



**STATE OF MARYLAND**  
**DEPARTMENT OF BUDGET AND MANAGEMENT (DBM)**  
**MULTI-STEP INVITATION FOR BIDS (MS-IFB)**  
**PHARMACY BENEFITS MANAGEMENT SERVICES AND**  
**PURCHASING POOL MANAGEMENT**  
**MS-IFB NUMBER BPM039929**

**ISSUE DATE: JANUARY 23, 2024**

**NOTICE**

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

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

**VENDOR FEEDBACK FORM**

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

**Title: Pharmacy Benefits Management Services and Purchasing Pool Management**  
**Solicitation No: BPM039929**

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:
  - Other commitments preclude our participation at this time
  - The subject of the solicitation is not something we ordinarily provide
  - We are inexperienced in the work/commodities required
  - Specifications are unclear, too restrictive, etc. (Explain in REMARKS section)
  - The scope of work is beyond our present capacity
  - Doing business with the State is simply too complicated. (Explain in REMARKS section)
  - We cannot be competitive. (Explain in REMARKS section)
  - Time allotted for completion of the Bid is insufficient
  - Start-up time is insufficient
  - Bonding/Insurance requirements are restrictive (Explain in REMARKS section)
  - Bid requirements (other than specifications) are unreasonable or too risky (Explain in REMARKS section)
  - MBE or VSBE requirements (Explain in REMARKS section)
  - Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section)
  - Payment schedule too slow
  - Other: \_\_\_\_\_
2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

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

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

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

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

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

**STATE OF MARYLAND**  
**DEPARTMENT OF BUDGET AND MANAGEMENT (DBM)**  
**KEY INFORMATION SUMMARY SHEET**

<b>Multi-Step Invitation for Bids</b>	Services, Pharmacy Benefits Management Services and Purchasing Pool Management
<b>Solicitation Number:</b>	BPM039929
<b>MS-IFB Issue Date:</b>	January 23, 2024
<b>MS-IFB Issuing Office:</b>	Department of Budget and Management (DBM or the "Department")
<b>Procurement Officer:</b>  <b>e-mail:</b> <b>Office Phone:</b>	Tyler Russell 301 W. Preston Street, Baltimore, Maryland 21201 tyler.russell@maryland.gov (410) 767-5857
<b>Bids are to be sent to:</b>	The State will be using the Milliman RFP360 Reverse Auction platform for all submissions. Bid will be submitted per instructions provided in personalized invitations to the registered bidders. See MS-IFB Section 4.2.3.
<b>Pre-Bid Conference:</b>	January 30, 2024 @ 10 AM Local Time Virtual Conference Room See <b>Attachment A</b> for directions and instructions.
<b>Questions Due Date and Time</b>	February 13, 2024 Local Time
<b>Bid Due (Closing) Date and Time:</b>	Round 1 – April 15, 2024 Round 2 – May 2, 2024 Round 3 – May 15, 2024 @ 5 PM Local Time for the above dates. Bidders are reminded that a completed Feedback Form is requested if a no-bid decision is made (see <b>page iv</b> ).
<b>Reverse Auction</b>	After completion of determinations regarding satisfying Minimum Qualifications and Technical Acceptability.
<b>MBE Subcontracting Goal:</b>	5% of the Contract administrative fees amount for the base Contract term and any option years, if exercised
<b>VSBE Subcontracting Goal:</b>	1% of the Contract administrative fees amount for the base Contract term and any option years, if exercised.
<b>Contract Type:</b>	Cost reimbursement plus fixed fee for certain indefinite quantities pursuant to COMAR 21.06.03.03 and COMAR 21.06.03.02.
<b>Contract Duration:</b>	For both functional area, three (3) year base period with two, two (2) year option periods

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

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## 1 Minimum Qualifications

### 1.1 Bidder Minimum Qualifications for Functional Area 1

As part of the determination to be considered reasonably susceptible of being selected for award, the Bidder shall document in its Bid that, the following Minimum Qualifications have been met:

- 1.1.1** The Bidder shall have at least ten (10) years' experience providing pharmacy benefit management services.

Required Documentation: As proof of meeting this requirement, the Bidder shall submit a document detailing the required ten (10) years' experience including client names, contact information for a person within each client's organization who is able to attest to the Bidder's experience, a description of services provided, start and end date of contract, and contract duration.

- 1.1.2** The Bidder shall have at least five million (5,000,000) participants across the Bidder's pharmacy benefit management book of business as of the Bid submission date. Discount card programs are not to be counted towards this population requirement.

Required Documentation: As proof of meeting this requirement, the Bidder shall submit a document detailing the required number of participants including client names, description of services provided, and number of participants. The Bidder shall also provide confirmation that participants covered by discount card programs are not counted towards this population requirement.

- 1.1.3** The Bidder shall administer at least five billion dollars (\$5,000,000,000) in annual gross costs charged to plan sponsors for pharmacy benefit costs for calendar year 2022. Bidder shall not include any administrative fees.

Required Documentation: As proof of meeting this requirement, the Bidder shall submit a document detailing the total required annual costs including client names and annual charges to plan sponsors for calendar year 2022.

- 1.1.4** The Bidder shall provide proof of registration and/or certification as required by the following State laws:

- a) Certification as a Private Review Agent under Md. Ann. Code, Insurance Art., Title 15, subtitle 10B. This certification may be held by either the Bidder or the entity that performs utilization review, as defined in Md. INSURANCE Code Ann. § 15-10B-01 (n), on behalf of the Bidder; and
- b) Registration as a Pharmacy Benefits Manager under Md. Ann. Code, Insurance Art., Title 15, subtitle 16 and the required disclosure report as described in Md. Ann. Code, Insurance Art. § 15-1623. Registration must be held by the legal entity of the Bidder itself. For the purposes of meeting this qualification, registration may not be held by any other legal entity, including subsidiaries.

Required Documentation: As proof of meeting the requirement in a), the Bidder shall submit a copy of the certification as a Private Review Agent issued by the Maryland Insurance Administration (MIA) to the Bidder or, if appropriate, to the entity that performs utilization review on behalf of the Bidder. If a Bidder or the entity that performs utilization review on behalf of the Bidder is not certified by the date of Bid submission, a Bidder may submit with its Bid, in lieu of proof of certification, a copy of the application-receipt acknowledgment letter provided by

the MIA to the Bidder, or if appropriate, to the entity that performs utilization review on behalf of the Bidder. If such a statement is submitted with a Bidder's Bid, the Procurement Officer will verify with MIA that the application was timely filed with MIA. Once a Bidder or its designated utilization review entity receives notice of certification as a private review agent from MIA, that Bidder shall supplement its Bid by providing to the Procurement Officer a copy of that notice. Certification as a private review agent for a Bidder recommended for award must be completed within ten (10) Business Days of the formal notification of recommendation for Contract award.

As proof of meeting the requirement in b), the Bidder shall submit a copy of the Bidder's registration as a Pharmacy Benefits Manager issued by the MIA, as required by State laws.

## **1.2 Bidder Minimum Qualifications for Functional Area 2**

As part of the determination to be considered reasonably susceptible of being selected for award, the Bidder shall document in its Bid that, the following Minimum Qualifications have been met:

- 1.2.1** The Bidder shall have at least five (5) years experience as an approved Center for Medicaid and Medicare Services (CMS) contractor to current clients.

