

ATTACHMENTS

Pharmacy Benefits Plan Management Services and Pharmacy Purchasing Pool Management

In accordance with State Procurement Regulations:

ATTACHMENT A is the State's contract. It is provided with the RFP for informational purposes and is not required at proposal submission time. However, it must be completed, signed and returned by the selected Offeror to the Procurement Officer upon notification of proposed contract award.

ATTACHMENT B - Bid/Proposal Affidavit. This form must be completed and submitted with the Offeror's technical proposal.

ATTACHMENT C – Contract Affidavit. It is not required at proposals submission time. It must be submitted by the selected Offeror to the Procurement Officer within 5 working days of notification of proposed award.

ATTACHMENT D – Minority Business Enterprise Participation

ATTACHMENTS D-1 and D-2 – MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule. These forms must be submitted with the Offeror's technical proposal.

ATTACHMENTS D-3 and D-4 – Other MBE forms. These must be submitted to the Procurement Officer by the selected Offeror within 10 working days of notification of proposed contract award.

ATTACHMENTS D-5 and D-6 – Other MBE forms. These are submitted monthly.

ATTACHMENT E – 100-Character File Layout.

ATTACHMENT F – EFT Registration Request Form.

ATTACHMENT G – Claims Data Record Layout

ATTACHMENT H – NAIC 120-1 Model COB Contract Provisions.

ATTACHMENT I – Confidentiality and Non-Disclosure Agreement.

ATTACHMENT J – Technical Proposal

ATTACHMENT K – Financial Proposal

ATTACHMENT L – Living Wage Requirements for Service Contracts

ATTACHMENT L-1 – Affidavit of Agreement

ATTACHMENT M – Standard Reporting Formats

ATTACHMENT N – Confidential Documents

ATTACHMENT O – Pre-Proposal Conference Response Form

ATTACHMENT P – Md. Ann. Code, Insurance Art. § 15-1623 and § 15-1624. This is a list of PBM requirements and disclosures to clients (plans) before entering into a contract.

Attachment A – Contract

PHARMACY BENEFITS PURCHASING POOL MANAGEMENT AND PHARMACY BENEFITS ADMINISTRATION SERVICES CONTRACT

THIS CONTRACT is made this ____ day of _____, 2010 by and between _____ and the State of Maryland, acting through the Department of Budget and Management.

IN CONSIDERATION of the promises and the covenants contained herein, the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

1. Definitions

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

- 1.1. “Contract” means this Contract for Pharmacy Benefits Purchasing Pool Management and Pharmacy Benefits Administration Services Contract.
- 1.2. “Contractor” means _____, a _____ whose principal business address is _____.
- 1.3. “Contract Manager” means the individual identified in section 1.7 of the RFP or a successor designated by the Department.
- 1.4. “Department” means the Maryland Department of Budget and Management.
- 1.5. “Financial Proposal” means the Contractor’s Financial Proposal dated _____, 2010.
- 1.6. “Procurement Officer” means the individual identified in section 1.6 of the RFP or a successor designated by the Department.
- 1.7. “RFP” means the Request for Proposals for Pharmacy Benefits Purchasing Pool Management and Pharmacy Benefits Administration Services Contract, No. F10B0400006, dated December 8, 2009.
- 1.8. “State” means the State of Maryland.
- 1.9. “Technical Proposal” means the Contractor’s Technical Proposal, dated _____ 2010.

2. Scope of Work.

- 2.1. The Contractor shall provide administration services for the pharmacy benefits plan offered by the State and pharmacy benefits purchasing pool members, including claims processing, network administration, and other plan administration services, for State employees, State retirees, satellite account employees, and their respective dependents, and for the enrolled and eligible participants in the pharmacy benefits plans that are members of the purchasing pool, all as more fully described in the RFP. The services shall be provided in accordance with this Contract and the following exhibits, which are attached and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall

govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision.

Exhibit A - The RFP, including addenda, attachments and Excel worksheets.

Exhibit B - The Technical Proposal.

Exhibit C - The Financial Proposal.

Exhibit D – State Contract Affidavit Addendum.

- 2.2. If there are any inconsistencies between this Contract and Exhibits A, B, C, and D, the terms of this Contract shall control. If there is any conflict among the Exhibits, Exhibit A shall control.
- 2.3. The Procurement Officer may, at any time, by written order, make 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 article of this Contract. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

3. Time for Performance.

The Contractor shall perform pursuant to this Contract for a period covering five (5) plan years, and shall begin upon award of the Contract and cover implementation prior to the first plan year and covering run-out, audits, and reconciliation processes following the last covered plan year. The first plan year covered by the contract will begin July 1, 2011.

4. Consideration and Payment

- 4.1 Payment to the Contractor pursuant to this Contract shall be the monthly administration fee and reimbursement for claims payments in accordance with the pricing provisions of the Financial Proposal. The Contractor shall not receive any other payment for implementation and administrative services.
- 4.2 The Contractor's federal tax identification number is _____, which must be reflected on any invoice submitted to the State. The Contractor's eMarylandMarketplace identification number is _____. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after such payment is due as provided in the RFP. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. The 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.

- 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 Electronic funds transfer will be used by the State to pay the Contractor for this Contract and any other State payments due Contractor unless the State's Comptroller's Office grants the Contractor an exemption.

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, software, graphics, mechanical, artwork, computations and data prepared by the Contractor for purposes of this Contract shall be the sole property of the Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract. Nothing in this Article 5 shall abrogate or transfer any intellectual property rights of the Contractor in its proprietary information related to methodologies, ideas, know-how, methods, techniques or skills possessed prior to this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, the works created 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 under this Contract are not works for hire for the Department, 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 Department, 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 and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

6. Confidentiality

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

to disclose by law. This provision shall not be read to limit confidentiality provisions and obligations provided in the RFP.

