and Medicine: Public Health Consequences of E-Cigarettes

<https://www.nap.edu/catalog/24952/public-health-consequences-of-e-cigarettes>

National Council for Behavioral Health: Tobacco Cessation

<https://www.thenationalcouncil.org/topics/tobacco-cessation/>

Truth Initiative (Formerly Legacy Foundation)

<http://truthinitiative.org/>

U.S. Department of Housing and Urban and Development (HUD): Smoke-Free Public Housing and Multi-Family Properties

http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/smokefree

U.S. Food and Drug Administration (FDA) – Center for Tobacco Products

<https://www.fda.gov/tobacco-products>

Appendix 4 Expectations for Traditional and Social and Digital Media

Tobacco Control Mass Media Message Development

General:

- Develop content for multiple platforms
- Create integrated communications plan and editorial calendar
- Recommend campaign slogan as needed
- Produce mix of television, radio and digital ads, social media posts, press releases, website content, etc.

Creative and Design Support

- Design branding and visual identity for the campaign
- Create suite of campaign assets and collateral materials, including traditional and digital assets
- Develop website content as needed

Paid Media/Advertising

- Develop plan to use paid media to reach target audiences
- Utilize television, radio, cable, streaming services, digital platforms and/or display advertising for most effective message distribution
- Provide cost estimates for paid media/advertising
- Demonstrate ability to execute media buy
- Perform and provide analytics to determine effectiveness of media buy
- Maximize use of free and low-cost advertising and public service announcements

Social Media

- Develop social media campaign, including suggested posts, graphics and video
- Perform and provide analytics to determine effectiveness and social media trends

Earned Media

- Write press releases and conduct direct outreach to media outlets to encourage positive stories about the campaign, its objectives, and goals
- Engage with local and statewide media outlets to ensure accurate coverage
- Provide timely summaries of earned media coverage