Required Documentation: As proof of meeting this requirement, the Bidder shall submit a copy of a current contract with CMS as a Medicare Part D Prescription Drug Plan evidencing the Bidder is providing and for the last five (5) years has been providing Employer Group Waiver Program (EGWP) benefits to current clients.

- 1.2.2** The Bidder shall have at least five (5) years' experience providing EGWP benefits to current clients.

Required Documentation: As proof of meeting this requirement, the Bidder shall submit a document detailing the required experience including current client names, contact information to include telephone number and email address for a person within each client's organization who is able to attest to the Bidder's experience, a description of the EGWP services provided, start and end date of contract, implementation time frame, and contract duration.

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## 2 Contractor Requirements: Scope of Work

### 2.1 Summary Statement

**2.1.1** The Department of Budget and Management (DBM or the "Department") is issuing this Multi-Step Invitation for Bids (MS-IFB) Bids for Pharmacy Benefits Plan Management Services and Pharmacy Purchasing Pool Management to procure services for the State of Maryland in connection with the State Employee and Retiree Health and Welfare Benefits Program and the Maryland Rx Program. The Department administers the Pharmacy Benefits Plan (the Plan) that covers Active Employees, State Retirees, Satellite Account Employees and Retirees, Direct Pay Enrollees, and their respective eligible Dependents. The plan is self-funded by the State and is an employee-sponsored health plan administered as part of the State Employee and Retiree Health and Welfare Benefits Program. The State is requesting services to be provided in the following functional areas:

Functional Area (FA) 1 – Active Employees, non-Medicare Retirees, and State of Maryland Rx Purchasing Pool

Functional Area 2 – Medicare Eligible Retirees Employer Group Waiver Program (EGWP)

- 2.1.2** It is the State's intention to obtain goods and services, as specified in this MS-IFB, from a Contract between the selected Bidder and the State.
- 2.1.3** The Department intends to make a single award for both Functional Areas as a result of this MS-IFB. See MS-IFB **Section 4.9 Award Basis** for more Contract award information.
- 2.1.4** A Bidder, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Bidder (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.5** The Segal Group, Inc. (Segal) and Managed Care Advisors, as the Department's benefits consultants, and Milliman, as the reverse auction provider, will be assisting the State in this procurement.
- 2.1.6** A Contract award does not ensure a Contractor will receive all or any State business under the Contract. Participants in the Program, including participating Maryland State and local entities as defined in Md. Ann. Code, State Finance and Procurement Art. § 13-110(a)(5)(i), and qualified not-for-profit entities within the State of Maryland may purchase from the Contractor goods or services covered by the Contract at the same prices chargeable to the State. All such purchases by non-executive branch entities, non-State governments, government agencies or not-for-profit entities:
- A. Shall constitute Contracts between the Contractor and that government, agency or not-for-profit entity;
  - B. Shall not constitute purchases by the State or State agencies under the Contract;
  - C. Shall not be binding or enforceable against the State; and
  - D. May be subject to other terms and conditions agreed to by the Contractor and the purchaser.
- 2.1.7** All Contract prices, terms, and conditions must be provided to any Maryland local government or not-for-profit entity participating in the Program upon requesting services under the Contract. The Contractor bears the risk of determining whether or not a government, agency or

organization with which the Contractor is dealing is a State entity or not-for profit entity participating in the Program.

**2.2 Background and Purpose**

- 2.2.1 The State of Maryland provides an expansive range of employee benefit plans to approximately 58,000 Active Employees, 1,500 State Law Enforcement Officers Labor Alliance (SLEOLA) Employees, 1,600 Satellite Account Employees, 2,300 Direct Pay Enrollees, 9,800 Non-Medicare Retirees, 40,000 Medicare Retirees, and their covered Dependents. All Members and Dependents as defined in this MS-IFB are eligible for coverage.
- 2.2.2 Current benefit plans include medical, prescription drug, dental, voluntary term life, accidental death and dismemberment, and flexible spending accounts.
- 2.2.3 These benefits are offered to a diverse workforce that includes clerical, administrative, technical, academic, professional, maintenance, educational (State colleges and universities), public safety, and appointed and elected officials at more than 300 different worksites.
- 2.2.4 Due to the large number of State employees, a diverse population and numerous employee work locations, the State sponsors annual benefit fairs during each annual open enrollment period. The State expects to conduct 60 or more Open Enrollment Benefit Fairs plus 40 or more annual wellness events throughout the State each year to answer employee and retiree questions and enhance engagement in the plans offered.
- 2.2.5 The State’s Pharmacy Benefits Plan currently includes a self-insured pharmacy program for Active Employees, Satellite Account Employees and Retirees, Direct Pay Enrollees, and Non-Medicare Retirees, and a self-insured EGWP program for Medicare-eligible Retirees. Both plans are currently administered by CVS Health and have approximately 218,000 enrolled employees, retirees, spouses, and dependents . Of these members, approximately 55,800 are Medicare-eligible retirees and spouses. The chart below provides a breakout of the enrollment as of June 2023 by employee status.

Employee Status	Number of Members	Number of Dependents	Total Members
Active	57,960	70,441	128,840
SLEOLA	1,533	2,977	4,510
Satellite	1,608	2,751	4,359
Direct Pay	2,330	257	2,587
Non-Medicare Retiree	9,768	12,589	22,357
Medicare Retiree (EGWP)	39,509	16,252	55,761
<b>Total</b>	<b>112,708</b>	<b>105,267</b>	<b>217,975</b>

- 2.2.6 The prescription drug plan year runs from January 1 through December 31 and coincides with the State’s calendar year benefits program. The total cost of the current prescription drug plan, including administrative fees and claims (but excluding Rebates), was approximately \$793 million (gross plan paid claims before Rebates) for calendar year 2022.
- 2.2.7 The current State Plan includes an extensive national retail network as well as open access to mail order and specialty pharmacies. Members use a prescription card to access services or, if using a non-participating pharmacy, submit paper claims directly to the Contractor for reimbursement. Authorizations of early refills and advance supplies are approved by the Contractor but may be overridden and audited by the State or a designee. The Contractor must provide the State full-

service, operational and cost-efficient pharmacy benefit plan administration services for this population on a self-insured basis.