7. Loss of Data

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

8. Non-Hiring of Employees

No official or employee of the State, as defined under State Government Article, § 15-102, Annotated Code of Maryland, 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.

9 Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, 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 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 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.

10. Maryland Law

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

11. Nondiscrimination in Employment

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

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

13. Nonavailability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State of Maryland 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.

14. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State of Maryland 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.

15. Termination for Convenience

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

16. Delays and Extensions of Time

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and

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

17. Suspension of Work

The Procurement Officer 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.

18. 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.

19. 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 of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

20. Political Contribution Disclosure

The Contractor shall comply with the provisions of Election Law Article, Sections 14-101 through 14-108 of the Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State of Maryland, a county or an incorporated municipality or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

21. Retention of Records.

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after final payment by the State of Maryland under this Contract or any applicable statute of limitations (such as the statute of limitations for HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State,

including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. This section shall survive expiration of this Contract.

22. Compliance with Laws.

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland 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 of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 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.

23. Cost and Price Certification

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

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

24. Living Wage

- 24.1 A State contract for services valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland and COMAR 21.11.10.
- 24.2 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. If Contractor is an out of state Contractor, this contract is deemed to be a Tier 1 Contract.
- 24.3 The Contractor shall comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and COMAR 21.11.10, including the submission of payroll reports to the Commissioner of Labor and Industry and the posting 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.
- 24.4 The Contractor shall make any subcontractor on this Contract aware of the Living Wage law requirements.

25. Commercial Non-Discrimination

- 25.1 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 or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 25.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department of Budget and Management, in all subcontracts.
- 25.3 As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, 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 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth 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.

26. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State of Maryland, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of sections 5 through 8, 10 through 25, and 27 through 28 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

27. Prompt Pay Requirements

- 27.1. If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

- (a) Not process further payments to the contractor until payment to the subcontractor is verified;
- (b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
- (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

27.2. 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.

27.3. An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:

- (a) Affect the rights of the contracting parties under any other provision of law;
- (b) Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
- (c) Result in liability against or prejudice the rights of the Department.

27.4. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

27.5. To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:

(a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.

(b) This verification may include, as appropriate:

- i. Inspecting any relevant records of the Contractor;
- ii. Inspecting the jobsite; and
- iii. Interviewing subcontractors and workers.
- iv. Verification shall include a review of:

- a. The Contractor’s monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
- b. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.

(c) If the Department determines that the Contractor is in noncompliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

(d) If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:

- i. Terminate the contract;

ii. Refer the matter to the Office of the Attorney General for appropriate action; or
iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.

(e) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

28. Indemnification

27.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract..

27.2 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

27.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

27.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

27.5 This Section 26 survives the termination of this Contract.

29. Administrative

29.1 Procurement Officer. The day-to-day work to be accomplished under this Contract shall be performed under the direction of the Contract Manager and, as appropriate, the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

29.2 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:

Gabriel Gnall
Procurement Officer
Department of Budget and Management
Room 140
45 Calvert Street
Annapolis, Maryland 21401

With a copy to:
Anne Timmons
Director, Employee Benefits Division
State of Maryland
Director of Employee Benefits
301 W. Preston Street, Room 510
Baltimore, MD 21201

If to the Contractor:

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

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

CONTRACTOR

STATE OF MARYLAND
BY: DEPARTMENT OF BUDGET AND
MANAGEMENT

By:

By: T. Eloise Foster, Secretary

Date

Date

Witness

Witness

Approved for form and legal
sufficiency this ____ day of September, 2010.

Assistant Attorney General

APPROVED BY BPW: _____
(Date)

(BPW Item #)

Attachment B – Bid/Proposal Affidavit

(Authorized Representative and Affiant)

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____ and the duly authorized representative 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. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

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

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

- (1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to §16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

K. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
- (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or

- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
 - (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

- (1) The business named above is a (domestic) (foreign) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

(If not applicable, so state).

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

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

N. Repealed.

O. ACKNOWLEDGEMENT

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

Attachment C – Contract Affidavit

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the _____(title) and the duly authorized representative 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. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic____) (foreign____) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:
Name:_____ Address:_____.

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

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the Contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date:_____

By:_____ (Authorized Representative and Affiant)

Attachment D – Minority Business Enterprise Participation

PURPOSE

COMAR 21.11.03 Provides maximum Contracting opportunities be extended to certified minority business enterprises, and establishes.

The Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the Minority Business Enterprise (MBE) goal stated in the Request for Proposals (RFP). MBE performance shall be in accordance with this Exhibit, as authorized by Minority Business Enterprise Policies as set forth by 21.11.03 of the Code of Maryland Regulations (COMAR). Accordingly, the Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Exhibit.

To meet the goal using MBE subcontractors, all Prime Contractors shall:

- ❑ Identify work areas for subcontracting
- ❑ Solicit minority business enterprises through written notice or personal contact
- ❑ Help minority businesses meet bonding requirements or grant them a waiver of bonding requirements
- ❑ Identify their MBE subcontractors at the time they submit their bids or proposals

MBE GOAL AND SUB GOALS

An MBE subcontract participation goal of **8%** of the total Contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the bidder or Offeror agrees that this dollar amount of the Contract will be performed by certified minority business enterprises.

- ◆ A prime Contractor — including an MBE prime Contractor — shall accomplish an amount of work not less than the MBE subcontract goal with certified MBE subcontractors. (COMAR 21.11.03.09B(2))
- ◆ A prime Contractor comprising a joint venture that includes MBE partner(s) shall accomplish the MBE subcontract goal with certified MBE subcontractors.