- 2.2.8** The current State Plan design and clinical information can be found in Attachment S: Plan Design and Clinical Programs. The Contractor must mirror current plan design and closely align with current clinical practice.
- 2.2.9** The State of Maryland also offers a purchasing pool arrangement for eligible local government entities and qualifying not-for-profit organizations in Maryland. This program is self-insured and administered through the current contractor, CVS Health.
- 2.2.10** DBM intends to make a single award to one bidder for a planned go-live date of January 1, 2025, (Contract Commencement to begin mid-2024 to provide sufficient implementation and set up) for pharmacy benefits management services (including EGWP services) for the State Pharmacy Benefits Plan and those entities eligible for the pharmacy purchasing pool.
- 2.2.11** The objectives of this procurement are to:
- A. Partner with a Contractor that can identify and implement various strategies to reduce and control the State’s ongoing prescription drug costs, including drug price inflation;
  - B. Secure a fully transparent arrangement for the State Plan, which includes: complete and auditable reporting of revenue and Manufacturer Payments, information disclosure and 100% pass-through pricing;
  - C. Make available to Participants prescription drugs and other pharmacy services that address their healthcare needs and contribute to overall wellness;
  - D. Provide Participants convenient accessibility to a national pharmacy provider network, ensuring pharmacies (including independent pharmacies) in Maryland are well represented;
  - E. Offer a pharmacy benefit of significant value via a thorough examination of pharmacy costs and implementation of innovative strategies designed to manage healthcare costs and improve health outcomes for Participants;
  - F. Identify the most appropriate Contractor for the State and the Maryland Rx Program’s prescription management business for the duration of this contract;
  - G. Provide competitive market pricing that allows for periodic market checks that ensure the most cost effective terms for the State; and
  - H. Maximize cost-savings for the State and Maryland Rx Program participating entities by contracting on a fixed fee basis, with product discounts and incentives accruing directly to the State and Purchasing Pool Participants.
- 2.2.12** As the pharmacy and prescription benefits purchasing pool grows, the Department expects to be advantaged by the increased aggregate number of total lives and the increased aggregate drug purchases to obtain lower unit costs for the products and services obtained by this MS-IFB and higher Rebates and discounts. The State expects the Contractor to provide updated pricing through the market check process to reflect the economies of scale that the growing purchasing pool produces.

## **2.3 Scope of Work – Requirements**

### **2.3.1 General Requirements**

2.3.1.1 The Contractor shall provide a single point of contact for each Functional Area responsible for communicating with State personnel regarding matters to include the following:

1. Contract start-up;
2. Implementation;
3. Testing;
4. Deployment;
5. Training;
6. Reporting;
7. Administrative tasks;
8. Issues or concerns; and
9. Day-to-day matters.

2.3.1.2 Eligibility for coverage under the group health plans administered by the Contractor shall be determined pursuant to the terms of this MS-IFB. See MS-IFB Appendix 1, Abbreviations and Definitions, for definitions of eligible Members and Dependents.

2.3.1.3 The Contractor shall establish and provide a state-of-the-art customer service operation (including a dedicated toll-free phone number) available to plan Participants (both in-state and out-of-state) 24 hours a day/seven days a week, staffed by live customer service representatives during the core hours of 7:00 am to 11:00 pm Eastern Time, seven days a week at no additional charge. This may be the same operation as that provided for State employees, retirees, and dependents under another active contract, if applicable.

#### **2.3.1.4 Overall Services**

The Contractor shall provide adequate staffing and services in the following areas that assure that the State Plan and the Maryland Rx Program successfully operate in a cost-efficient manner, consistent with this MS-IFB and the Contract:

- A. Account Management Services;
- B. Membership Customer Services;
- C. Member and Participant Communications;
- D. Pharmacy Network Management, ensuring a network of adequate size, accessibility, and scope;
- E. Claims Processing;
- F. Formulary Management and Clinical Services;
- G. Fraud/Abuse Detection and Controlled Substance Management Programs;
- H. Plan and Maryland Rx Program Reporting;
- I. Rebate Administration and other Plan Management Services;

- J. Data Processing and Interface;
- K. Data Reporting for management of the Plan and to help achieve the State's strategic goals of the benefits program;
- L. Health Insurance Portability and Accountability Act of 1996 (HIPAA) Compliance on behalf of the Plan;
- M. EGWP Administration Services;
- N. Cost-Management Strategies and Supplemental Programs; and
- O. Auditability and Accountability.

### **2.3.2 Transparent and Pass-Through Pricing**

2.3.2.1 The Contract shall be a transparent arrangement. The Contractor shall provide the State with reports and audit access to: (1) any and all data related to the State Plan and (2) data related to the Contractor's receipt of revenue, including any Manufacturer Payments and/or other revenue streams received by the Contractor that are directly or indirectly related to the State's Plan, with the exception of the traditional pricing allowed below.

- (a) **Complete Pass-Through Pricing at Retail Pharmacies:** For the retail component, the Contractor shall pass through the actual price the Contractor has negotiated with the dispensing retail pharmacy; spread pricing with participating retail pharmacies shall not be permitted. The amount billed to the State will be the exact amount remitted to the pharmacy, less applicable participant share.
- (b) **Complete Pass-Through Pricing at mail order and specialty pharmacies** (if Contractor DOES NOT own or is not part of a common ownership structure with the mail order and specialty pharmacies): For the mail order and specialty components, the Contractor shall pass through the actual price the Contractor has negotiated with the dispensing mail order and specialty pharmacies respectively; spread pricing with mail order and specialty pharmacies shall not be permitted. The amount billed to the State will be the exact amount remitted to the pharmacy, less applicable participant share.
- (c) **Pass-Through Pricing on mail order and specialty pharmacies** (if the Contractor owns or is part of a common ownership structure with the mail order and specialty pharmacies): For the mail order and specialty pharmacy components, the Contractor shall apply a traditional fixed discount rate for Brand and Generic medications, including Maximum Allowable Cost (MAC) pricing. The MAC pricing applied at mail shall be at least equivalent to the MAC pricing applied at retail but in no case shall it produce a higher cost to the plan than the retail MAC. The actual acquisition price of medications and pharmaceutical supplies purchased by the mail order and specialty pharmacy is not required to be pass-through to the State.

#### **2.3.2.2 Revenue Transparency and Pass-Through:**

- A. For the retail, mail, and specialty components, the Contractor shall disclose any and all of the following when such items are directly or indirectly attributable to the State's Plan or the provision of Pharmacy Benefits Management (PBM) Services to the State:
  - 1. Manufacturer Payments; and
  - 2. Other revenue, payments, compensation, or remuneration from any source other than the administrative fee paid to it by the State (except as specified above, to accommodate a

traditional mail order pricing model if the Contractor owns its own mail order and specialty pharmacies).

- B. When such revenue, payments, compensation, or remuneration are directly or indirectly attributable to the State Plan or any PBM services provided to the State, the Contractor shall pass through the funds, revenue, remuneration, payment, compensation, or Manufacturer Payments to the State and must provide reporting that discloses the value of this revenue from each source and also demonstrates where and how the revenue is passed to the State.
- C. Pricing Guarantee(s) means the network discounts, claim adjudication rates, specialty drug discounts, Dispensing Fees, Rebates, and minimum Rebate guarantees. For the retail, mail, and specialty components, the Contractor shall guarantee a maximum amount for Dispensing Fees, minimum percentage discounts off current Average Wholesale Price (AWP) by drug type (Brand and Generic) and place of services (retail, mail and specialty pharmacies) and minimum guarantees per claim for Manufacturer Payments. Contractor shall reconcile Discount, Dispensing Fee guarantees, and Manufacturer Payments against actual performance and credit all shortfalls on a bi-annual basis.
- D. Transparency: For the retail components, the Contractor shall provide full transparency reporting as further described in Section 2.3.11, Data and Reporting.
- E. Contractor agrees that the State will be notified of any change to the AWP source at least 180 calendar days prior to the change. In the event that the AWP source change is not determined by a third party to be price neutral for the State, the State will have the right to terminate the contract with no penalty.
- F. Contractor agrees to monitor federal and State legislation affecting the delivery of prescription drug benefits under the plan and to report to the State on those issues upon discovery and prior to the effective date of any mandated plan changes or changes in PBM regulation.
- G. Contractor agrees to comply with the No Surprises Act, enacted as Title I of Division BB of the Consolidated Appropriations Act, 2021. Pub. L. 116-260, 134 Stat. 1182 (2020), and all applicable and related rules and regulations promulgated, issued or adopted by governmental agencies with jurisdiction over enforcement of the Act, including but not limited to the Final Transparency Rule.

### **2.3.2.3 Specialty Pharmacy Clinical and Utilization Tracking Programs:**

- A. For the specialty pharmacy ONLY, the Contractor may accept and not pass through certain limited fees. The fees that are exempt from the pass-through requirements are:
  - 1) Fees that are only to offset the costs associated with providing utilization data under manufacturer contracts and/or the U.S. Food and Drug Administration (FDA) rules/FDA required programs to track data related to utilization of certain specialty pharmacy medications; and
  - 2) Fees that are only to offset and pay for the cost of clinical programs provided to utilizers of certain specialty pharmacy medications in cases where the manufacturer contract for funding such clinical programs specifically prohibits passing the fee to the plan sponsor or plan.
- B. The Contractor must document and disclose such exempt fees and be prepared to identify how the payments are used solely in connection with the identified exemption and do not constitute revenue or other payments similar to Rebates or Manufacturer Payments that are



subject to pass-through. These disclosures and/or fees shall apply to the specialty medications as identified in the Contractor's Participant Bidding Agreement (PBA) submission. In connection with disclosures of data in connection with these fees, the Contractor shall comply with the following:

- 1) Disclosures shall be of the minimum necessary data, meaning de-identified data (*see* HIPAA Privacy Standards) in any case where de-identified data is sufficient;
- 2) All disclosures and receipt of all fees are permitted by HIPAA and the HI-TECH Act as an action by the Plan (i.e., by a covered entity);
- 3) Clinical programs that are the basis of the fee and/or disclosure are validated as clinically appropriate, do not influence product selection, and do not constitute marketing, as that term is defined by the HIPAA Privacy Standards and the HI-TECH Act; and
- 4) The manufacturer or FDA limits distribution of the specialty medication to only those pharmacies that provide the utilization data.

**2.3.2.4 Interest on Rebates and Payments:** In connection with Rebate and Manufacturer Payments that are to be passed through and payments to pharmacies for claims, the following applies:

- A. So long as the timing requirements of this MS-IFB are met, per Performance Guarantees 20 and 21 in the PBA packet, as to the payments being remitted to the State or Purchasing Pool Participant (i.e., plan sponsor of a PPP), the Contractor may retain any interest or earnings on such funds during the limited period that such funds are held by the Contractor; and
- B. Interest may be retained so long as the funds being held by the Contractor and on which it has earnings are commingled funds in the Contractor's own accounts that are not client-specific holdings (e.g., the Contractor receives a quarterly Rebate payment that is based on utilization of all members in all client plans administered by the Contractor and the Contractor has yet to analyze each plan's utilization to properly attribute such Rebates to each plan so that the funds may be properly treated consistent with the client contract).

### **2.3.3 Market Checks**

The State may conduct annual Market Checks to determine whether the financial terms of the agreement remain competitive in the marketplace. The Market Check analysis will be performed by a qualified party, as selected by the State and will be based on existing PBM agreements from comparable plans, and will be made available to the Contractor. If the Market Check report validates an aggregate annualized savings of greater than 1% over the Contractor's existing financial terms, the parties will discuss, in good faith, revisions to the pricing terms. Any revisions to the pricing terms resulting from the parties' negotiations will be effective January 1 of the following year, but no sooner than 30 days after completion of the Market Check report. The State reserves the right to terminate this agreement upon 90 days prior notice should an agreement not be reached.

In addition, the State reserves the right to conduct a Market Assessment before the first contract year to confirm that the competitiveness and financial terms of the awarded contract are within 1% of the market.

### **2.3.4 Maryland Rx Purchasing Pool**

**2.3.4.1** The Contractor shall administer the Maryland Rx Purchasing Pool in accordance with Code of Maryland Regulations (COMAR) 17.04.15, as amended, and other applicable law. The

regulations are available on-line at:

<https://dsd.maryland.gov/Pages/COMARSearch.aspx#k=17.04.15#l=1033>.

- 2.3.4.2 Eligible members of Maryland Rx Purchasing Pool include the State of Maryland Employee and Retiree Health and Welfare Benefits Program participants, certain local government entities, and qualifying not-for-profit organizations in Maryland. The State Plan is administered through the State Employee and Retiree Health and Welfare Benefits Program and is the only guaranteed member of the Maryland Rx Program Purchasing Pool.
- 2.3.4.3 The other entities will be entitled to participate in the Maryland Rx Program, and to secure PBM services from the Contractor. Such Purchasing Pool Members must agree to self-insure their respective plans and the risk of benefits coverage for their respective plans. Each Purchasing Pool Member will be able to contract directly with the Contractor for pharmacy and prescription benefits management services on the terms and conditions described in this MS-IFB, but by way of a separate contract with the Contractor. Drug purchases and enrollment from all participating Purchasing Pool Members will be aggregated to set certain cost and payment terms.
- 2.3.4.4 Drug ingredient cost and pricing terms, Dispensing Fees, and Rebates must be guaranteed by the Contractor and provided by the Contractor for the State and each Purchasing Pool Member of the Maryland Rx Program. The Contractor may negotiate separate administrative services and separate administrative fees for each Purchasing Pool Member in connection with providing administrative services for the Purchasing Pool Member's prescription benefits plan. The State shall pay administrative fees to the Contractor for the administrative services in accordance with **Attachment T**.
- 2.3.4.5 Each Purchasing Pool Member shall set the premiums (including employer and employee portion as applicable) for its own self-insured plan and is not limited by premiums and employer contributions set by the State for the State's Plan.
- 2.3.4.6 The Contractor shall publicize and market the existence of the Maryland Rx Program.
- 2.3.4.7 Pharmacy Benefit Management Services for Purchasing Pool Members. The Contractor shall provide Pharmacy and Prescription Benefits Purchasing Pool Management services to each Purchasing Pool Member, including:
- A. Claims payment, processing, and tracking services for each Purchasing Pool Member;
  - B. Reports for each Purchasing Pool Member based on the Purchasing Pool Member's own prescription benefits plan;
  - C. Enrollment tracking per Purchasing Pool Member;
  - D. Invoicing and accepting claims reimbursements from each Purchasing Pool Member for each purchasing pool plan;
  - E. Drug ingredient cost and pricing terms, Dispensing Fees, Rebates, and invoicing and payments per Purchasing Pool Member (at a minimum meeting the guarantees established using the aggregate enrollment and utilization of the purchasing pool); and
  - F. Pharmacy and prescription benefits management and administration services for the self-insured plan of each Purchasing Pool Member in accordance with terms and conditions set by the Contractor and the Purchasing Pool Member.