SOLICITATION AND CONTRACT FORMATION

- ◆ A Bidder or Offeror shall include with its bid or offer:
 - (1) A completed Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1) whereby the bidder or Offeror acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.
 - (2) A completed MBE Participation Schedule (Attachment D-2) whereby the bidder or Offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified Minority Business Enterprises at the time of submission. The bidder or Offeror shall specify the

percentage of Contract value associated with each MBE subcontractor identified on the MBE Participation Schedule.

- a. **COMAR 21.11.03.09C(5) The failure of an Offeror to complete and submit the MBE utilization affidavit and the MBE participation schedule shall result in a determination that the bid is not responsive.**
 - b. **COMAR 21.11.03.09C(6) The failure of an Offeror to complete and submit the MBE utilization affidavit and the MBE participation schedule shall result in a determination that the proposal is not susceptible of being selected for award.**
- ◆ Within 10 working days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee shall provide the following documentation to the Procurement Officer.
- (1) Outreach Efforts Compliance Statement (Attachment D-3)
 - (2) Subcontractor Project Participation Statement (Attachment D-4)
 - (3) If the apparent awardee has requested a waiver (in whole or in part) of the overall MBE goal or of any sub-goal as part of the previously submitted Attachment D-1, it shall submit documentation supporting the waiver request that complies with COMAR 21.11.03.11.
 - (4) Any other documentation required by the Procurement Officer to ascertain bidder or Offeror responsibility in connection with the certified MBE participation goal.

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

MBE REPORTING INSTRUCTIONS

Prime Contractor shall:

1. Submit by the 10th of each month to the Department a separate report (Attachment D-5) for each Subcontractor. The report shall list:
 - a) all payments made to the MBE subcontractor during the previous 30 days
 - b) any unpaid invoices over 30 days old received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.
2. Include in its written agreements with the MBE subcontractors as listed on the MBE Participation Schedule a requirement that those subcontractors submit monthly to the Department a report (Attachment D-6) that identifies the prime Contract. The D-6 report shall lists:
 - a) all payments received from the Prime Contractor during the previous 30 days; and
 - b) any outstanding invoices to include number and date, and the invoice amount.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records shall indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work performed. **Subcontract agreements documenting the work performed by all MBE participants shall be retained by the Contractor and furnished to the Procurement Officer on request.**
4. 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 shall retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.**
5. At the option of the Procurement Agency, upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

Attachments

- D-1 Certified MBE Utilization and Fair Solicitation Affidavit (shall be submitted with bid or offer)
- D-2 MBE Participation Schedule (shall be submitted with bid or offer)
- D-3 Outreach Efforts Compliance Statement (shall be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)
- D-4 Subcontractor Project Participation Statement (shall be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)
- D-5 Prime Contractor Paid/Unpaid MBE Invoice Report (shall be submitted monthly by the Prime Contractor)
- D-6 Subcontractor Paid/Unpaid MBE Invoice Report (shall be submitted monthly by the MBE subcontractor)

Attachment D-1

Certified MBE Utilization and Fair Solicitation Affidavit

This document shall be included with the submittal of the bid or offer. If the bidder or Offeror fails to submit this form with the bid or offer, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not susceptible of being selected for award. (COMAR 21.11.03.09C(5) and 21.11.03.09C(6))

In conjunction with the bid or offer submitted in response to Solicitation No. F10B0400006, I affirm the following:

1. I acknowledge the overall certified Minority Business Enterprise (MBE) participation goal of 8%. I have made a good faith effort to achieve this goal.

OR

After having made a good faith effort to achieve the MBE participation goal, I conclude I am unable to achieve it. Instead, I intend to achieve an MBE goal of _____% and request a waiver of the remainder of the goal. If I submit the apparent low bid or am selected as the apparent awardee (competitive sealed proposals), I will submit written waiver documentation that complies with COMAR 21.11.03.11 within 10 business days of receiving notification that our firm is the apparent low bidder or the apparent awardee.

2. I have identified the specific commitment of certified Minority Business Enterprises by completing and submitting an MBE Participation Schedule (Attachment D-2) with the bid or proposal.
3. I acknowledge that the MBE subcontractors/suppliers listed in the MBE Participation Schedule will be used to accomplish the percentage of MBE participation that I intend to achieve.
4. I understand that if I am notified that I am the apparent awardee, I shall submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.
 - (a) Outreach Efforts Compliance Statement (Attachment D-3)
 - (b) Subcontractor Project Participation Statement (Attachment D-4)
 - (c) MBE Waiver Documentation per COMAR 21.11.03.11 (if applicable)
 - (d) Any other documentation required by the Procurement Officer to ascertain bidder or Offeror responsibility in connection with the certified MBE participation goal.

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

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

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

Bidder/Offeror Name

Signature of Affiant

Address

Printed Name, Title

Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Attachment D-2

MBE Participation Schedule
(for submission with bid or proposal)

This document shall be included with the submittal of the bid or offer. If the bidder or Offeror fails to submit this form with the bid or offer, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not susceptible of being selected for award.