2.3.4.8 Services for Maryland Rx Program Management. The Contractor shall:

- A. Provide to the Department annual reports detailing aggregate population and utilization information for the Maryland Rx Program;
- B. Provide to the Department annual reports indicating the administrative fee costs and aggregate enrollment for each Purchasing Pool Member;
- C. Implement pricing discounts and guarantees, Dispensing Fee guarantees, Rebate guarantees for the State and all Purchasing Pool Members, and administrative fees for the State, at the beginning of the next month after which aggregate population goals for the Maryland Rx Program have been met which trigger changes in the pricing discounts and guarantees, Dispensing Fee guarantees, Rebates guarantees, and administrative fees; and
- D. Include in the aggregate enrollment for the Maryland Rx Program, for purposes of meeting the enrollment tiers at which pricing elements change, shall reflect the enrollment of any Purchasing Pool Member that leaves the Maryland Rx Program but continues with the Contractor as its pharmacy/prescription benefits manager.

### **2.3.5 EGWP**

2.3.5.1 The Bidder agrees to provide services for the State's EGWP program under the Medicare Drug rules, the EGWP Benefit will be deemed to be an EGWP administered by the Contractor, and each EGWP Enrollee will be deemed to be a Part D enrollee of the Contractor who is covered by the EGWP benefit. The design and administration of the EGWP Benefit is subject to the applicable requirement of the Medicare Drug Rules.

2.3.5.2 **EGWP Benefit:** The EGWP Benefit shall satisfy all actuarial equivalence standards set forth in the Medicare Drug Rules.

2.3.5.3 **Enrollment:** By requesting a Member's enrollment as an EGWP Enrollee in the EGWP Benefit, Department represents that such EGWP Enrollee's eligibility as a Member in the Commercial Benefit will immediately terminate. An EGWP Enrollee may not have dual coverage under the EGWP Benefit and the Commercial Benefit; and therefore, after any EGWP Enrollee's enrollment in the EGWP Benefit, all Prescription Drug Claims and Member Submitted Claims submitted to Contractor under the Contract shall be treated as Prescription Drug Claims and shall be processed by Contractor in accordance with the EGWP Benefit. The following are required services under the terms of this MS-IFB for EGWP enrollment and disenrollment.

- A. **Enrollment File:** No later than thirty (30) days prior to the Effective Date and the first day of each EGWP Benefit enrollment period thereafter, the Department shall provide an Enrollment File to Contractor via the State's communication medium that lists those Part D Eligible Retirees for whom the Department intends to make application for enrollment in the EGWP Benefit for that contract year. The Department shall communicate all new enrollments (i.e., individuals who become eligible to participate in the EGWP Benefit outside of an annual election period), requested retroactive enrollments of Part D Eligible Retirees, and disenrollments from the EGWP Benefit via the State's communication medium. Contractor agrees to process retroactive enrollment requests pursuant to the requirements of the Medicare Drug Rules.
- B. **Contractor's Responsibilities:** Contractor shall implement the Enrollment File following confirmation of the eligibility of the Part D Eligible Retirees listed on the Enrollment File with CMS eligibility files. A Part D Eligible Retiree will not be enrolled in the EGWP Benefit unless such individual is listed on both the Enrollment File submitted by Department

- and the CMS eligibility files. If an individual is listed on the Enrollment File provided by the Department, but is not eligible for participation according to CMS eligibility files, then Contractor shall notify the Department within two (2) Business Days regarding such individual's ineligibility. Contractor will work with the Department to determine if such individual has been rejected due to an administrative or clerical error (e.g., data field standards errors, rejections related to information input by Contractor related to the EGWP Benefit into the CMS system, etc.), or an error requiring individual retiree contact, and if so in either case, Contractor will take appropriate action and attempt to correct such error and resubmit the individual through the CMS system. The Contractor may update in the Enrollment File with any and all information concerning Part D Eligible Retirees upon receipt of corrected information from CMS, and Contractor may use such corrected information to obtain a Part D Eligible Retiree's enrollment in the EGWP Benefit. For all Part D Eligible Retirees that have been included by the Department in the Enrollment File, but who are ultimately determined to be ineligible for participation in the EGWP Benefit, Contractor shall notify the individual of his or her ineligibility in the EGWP Benefit and take all other action as required by applicable law. Contractor shall communicate to the Department any changes to a Part D Eligible Retiree's information in the Enrollment File based upon updates or corrections received from CMS.
- C. **Incomplete Enrollment File Information:** The Department's submission to Contractor of an inaccurate or incomplete Enrollment File (e.g., missing date of birth, last name, first name, etc.) or otherwise of incomplete information with respect to any individual Part D Eligible Retiree may result in a rejection of the Part D Eligible Retirees enrollment in the EGWP Benefit. The Contractor shall provide the Department with regular reports providing the details of all incomplete information needed to enroll Part D Eligible Retirees. The Contractor may contact the Department's Part D Eligible Retirees to obtain the information required hereunder and Contractor shall update the Enrollment File on the Department's behalf to reflect additional information needed to complete enrollment of the Part D Eligible Retirees in the EGWP Benefit. If Contractor, in is not able to obtain all missing information from a Part D Eligible Retiree within twenty-one (21) Business Days after receiving the Department's initial request for enrollment of the Part D Eligible Retiree in the EGWP Benefit, then the Department's request shall be deemed canceled and Contractor shall notify the individual within two (2) Business Days of his or her non-enrollment in the EGWP Benefit and shall take all other action as required by applicable law.
- D. **Effective Date of Application for Enrollment into EGWP Benefit:** Notwithstanding any provision of this MS-IFB to the contrary, the effective date of the application for any Part D Eligible Retiree whom the Contractor seeks to enroll in the EGWP Benefit hereunder shall be the date on which the application for enrollment is entered by the Contractor into its enrollment system, subject however to any adjustments that the Contractor may make for retroactive enrollments as necessary to enroll the Part D Eligible Retiree in the EGWP Benefit.
- E. **Individual Disenrollment:** If the Department or Contractor determines that an EGWP Member is no longer eligible to participate as an EGWP Member in the EGWP Benefit (an "Ineligible Member"), such Ineligible Member shall be disenrolled in accordance with the Medicare Drug Rules.
- F. **Group Disenrollment:** If, upon the expiration of the then term of the Contract, the Department plans to disenroll its EGWP Enrollees from the EGWP Benefit using a group disenrollment process, then the Department shall implement the following procedures:

1. Notification to EGWP Members: The Department shall provide at least twenty-one (21) days (or such other minimum days' notice as required by the Medicare Drug Rules) prior written notice to each EGWP Member that the Department plans to disenroll him or her from the EGWP Benefit and shall include with such written notification an explanation as to how the EGWP Member may contact CMS for information on other Medicare Part D options that might be available to the EGWP Member; and
  2. Information to Contractor: The Department shall provide the information to the Contractor required to submit a completed disenrollment request transaction to CMS, as set forth in the Medicare Drug Rules.
- G. Voluntary Disenrollment:** If an EGWP Enrollee makes a voluntary request to be disenrolled from the EGWP Benefit (the "Voluntary Disenrollee") to the Department, the Department will notify Contractor at least sixty (60) days prior to the effective date of such Voluntary Disenrollee's disenrollment, in a manner and format as outlined by the Department. If the Department does not timely notify Contractor of such Voluntary Disenrollee's disenrollment in the EGWP Benefit, then Contractor shall submit a retroactive disenrollment request to CMS. CMS may only grant up to a ninety (90) day retroactive disenrollment in such instances. If the Voluntary Disenrollee makes his or her request directly to Contractor, then Contractor shall direct the Voluntary Disenrollee to initiate the disenrollment with the Department.
- 2.3.5.4 EGWP Plan Administrative Service:** The Contractor shall provide all EGWP plan administration, billing, payment, and CMS coordination services as provided in the Participant Bidding Agreement and referenced herein. The services include, but are not limited, to the following:
- A. Claims processing including proper application of discounts, Coordination of Benefits, quality assurance, utilization management, True Out-of-Pocket Costs balances, coverage appeals, and Explanation of Benefits;
  - B. Enrollee communications, including opt out letter;
  - C. Formulary and medication management services;
  - D. Program reporting;
  - E. Monthly premium billing and invoicing;
  - F. CMS reimbursement reporting and end-of-year reconciliation; and
  - G. Low-income premium subsidy refunds to Members and the Plan as well as low-income cost sharing refund requests from Members.
- 2.3.6** As it pertains to the EGWP benefit, the Contractor shall have approval from CMS to serve as a Prescription Drug Sponsor and shall provide prescription drug coverage that meets the requirements of, and pursuant to, the Voluntary Prescription Drug Benefit Program set forth in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, 42 U.S.C. §1395w-101 through 42 U.S.C. §1395w-152 (the "Act") and all applicable and related rules and regulations promulgated, issued or adopted by CMS or other governmental agencies with jurisdiction over enforcement of the Act, including 42 C.F.R. §423.1 through 42 C.F.R. §423.910 (with the exception of Subparts Q, R, and S), and the terms of any Prescription Drug Sponsor contract between CMS and Contractor (collectively, the "Medicare Drug Rules").

### **2.3.7 Vaccine Clinics**

2.3.7.1 At its discretion, the State may offer an annual eligibility-based clinic for seasonal influenza vaccines (Influenza Clinic).

2.3.7.2 **Influenza Seasons:** The Influenza Clinic provides coverage for influenza vaccines.

2.3.7.3 **Eligibility Based Coverage:** Under the Influenza Program and the Non-Season Program, Plan Members desiring a vaccination covered by the Department's Plan, may receive such vaccination upon presentation of a valid prescription benefit Plan Member ID Card, at a Participating Vaccine Pharmacy (as defined below), and payment of the applicable Cost Share, if any.

2.3.7.4 **Participating Vaccine Pharmacies:** Participating Pharmacies administering vaccinations during the aforementioned clinics are referred to herein as "Participating Vaccine Pharmacies." All Participating Vaccine Pharmacies shall administer vaccination(s) covered under the aforementioned clinics. The Contractor shall maintain an active list of Participating Vaccine Pharmacies; and shall submit to the State as requested.

2.3.7.5 **Non-Seasonal Vaccines:** Certain non-seasonal vaccine offerings may be available from time to time, which will be set forth in the Department Plan Document, as approved by the Department. Non-seasonal vaccine services under the Non-Seasonal Program shall be provided on an open-ended basis and not on a Flu Season-specific basis.

A. **Non-Seasonal Vaccine Availability and Network.** Non-Seasonal Vaccines will be provided through the Broader Vaccine Network, notwithstanding which, if any, election the Department has made under the Influenza Program, above. Not all Participating Vaccine Pharmacies will stock all available non-seasonal vaccines. Plan Members should call the pharmacy to confirm availability.

B. Non-seasonal vaccines will adjudicate using the same AWP discount and dispensing fee as a standard 30-day supply brand drug claim at a retail pharmacy under the Agreement.

2.3.7.6 Vaccinations administered under the Program shall be administered by licensed pharmacists or pharmacist interns in accordance with all laws and regulations applicable to the respective Participating Vaccine Pharmacy. Participating Vaccine Pharmacies may decline to provide vaccinations to minors based on state law or clinical considerations. The provision of all Program services is subject at all times to vaccine availability. In the event of an epidemic, pandemic, or similar public health incident(s), Participating Vaccine Pharmacies may be unable to purchase or supply vaccine, and product held by Participating Vaccine Pharmacies may be subject to superseding requirements imposed by a governmental authority, including, without limitation, potential seizure. Contractor shall have no liability due to any resulting inability to provide Program services.

### **2.3.8 Diabetes Care Program**

2.3.8.1 The State may offer diabetes engagement services that target eligible Plan Participants who have been identified with diabetes and encourage them to participate. The Contractor shall provide Participants with a comprehensive diabetes management tool consisting of diabetes management system, all required equipment, and diabetes related testing supplies at no cost to participants.

The program shall minimally include a glucose monitoring device and adequate supplies each month, submission of blood glucose data obtained by data enabled meters, displayed directly on a

device and transmitted to Participants, first line acute response to alerts generated from out-of-range readings on the glucose monitoring device twenty-four (24) hours per day and seven (7) days per week, Participant access to Certified Diabetes Educators during normal business hours, and web portal with tips of the day. The engagement shall include clinical services, including face-to-face for A1C testing, blood pressure check, foot exam, and cholesterol test or, at the participant’s request, virtual diabetes counseling at no charge to the Participant.

**2.3.9 Implementation Schedule**

2.3.9.1 The Contractor shall begin implementation activities, including an implementation meeting with the State, upon Contract award. The Contractor shall work with the State to develop a program rollout including a communications plan to increase awareness and promote the pharmacy benefits and other related programs. The State’s implementation schedule as it relates to PBA Section 4.7, Performance Guarantees, PG-1

**Figure 1: Implementation Schedule**

<b>ACTIVITY</b>	<b>DATE (anticipated)</b>
Attend a Kick-Off Meeting with the Contract Manager and other State representatives to begin project planning and to schedule weekly status meetings.	Within ten (10) Business Days of the approval of contract award by Board of Public Works
Provide a draft project schedule to the Contract Manager and State for review and approval.	Within five (5) Business Days after the Kick-Off Meeting
Provide a final project schedule to the Contract Manager and State for review and approval.	Within ten (10) Business Days after the Kick-Off Meeting
Begin implementation meetings with the Contract Manager and State.	Within thirty (30) calendar days of the approval of contract award by Board of Public Works
Provide plan benefits documents to the State for review and approval.  Develop and deliver a draft marketing plan for open enrollment and health fairs, including draft open enrollment marketing materials to the State for review and approval.  Establish necessary account(s) with the Comptroller’s Office to enable electronic funds transfer.	Within thirty (30) calendar days after the Kick-Off Meeting
Provide final open enrollment marketing plan for open enrollment and health fairs, including final open enrollment marketing materials, to the State.	Within sixty (60) calendar days after the Kick-Off Meeting
Information Technology (IT) System development and set-up to support program operations, including the website, mobile apps, participating pharmacy directory, and call center automated voice response system.	August 31, 2024
Attend all scheduled benefits coordinator open enrollment training sessions as determined by the State.	September 1, 2024 through October 15, 2024

<b>ACTIVITY</b>	<b>DATE (anticipated)</b>
Attend all scheduled open enrollment and health fairs as determined by the State.	Beginning September 1, 2024 through November 15, 2024
Pre-implementation review by the State, including a review of the Contractor’s operational readiness for all services (e.g., IT processes member services, training, and website and mobile app development).	October 1, 2024
Receive, load and audit positive files for open enrollment for coverage beginning January 1, 2025.	Testing to begin November 1, 2024
All files loaded, positive file audits completed, data import and export transmission tested between Contractor, State, and State’s consultants, confirmation that all file data points shall successfully transmit to the aforementioned state and elected consultants and operational readiness completed.	December 1, 2024
Ongoing Claims Review – Establish electronic interface with State’s elected consultant for Ongoing Claims Review services and provide regular claims files at required frequency.	Beginning November 1, 2024
Ongoing Claims Review – Claims import and export transmission tested, confirmation that all data points shall successfully transmit to the elected consultants system without error or omission of data and operational readiness completed.	November 30, 2024
Issue identification cards.	December 15, 2024
Go Live Date – Commence benefit coverage and administration of plan.	January 1, 2025
Schedule and host weekly status meetings with the Contract Manager and other State representatives concerning project development, status and Contractor Performance.	Beginning February 1, 2025

**2.3.10 Staffing and Meetings**

- A. Contractor shall provide adequate staffing for effective management and performance of its obligations in at least the following areas: account management, claims processing, claims appeals, customer/member services, reporting, and data management and production.
- B. Contractor shall assign a designated (but not necessarily dedicated) Contractor Account Executive for each Functional Area as the primary contacts for the State of Maryland; the Contractor Account Executive will participate on the implementation team and all other areas of the contract administration. The Contract Manager reserves the right to accept or decline the Contractor’s designated Account Executives for any reason at any time. If requested by the Contract Manager, a Contractor Account Executive will be replaced with one that the State is allowed to interview. See MS-IFB Section 3.11 for requirements regarding Substitution of Personnel.



- C. Contractor shall assign a designated (but not necessarily dedicated) Clinical Services Account Manager for the State per MS-IFB section 3.10. The State of Maryland reserves the right to accept or decline assigned contacts for any reason at any time.
- D. Contractor shall assign a dedicated Contractor Account Service Representative for each Functional Area per MS-IFB section 3.10. The State of Maryland reserves the right to accept or decline assigned contacts for any reason at any time.
- E. Contractor shall assign a designated (but not necessarily dedicated) customer service team for the State. The State of Maryland reserves the right to accept or decline assigned contacts for any reason at any time.
- F. Contractor shall assign a designated (but not necessarily designated) eligibility file representative for the State. The State of Maryland reserves the right to accept or decline assigned contacts for any reason at any time.
- G. Contractor shall attend quarterly and annual meetings, as required, with the Contract Manager and State. Other contract or operational meetings may be required by the Contract Manager or State.
- H. Contractor shall provide meeting minutes to the Contract Manager and other State representatives and attendees within ten (10) Business Days for quarterly and annual meetings; and any subsequent edits within five (5) Business Days of receipt of reviewers.

### **2.3.11 Data and Reporting**

- A. Contractor shall provide reports and submit data to the State and to other entities on behalf of the State. All Contractor reports shall be in the form and format as approved by the State. The State is not responsible for any incurred costs associated with adhering to the State's form and format of data transmission.
- B. Contractor Account Executives shall provide quarterly report cards, which include performance guarantee descriptions, performance goals (see PBA Package, Section 4.7, Performance Guarantees), actual performance measurement, variance details of each non-compliant component and detailed supporting documentation for each Performance Guarantee ("Report Cards"). Report cards shall be submitted to the Contract Manager within seventy-five (75) calendar days following the end of the preceding quarter.
- C. The Contractor shall respond to requests made by either the State or its benefits consultants regarding State-specific financial or statistical files, prescription processing, member services, network adequacy, patient management, and drug utilization reports. The Contractor shall acknowledge requests within one (1) Business Day with an expected timeline for completion and delivery to the State or its benefits consultant.
- D. The Contractor shall provide standard reports to the Department for all periods covered by this Contract. This obligation shall survive termination of the Contract to the extent that reports cannot be provided until the close of a period of coverage.
- E. The State requires a number of regular monthly, quarterly, bi-annual, and annual reports. The Contractor shall provide these reports via a secure electronic transmission to the Contract Manager, State, and benefit consultants with the exception of the MBE, fraud, and investigations audit reports. The reports shall be submitted by 6:00 p.m. EST on the last day of the month following the end of the reporting period on a calendar basis, unless otherwise specified by the Contract Manager. See below for a listing of reports:

#### **Monthly Reports**

1. The Contractor shall provide a paid claim report, in the form and format as approved by the State, showing paid claims by pharmacy type (e.g., retail, mail order, or specialty), number of enrolled employees and retirees, number of enrolled participants (including employees, retirees and their dependents) for the following groups: Active Employees, Direct Pay Enrollees, Satellite Account Employees and Retirees, Retirees under 65, and Retirees over 65.
2. The Contractor shall provide an MBE Report in accordance with FA 1 Attachment D: Minority Business Enterprise Forms.

### **Quarterly Reports**

1. The Contractor shall self-report on each of the Performance Guarantee measurements as the “Quarterly Plan Performance Measurement Report Card” to the State on a fiscal quarterly basis, in accordance with PG-4.
2. The Contractor shall provide the data elements shown in Attachment Q-1 to Q-9: Standard Reporting Formats in the format requested.
3. The Contractor shall provide a report explaining any unusual trend results relative to the market.
4. The Contractor shall provide full disclosure of all revenue sources of the PBM related to the State’s Plan.
5. The Contractor shall provide reports that include details of the following, received directly or indirectly in connection with the State plan and the Maryland Rx Program:
  - a) Prescription Pricing Components (e.g., retail, mail, and specialty pharmacy AWP, AWP discounts, dispensing fees, etc.);
  - b) Manufacturer payments (e.g., formulary rebates, administrative fees, educational grants, detailing payments, bonuses, etc.), including amount and source;
  - c) Administrative fees or payments from labelers or wholesalers (discounts, rebates, grants, detailing payments, bonuses, etc.) including amount and source (not including the acquisition cost of products dispensed from the Contractor’s mail service and specialty pharmacies); and
  - d) Outreach and outcomes of any other arrangement(s) from which the PBM may profit (not including the acquisition cost of products dispensed from the Contractor’s mail service and specialty pharmacies).
6. To the extent applicable to the plan design in place, Contractor shall provide full disclosure and quarterly reports of utilization management programs (e.g., prior authorization, drug limitation, etc.) including affected drugs, costs, savings, outcomes, and number of affected members.
7. The Contractor shall provide full disclosure quarterly reports of drug interventions, drug substitution, and drug repackaging that occurs directly or indirectly in connection with the State Plan and the Maryland Rx Program, including at least the following:
  - a) Drug name, dosage, strength, and National Drug Code (NDC) of the drug prior to substitution, intervention, or repackaging;
  - b) Drug name, dosage, strength, and NDC of the drug after substitution, intervention, or repackaging;