Prime Contractor (Firm Name, Address, Phone)	Project Description
Project Number	
List Information For Each Certified MBE Subcontractor On This Project	
Minority Firm Name	MBE Certification Number
<i>Work To Be Performed/NAICS</i>	
<i>Percentage of Total Contract</i>	
Minority Firm Name	MBE Certification Number
<i>Work To Be Performed/NAICS</i>	
<i>Percentage of Total Contract</i>	
Minority Firm Name	MBE Certification Number
<i>Work To Be Performed/NAICS</i>	
<i>Percentage of Total Contract</i>	

USE ATTACHMENT D-2 CONTINUATION PAGE AS NEEDED

SUMMARY

TOTAL MBE PARTICIPATION: _____ %
TOTAL WOMAN-OWNED MBE PARTICIPATION: _____ %
TOTAL AFRICAN AMERICAN-OWNED MBE PARTICIPATION: _____ %

Document Prepared By: (please print or type)

Name: _____ Title: _____

Signature: _____ Date: _____

Attachment D-3

Outreach Efforts Compliance Statement

In conjunction with the bid or offer submitted in response to Solicitation No. F10B0400006, I state the following:

1. Bidder/Offeror took the following efforts to identify subcontracting opportunities in these specific work categories:

2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit certified MBEs for these Subcontract opportunities.

3. Bidder/Offeror made the following attempts to contact personally the solicited MBEs:

4. Bidder/Offeror assisted MBEs to fulfill or to seek waiver of bonding requirements.
(DESCRIBE EFFORTS)

- This project does not involve bonding requirements.

5. Bidder/Offeror did/did not attend the pre-bid/proposal conference
 No pre-bid/proposal conference was held.

Bidder/Offeror Name

Address

By: _____
Name

Title

Date

Attachment D-4

Subcontractor Project Participation Statement

**Submit one form for each MBE
Listed on the MBE Participation Schedule**

Provided that _____ is awarded the State Contract in conjunction with
(Prime Contractor Name)
Solicitation No. F10B0400006, it and _____,
(Subcontractor Name)

MDOT Certification No. _____, intend to enter into a Contract by which Subcontractor shall:

(describe work) _____

- No bonds are required of Subcontractor
- The following amount and type of bonds are required of Subcontractor:

By: _____

By: _____

Prime Contractor Signature

Subcontractor Signature

Name

Name

Title

Title

Date

Date

Attachment D-5

This form is to be completed monthly by the prime contractor.

**Maryland Department of Budget and Management
Minority Business Enterprise Participation
Prime Contractor Paid/Unpaid MBE Invoice Report**

Report #: _____	Contract #:
Reporting Period (Month/Year): _____	Contracting Unit:
Report is due by the 10th of the month following the month the services were provided.	Contract Amount:
	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	FAX:		
Subcontractor Name:		Contact Person:	
Phone:	FAX:		
Subcontractor Services Provided:			

<p>List all payments made to MBE Subcontractor named above during this reporting period:</p> <table border="1"> <thead> <tr> <th></th> <th align="center"><u>Invoice#</u></th> <th align="center"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td>Total Dollars Paid: \$</td> <td colspan="2">_____</td> </tr> </tbody> </table>		<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			Total Dollars Paid: \$	_____		<p>List dates and amounts of any outstanding invoices:</p> <table border="1"> <thead> <tr> <th></th> <th align="center"><u>Invoice #</u></th> <th align="center"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td>Total Dollars Unpaid: \$</td> <td colspan="2">_____</td> </tr> </tbody> </table>		<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			Total Dollars Unpaid: \$	_____	
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3.																															
Total Dollars Unpaid: \$	_____																														

**If more than one MBE Subcontractor is used for this Contract, you shall use separate D-5 forms.

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

<p>Thomas McLamore MBE Officer Department of Budget and Management 45 Calvert Street, Room 116 Annapolis, MD 21401 Telephone: 410.260.7663 Fax: 410.974.3274 Email: tmclamore@dbm.state.md.us</p> <p>Signature: _____ Date: _____</p>	<p>Anne Timmons Director, Employee Benefits Division Employee Benefits Division 301 West Preston Street, Room 510 Baltimore, Maryland 21201 Telephone: 410.767.4710 Fax: 410.333.7122 E-mail: atimmons@dbm.state.md.us</p> <p>Signature: _____ Date: _____</p>
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Attachment D-6

Minority Business Enterprise Participation
Subcontractor Paid/Unpaid MBE Invoice Report

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

MBE Subcontractor Name:		
MDOT Certification #:		
Contact Person:		
Address:		
City:	State: Maryland	ZIP:
Phone:	FAX:	
Subcontractor Services Provided:		
List all payments received from Prime Contractor during reporting period indicated above.		List dates and amounts of any unpaid invoices over 30 days old.
<u>Invoice Amt</u>	<u>Date</u>	<u>Invoice Amt</u>
1.		1.
2.		2.
3.		3.
Total Dollars Paid: \$ _____		Total Dollars Unpaid: \$ _____
Prime Contractor:		Contact Person

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

Thomas McLamore MBE Officer Department of Budget and Management 45 Calvert Street, Room 116 Annapolis, MD 21401 Telephone: 410.260.7663 Fax: 410.974.3274 Email: tmclamore@dbm.state.md.us	Anne Timmons Director, Employee Benefits Division Employee Benefits Division 301 West Preston Street, Room 510 Baltimore, Maryland 21201 Telephone: 410.767.4710 Fax: 410.333.7122 E-mail: atimmons@dbm.state.md.us
Signature: _____ Date: _____	Signature: _____ Date: _____

Attachment E – 100 Character File Layout

File Name: VENDPPOCF.TXT
File Organization: SEQUENTIAL
Storage Medium: DISK
Record Size: 100
Block Size: 10000
Record Format: FB

POSITIONS	SIZE	CLASS	DESCRIPTION	DATA
1-15	15	A/N	Document No.	Claim number
16-24	9	A/N	MD State Enrollee SSN	Primary S.S. #
25	1	A/N	Patient Relation Code	0=self, 1=spouse, 2=child, 3=grandchild, 4=stepchild, 5=legal ward
26-34	9	A/N	Patient SSN	Patient S.S. #
35-42	8	N	Patient DOB	MMDDCCYY
43-50	8	N	Incur From Date	MMDDCCYY
51-58	8	N	Incurred Thru Date	MMDDCCYY
59-68	10	A/N	Group No.	Group Number
69-77	9	N	Amount Paid	9(7)v99
78-100	23	A/N	Filler	Spaces

Attachment F – Electronic Funds Transfer (EFT) Registration Request Form

**State of Maryland
Comptroller of Maryland**

Vendor Electronic Funds Transfer (EFT) Registration Request Form

Date of request _____

Business identification information (Address to be used in case of default to check):

Business/Individual name _____

Address line 1 _____

Address line 2 _____

City _____ State _____ Zip code

Taxpayer identification number:

Federal Employer Identification Number:

(or) Social Security Number:

Business contact name, title, e-mail and phone number including area code. (And address if different from above):

Financial institution information:

Name and address _____

Contact name, phone number (include area code) _____

ABA number

Account number

Checking Money Market Savings

Account type

Format Desired: _____ CCD+ _____ CTX* _____ EDI* (Check one.)

***Note – There may be a charge to you by your bank with this format. You must contact your bank to receive this format.**

A VOIDED CHECK from the bank account must be attached or letter from the bank confirming the account number.

COT/GAD X-10

Transaction requested:

- 1. ___ Initiate all disbursements via EFT to the above account.

2. ___ Discontinue disbursements via EFT, effective _____
3. ___ Change the bank account to above information – a copy of the approved Registration Form for the previous bank account shall be attached.

I am authorized by *_____ (hereinafter Company) to make the representations contained in this paragraph. Company authorizes the Comptroller and the Treasurer of Maryland to register it for electronic funds transfer (EFT) using the information contained in this registration form. Company agrees to receive all funds from the State of Maryland by electronic funds transfer according to the terms of the EFT program. Company agrees to return to the State of Maryland any EFT payment incorrectly disbursed by the State of Maryland to the Company’s account. Company agrees to hold harmless the State of Maryland and its agencies and departments for any delays or errors caused by inaccurate or outdated registration information or by the financial institution listed above.

*Name of registering business entity

Signature of individual, company treasurer, controller, or chief financial officer and date

Completed by GAD/STO

Date Received _____

GAD registration information verified _____ Date to STO _____

STO registration information verified _____ Date to GAD _____

R*STARS Vendor No. and Mail Code Assigned:

State Treasurer’s Office approval date

General Accounting Division approval date

To Requestor:

Please retain a copy of this form for your records. Please allow approximately 30 days from the date of your request for the Comptroller’s and Treasurer’s Offices to process your request. Failure to maintain current information with this office could result in errors in payment processing. If you have any questions, please call the EFT registration desk at 410-260-7375.

Please submit form to: EFT Registration, General Accounting Division
 Room 205, P.O. Box 746
 Annapolis, Maryland 21404-0746

(or) Fax: 410-974-2309

Instructions: Electronic Funds Transfer instructions are located:
<http://compnet.comp.state.md.us/General%5FAccounting%5FDivision/Vendors/Electronic%5FFunds%5FTransfer/>

Questions may be requested by email, gad@comp.state.md.us. Or call 1-888-784-0144.
 COT/GAD X-10

Attachment G – Claim Data Record Layout

The Contractor shall be required to provide to the State and its designated representatives, at least monthly, a detailed claims transaction file. The file shall include, at a minimum the following information:

- (1) Member Social Security Number / identifier
- (2) Patient Social Security Number / identifier
- (3) Patient Name
- (4) Patient Date of Birth
- (5) Patient Gender
- (6) Patient's Relationship to the Insured
- (7) Patient's ZIP
- (8) Refill Number
- (9) Average Wholesale Price (Per Metric Quantity) or its successor
- (10) Ingredient Cost
- (11) Pharmacy Submitted Charge / Usual and Customary
- (12) Discount Amount
- (13) Covered Charge
- (14) Dispensing / Professional Fee Paid
- (15) Sales Tax paid
- (16) Patient Payment / cost sharing amount
- (17) Deductible
- (18) Plan payments to vendor
- (19) Amount paid to pharmacy
- (20) Not covered Amount
- (21) Not covered Reason(s)
- (22) Adjustment Date
- (23) Adjustment Reason
- (24) Metric Quantity
- (25) Days Supplied
- (26) Package Size
- (27) Strength
- (28) DUR Indicator
- (29) Formulary Indicator
- (30) Maintenance Indicator
- (31) Pharmacy NABP or other pharmacy identifier
- (32) Pharmacy Type (Retail, Mail, Specialty, etc)
- (33) DEA ID of prescribing physician or other physician identifier
- (34) Dispense Date
- (35) Date claim processed
- (36) Date claim received
- (37) Claim type (original, positive adjustment, negative adjustment, etc)
- (38) Claim Media (electronic, paper, etc)
- (39) NDC Code
- (40) Drug Name
- (41) Drug class
- (42) DAW indicator
- (43) Type of Drug (Single source brand, generic, multi-source brand, single source generic, etc)
- (44) Pricing methodology (AWP, MAC, submitted charge, etc)

In addition, the contractor shall supply the State and its designated representatives, file layouts, data dictionaries, and any documentation required to interpret the contents of the detailed claims transactions file.

Attachment H – NAIC 120-1 Model COB Contract Provisions

NAIC 120-1 MODEL COB CONTRACT PROVISIONS

Copr. © West 2003 No Claim to Orig. U.S. Govt. Works

MODEL COB CONTRACT PROVISIONS

COORDINATION OF THIS GROUP CONTRACT'S BENEFITS WITH OTHER BENEFITS

This coordination of benefits (COB) provision applies when a person has health care coverage under more than one plan. "Plan" is defined below.

The order of benefit determination rules below determine which plan will pay as the primary plan. The primary plan that pays first pays without regard to the possibility that another plan may cover some expenses. A secondary plan pays after the primary plan and may reduce the benefits it pays so that payments from all group plans do not exceed 100% of the total allowable expense.

DEFINITIONS

A. A "plan" is any of the following that provides benefits or services for medical or dental care or treatment. However, if separate contracts are used to provide coordinated coverage for members of a group, the separate contracts are considered parts of the same plan and there is no COB among those separate contracts.

(1) "Plan" includes: group insurance, closed panel or other forms of group or group-type coverage (whether insured or uninsured); hospital indemnity benefits in excess of \$200 per day; medical care components of group long-term care contracts, such as skilled nursing care; medical benefits under group or individual automobile contracts; and Medicare or other governmental benefits, as permitted by law.

(2) "Plan" does not include: individual or family insurance; closed panel or other individual coverage (except for group-type coverage); amounts of hospital indemnity insurance of \$200 or less per day; school accident type coverage, benefits for non-medical components of group long-term care policies; Medicare supplement policies, Medicaid policies and coverage under other governmental plans, unless permitted by law.

Each contract for coverage under (1) or (2) is a separate plan. If a plan has two parts and COB rules apply only to one of the two, each of the parts is treated as a separate plan.

B. The order of benefit determination rules determine whether this plan is a "primary plan" or "secondary plan" when compared to another plan covering the person.

When this plan is primary, its benefits are determined before those of any other plan and without considering any other plan's benefits. When this plan is secondary, its benefits are determined after those of another plan and may be reduced because of the primary plan's benefits.

C. "Allowable expense" means a health care service or expense, including deductibles and copayments, that is covered at least in part by any of the plans covering the person. When a plan provides benefits in the form of services, (for example a PPO) the reasonable cash value of each service will be considered an allowable expense and a benefit paid. An expense or service that is not covered by any of the plans is not

an allowable expense. The following are examples of expenses or services that are not allowable expenses:

(1) If a covered person is confined in a private hospital room, the difference between the cost of a semi-private room in the hospital and the private room, (unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice, or one of the plans routinely provides coverage for hospital private rooms) is not an allowable expense.

(2) If a person is covered by 2 or more plans that compute their benefit payments on the basis of usual and customary fees, any amount in excess of the highest of the usual and customary fees for a specific benefit is not an allowable expense.

(3) If a person is covered by 2 or more plans that provide benefits or services on the basis of negotiated fees, an amount in excess of the highest of the negotiated fees is not an allowable expense.

(4) If a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangements shall be the allowable expense for all plans.

(5) The amount a benefit is reduced by the primary plan because a covered person does not comply with the plan provisions. Examples of these provisions are second surgical opinions, precertification of admissions, and preferred provider arrangements.

D. "Claim determination period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under this plan, or before the date this COB provision or a similar provision takes effect.

E. "Closed panel plan" is a plan that provides health benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by the plan, and that limits or excludes benefits for services provided by other providers, except in cases of emergency or referral by a panel member.

F. "Custodial parent" means a parent awarded custody by a court decree. In the absence of a court decree, it is the parent with whom the child resides more than one half of the calendar year without regard to any temporary visitation.

ORDER OF BENEFIT DETERMINATION RULES

When two or more plans pay benefits, the rules for determining the order of payment are as follows:

A. The primary plan pays or provides its benefits as if the secondary plan or plans did not exist.

B. A plan that does not contain a coordination of benefits provision that is consistent with this regulation is always primary. There is one exception: coverage that is obtained by virtue of membership in a group that is designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of the plan provided by the contract holder. Examples of these types of situations are major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance type coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

C. A plan may consider the benefits paid or provided by another plan in determining its benefits only when it is secondary to that other plan.

D. The first of the following rules that describes which plan pays its benefits before another plan is the rule to use.

(1) Non-Dependent or Dependent. The plan that covers the person other than as a dependent, for example as an employee, member, subscriber or retiree is primary and the plan that covers the person as a dependent is secondary. However, if the person is a Medicare beneficiary and, as a result of federal law, Medicare is secondary to the plan covering the person as a dependent; and primary to the plan covering the person as other than a dependent (e.g. a retired employee); then the order of benefits between the two plans is reversed so that the plan covering the person as an employee, member, subscriber or retiree is secondary and the other plan is primary.

(2) Child Covered Under More Than One Plan. The order of benefits when a child is covered by more than one plan is:

(a) The primary plan is the plan of the parent whose birthday is earlier in the year if:

- . The parents are married;
- . The parents are not separated (whether or not they ever have been married); or
- . A court decree awards joint custody without specifying that one party has the responsibility to provide health care coverage.

If both parents have the same birthday, the plan that covered either of the parents longer is primary.

(b) If the specific terms of a court decree state that one of the parents is responsible for the child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. This rule applies to claim determination periods or plan years commencing after the plan is given notice of the court decree.

(c) If the parents are not married, or are separated (whether or not they ever have been married) or are divorced, the order of benefits is:

- . The plan of the custodial parent;
- . The plan of the spouse of the custodial parent;
- . The plan of the noncustodial parent; and then
- . The plan of the spouse of the noncustodial parent.

(3) Active or inactive employee. The plan that covers a person as an employee who is neither laid off nor retired, is primary. The same would hold true if a person is a dependent of a person covered as a retiree and an employee. If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule is ignored. Coverage provided an individual as a retired worker and as a dependent of an actively working spouse will be determined under the rule labeled B(1).

(4) Continuation coverage. If a person whose coverage is provided under a right of continuation provided by federal or state law also is covered under another plan, the plan covering the person as an employee, member, subscriber or retiree (or as that person's dependent) is primary, and the continuation coverage is secondary. If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule is ignored.

(5) Longer or shorter length of coverage. The plan that covered the person as an employee, member, subscriber or retiree longer is primary.

(6) If the preceding rules do not determine the primary plan, the allowable expenses shall be shared equally between the plans meeting the definition of plan under this regulation. In addition, this plan will not pay more than it would have paid had it been primary.

EFFECT ON THE BENEFITS OF THIS PLAN

A. When this plan is secondary, it may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than 100 percent of total allowable expenses. The difference between the benefit payments that this plan would have paid had it been the primary plan, and the benefit payments that it actually paid or provided shall be recorded as a benefit reserve for the covered person and used by this plan to pay any allowable expenses, not otherwise paid during the claim determination period. As each claim is submitted, this plan will:

- (1) Determine its obligation to pay or provide benefits under its contract;
- (2) Determine whether a benefit reserve has been recorded for the covered person; and
- (3) Determine whether there are any unpaid allowable expenses during that claims determination period.

If there is a benefit reserve, the secondary plan will use the covered person's benefit reserve to pay up to 100% of total allowable expenses incurred during the claim determination period. At the end of the claims determination period, the benefit reserve returns to zero. A new benefit reserve must be created for each new claim determination period.

B. If a covered person is enrolled in two or more closed panel plans and if, for any reason, including the provision of service by a non-panel provider, benefits are not payable by one closed panel plan, COB shall not apply between that plan and other closed panel plans.

FACILITY OF PAYMENT

A payment made under another plan may include an amount that should have been paid under this plan. If it does, [Organization responsibility for COB administration] may pay that amount to the organization that made that payment. That amount will then be treated as though it were a benefit paid under this plan. [Organization responsibility for COB administration] will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

RIGHT OF RECOVERY

If the amount of the payments made by [Organization responsibility for COB administration] is more than it should have paid under this COB provision, it may recover the excess from one or more of the persons it has paid or for whom it has paid; or any other person or organization that may be responsible for the benefits or services provided for the covered person. The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

Attachment I – Non-Disclosure Agreement (Offeror)

This Non- Disclosure Agreement (the “Agreement”) is made this ___ day of _____ 2010, by and between _____ (hereinafter referred to as "the OFFEROR ") and the State of Maryland (hereinafter referred to as "the State").

OFFEROR warrants and represents that it intends to submit a Technical Proposal in response to RFP # F10B0400006, the Request for Proposals for Pharmacy Benefits Purchasing Pool Management and Pharmacy Benefits Plan Administration Services. In order for the OFFEROR to submit a Proposal, it will be necessary for the State to provide the OFFEROR with access to certain confidential information including, but not limited, to demographic and identifying information on eligible individuals and plan utilization data. All such information provided by the State shall be considered Confidential Information regardless of the form, format, or media upon which or in which such information is contained or provided, regardless of whether it is oral, written, electronic, or any other form, and regardless of whether the information is marked as “Confidential Information.” As a condition for its receipt and access to the Confidential Information described in Section 1.32 of the RFP, OFFEROR agrees as follows:

1. OFFEROR will not copy, disclose, publish, release, transfer, disseminate or use for any purpose in any form any Confidential Information received under Section 1.32, except in connection with the preparation of its Proposal.
2. Each employee or agent (including without limitation subcontractors) of the OFFEROR who receives or has access to the Confidential Information shall execute a copy of this Agreement and the OFFEROR shall provide originals of such executed Agreements to the State. Each employee or agent of the OFFEROR who signs this Agreement shall be subject to the same terms, conditions, requirements and liabilities set forth herein that are applicable to the OFFEROR and the OFFEROR shall be liable for any violations by any employees or agents who are provided or given access to Confidential Information.
3. OFFEROR shall return to the State the original and destroy any copies of the Confidential Information remaining in its possession within five business days of the State’s notice of a recommended award in connection with this procurement. If the OFFEROR does not submit a Proposal, the OFFEROR shall return the Confidential Information to the Procurement Officer identified in the RFP, Section 1.6, on or before the due date for Proposals. The OFFEROR shall certify, in writing, to the Procurement Officer the destruction of any electronic or paper copies of the Confidential Information within the five business days referenced above.
4. OFFEROR acknowledges that the disclosure of the Confidential Information may cause irreparable harm to the State and agrees that the State may obtain an injunction to prevent the disclosure, copying, or other impermissible use of the Confidential Information. The State’s rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages for the OFFEROR’S failure to comply with

the requirements of this Agreement. The OFFEROR consents to personal jurisdiction in the Maryland State Courts.

5. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the OFFEROR or any employee or agent of the OFFEROR to comply with the requirements of this Agreement, OFFEROR shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.

6. This Agreement shall be governed by the laws of the State of Maryland.

7. OFFEROR acknowledges that pursuant to Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland, a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Persons making such statements are guilty of a felony and on conviction subject to a fine of not more than \$20,000 and/or imprisonment not exceeding 5 years or both. OFFEROR further acknowledges that this Agreement is a statement made in connection with a procurement contract.

8. The individual signing below warrants and represents that he or she is fully authorized to bind the OFFEROR to the terms and conditions specified in this Agreement. If signed below by an individual employee or agent of the OFFEROR under Section 2 of this Agreement, such individual acknowledges that a failure to comply with the requirements specified in this Agreement may result in personal liability.

OFFEROR: _____
BY: _____ [signature]
NAME: _____ [print name]
TITLE: _____
ADDRESS: _____

***OFFEROR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE
CONFIDENTIAL INFORMATION***

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

Attachment J – Technical Proposal

See data file: Attachment J_Technical Proposal.xls

Attachment K –Financial Proposal

See data file: Attachment K_Financial Proposal.xls

Attachment L – Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. 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 Title 18, State Finance and Procurement, Annotated Code of Maryland.

- 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 of Labor and Industry 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 §18-103(c), State Finance and Procurement Article, Annotated Code of Maryland, shall not lower an employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland. 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 of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under §18-103(a), State Finance and Procurement, Annotated Code of Maryland, 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 §3-413, Labor and Employment Article, Annotated Code of Maryland.
- I. Under Title 18, State and Finance Procurement Article, Annotated Code of Maryland, 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 DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

**Attachment L-1 –Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts**

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

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

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

If the Contract is a Living Wage Contract

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

Attachment L-1 (continued)
Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts

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

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

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

Name of Authorized Representative: _____

Signature of Authorized Representative

Date

Title

Witness Name (Typed or Printed)

Witness Signature

Date

Attachment M – Standard Reporting Formats

See data file: Attachment M _Standard Reporting Formats.xls

These reporting formats are provided for informational purposes only. No response to Attachment M is required unless an Offeror takes an exception to the reporting formats.

Attachment N – Confidential Documents

See data file: Attachment N_Confidential Documents.xls

See also RFP Section 1.32

Attachment O – Pre-Proposal Conference Response Form

Project No. F10B0400006

**Pharmacy Benefits Plan Management Services and Pharmacy Purchasing
Pool Management**

A Pre-Proposal Conference will be held at 1:00 PM, on December 17, 2009 at 45 Calvert Street, Room 164 A/B Annapolis, MD 21401. Please return this form by December 11, 2009 by 4 PM advising whether or not you plan to attend.

Return or fax this form to the Procurement Officer:

Gabriel Gnall
Department of Budget and Management
Procurement Unit
45 Calvert Street, Room 140
Annapolis, MD 21401
Fax # (410) 974-3274

Please indicate:

_____ Yes, the following representatives will be in attendance:

1.

2.

_____ No, we will not be in attendance.

Signature

Title

Attachment P – Md. Ann. Code, Insurance Art. § 15-1623 and § 15-1624

Md. Ann. Code, Insurance Art. § 15-1623 and § 15-1624 (2009), as of September 30, 2009.

15-1623. Requirements before entering into contract.

- (a) *Disclosure of information* – Before entering into a contract with a purchaser, a pharmacy benefits manager:
- (1) as applicable, shall inform the purchaser that the pharmacy benefits manager may:
 - (i) solicit and receive manufacturer payments;
 - (ii) pass through or retain the manufacturer payments depending on the contract terms with a purchaser
 - (iii) sell aggregate utilization information; and
 - (iv) share aggregate utilization information with other entities; and
 - (2) shall offer to provide to the purchaser a report that contains the:
 - (i) net revenue of the pharmacy benefits manager from sales of prescription drugs to purchasers made through the pharmacy benefits manager's network of contractually affiliated retail pharmacies or through the pharmacy benefits manager's mail order pharmacies, with respect to the pharmacy benefits manager's entire client base of purchasers; and
 - (ii) amount of all manufacturer payments earned by the pharmacy benefits manager
- (b) *Non-disclosure agreement* – (1) If a purchaser requests the information described in subsection (a)(2) of this section, a pharmacy benefits manager shall provide the information before entering into a contract with the purchaser.
- (2) Notwithstanding the provisions of paragraph (1) of this subsection, if a pharmacy benefits manager requires a nondisclosure agreement under which a purchaser agrees that the information described in subsection (a)(2) of this section is proprietary information, the pharmacy benefits manager may not be required to provide the information until the purchaser has signed the nondisclosure agreement. (2008, ch. 36, § 6; chs. 205, 206.)

15-1624. Rebate sharing contract.

- (a) *Report* – If a purchaser has a rebate sharing contract, a pharmacy benefits manager shall offer to provide the purchaser a report for each fiscal quarter and each fiscal year that contains the amount of the:
- (1) net revenue of the pharmacy benefits manager from the sale of prescription drugs to purchasers made through the pharmacy benefits manager's network of contractually affiliated retail pharmacies or through the pharmacy benefits manager's mail order pharmacies, with respect to the pharmacy benefits manager's entire client base of purchasers;
 - (2) total prescription drug expenditures applicable to the purchaser;
 - (3) total manufacturer payments earned by the pharmacy benefits manager during the applicable reporting period; and

- (4) total rebates applicable to the purchaser during the applicable reporting period.
- (b) *Where exact amount not known* – If the exact amount of each item to be reported under subsection (a) of this section is not known by the pharmacy benefits manager at the time of the report, the pharmacy benefits manager shall offer to provide:
 - (1) its current best estimate of the amount of each item; and
 - (2) an updated report containing the exact amount of each item immediately after it becomes available.
- (c) *Nondisclosure agreement* – (1) A pharmacy benefits manager shall provide the information described in subsections (a) and (b) of this section if requested by the purchaser.
 - (2) Notwithstanding the provisions of paragraph (1) of this subsection, if a pharmacy benefits manager requires a nondisclosure agreement under which a purchaser agrees that the information in subsections (a) and (b) of this section is proprietary information, the pharmacy benefits manager may not be required to provide the information until the purchaser has signed the nondisclosure agreement. (2008, ch. 26, § 6; chs. 205, 206.)