- c) The price of each drug;
  - d) Therapeutic basis or cost savings for the intervention or substitution;
  - e) The manufacturer of each drug;
  - f) The labeler or packager of each drug;
  - g) The aggregate number of interventions, substitutions, or repackaging during the reporting period; and
  - h) Whether the Contractor has received any compensation from any source related to any drug intervention or substitution.
8. The Contractor shall provide a quarterly statement executed by the senior executive staff that verifies that no improper drug substitutions occurred during the prior quarter.
  9. The Contractor shall provide documentation for drug substitutions that occurred during the prior quarter.
  10. The Contractor shall provide reporting that demonstrates any changes in treatment patterns within a specific therapeutic class.
  11. Based on the results of the Contractor's internal claims auditing, the Contractor shall provide a report summarizing the percent of retail claims paid with no errors.
  12. The Contractor shall provide benchmarking data on pharmacy costs and utilization.
  13. The Contractor shall provide a report list of approved participants in any Drug Utilization Review (DUR) program including at least the following data elements:
    - a) Unique participant identifier;
    - b) Description of the DUR program;
    - c) Source of the intervention referral (i.e., pharmacy, Employee Benefits Division (EBD) staff, claims data, etc.);
    - d) Date of approval for DUR program;
    - e) Length of DUR authorization; and
    - f) Financial impact to the State for the specific intervention;
  14. The Contractor shall provide full disclosure quarterly updates of its specialty drug list. The Contractor shall list separately those specialty drugs added to the list and those specialty drugs deleted from the list. Included with the list of specialty drug additions or deletions noted in each of these quarterly updates, the Contractor shall provide the following:
    - a) The decision process used to make such changes;
    - b) The procedure used to notify those impacted by the specialty drug list changes;
    - c) Projected member impact and outcome of specialty drug list changes (e.g., number of participants, costs, savings, etc.) by drug; and
    - d) Any arrangements of the Contractor to encourage appropriate use and/or otherwise manage the utilization of the specialty drug in question, including a description of outreach efforts and outcomes.

15. The Contractor shall develop and administer a fraud/abuse detection and controlled substance management program that will notify the State quarterly (May 1, August 1, November 1, and February 1) of any suspected fraud and the steps the Contractor has taken to investigate and remedy. This program shall include, at a minimum, the following parameters:
  - a) Analysis of claims information against standard benchmarks to identify utilization patterns associated with abuse or fraud;
  - b) Tracking of members for multiple quarters to identify aberrant utilization patterns;
  - c) Prescriber and pharmacy communication and outreach to rule out abuse or fraud;
  - d) Tracking and reporting law enforcement agency contacts and involvement;
  - e) Ability to implement prescriber and/or pharmacy limits (lockdown) to control dispensing and coverage; and
  - f) Identification of medications and drugs that are susceptible to abuse or fraud.

**Bi-Annual Reports**

1. The Contractor shall report on fraud investigations and audit activity twice a year, at six-month intervals.
2. The Contractor shall provide a reconciliation of guaranteed Discounts, Dispensing Fees, and Rebates on a bi-annual basis. The pricing reconciliation periods for the Price Guarantees for both FA-1 Commercial and FA-2 EGWP are as follows in Figure 2:

**Figure 2: Reconciliation Period for Guarantee Periods**

Contract Year	Reconciliation Period for Guarantee Periods	Ingredient Cost Discounts (Non-Specialty and Specialty)	Dispensing Fees	Rebates	Delivery Date to State
Base Year 1	January 1, 2025 – June 30, 2025	X	X	X	September 30, 2025
	July 1, 2025 – December 31, 2025	X	X	X	April 30, 2026
Base Year 2	January 1, 2026 – June 30, 2026	X	X	X	September 30, 2026
	July 1, 2026 – December 31, 2026	X	X	X	April 30, 2027
Base Year 3	January 1, 2027 – June 30, 2027	X	X	X	September 30, 2027
	July 1, 2027 – December 31, 2027	X	X	X	April 30, 2028

Contract Year	Reconciliation Period for Guarantee Periods	Ingredient Cost Discounts (Non-Specialty and Specialty)	Dispensing Fees	Rebates	Delivery Date to State
Optional Period 1, Year 1	January 1, 2028 – June 30, 2028	X	X	X	September 30, 2028
	July 1, 2028 – December 31, 2028	X	X	X	April 30, 2029
Optional Period 1, Year 2	January 1, 2029 – June 30, 2029	X	X	X	September 30, 2029
	July 1, 2029 – December 31, 2029	X	X	X	April 30, 2030
Optional Period 2, Year 1	January 1, 2030 – June 30, 2030	X	X	X	September 30, 2030
	July 1, 2030 – December 31, 2030	X	X	X	April 30, 2031
Optional Period 2, Year 2	January 1, 2031 – June 30, 2031	X	X	X	September 30, 2031
	July 1, 2031 – December 31, 2031	X	X	X	April 30, 2032

**Annual Reports**

1. The Contractor shall provide annual recommendations for formulary changes and preferred drug list changes, listing changes in the list of drugs that are included in the second (i.e., “preferred”) tier and third (i.e., “non-preferred”) tier, identifying changes by name, dosage, and NCS number.
2. The Contractor shall provide full disclosure annual updates of formulary and rebate management information, including at least the following:
  - a) Maximum allowable cost (MAC) list changes, identifying changes by drug name, dosage, and NDC number for both the mail and retail MAC lists; (Note: If the MAC lists are the same for both mail and retail, only one set of changes need be provided.)
  - b) The procedure used to make such changes;
  - c) The procedure used to notify those impacted by the formulary or PDL damages;

- d) Projected member impact and outcome of formulary changes (e.g., number of participants, costs, savings, etc.) by drug;
  - e) Any arrangements with prescribing providers, medical groups, pharmacy providers, individual practice associations, or other persons associated with activities of the Contractor to encourage formulary compliance or otherwise manage prescription benefits, including a description of outreach efforts and outcomes;
  - f) Rebates paid by drug at the NDC level; and
  - g) Commercial plan that mirrors the Medicare Part D Prescription Drug Event (PDE) report for the EGWP plan in that the report will show, on a claim by claim basis, what was reimbursed to the pharmacy on the State's behalf and what was added onto the claim as a form of administration fee.
3. Contractor shall comply with Section 201 of Division BB of the Consolidated Appropriations Act of 2021 (the "anti-gag clause") and will not directly or indirectly restrict the State from: (1) providing provider-specific cost or quality of care information or data to referring providers, the plan sponsor, participants, beneficiaries, or enrollees, or individuals eligible to become participants, beneficiaries, or enrollees of the plan or coverage; (2) electronically accessing de-identified claims and encounter data for each participant, beneficiary, or enrollee; and (3) sharing such information, consistent with applicable privacy regulations.
- F. Contractor shall support the State's compliance with the No Surprises Act (NSA) and Transparency Regulations' requirements by (1) providing Advanced Explanations of Benefits for scheduled services; (2) providing price comparison tools under the NSA; (3) providing the plan with machine-readable files (updated monthly) with in-network negotiated rates and historical out-of-network allowed amounts; (4) for prescription drug coverage, providing machine-readable files with negotiated rates and prices for covered prescription drugs; and (5) reporting on pharmacy and drug costs as required under the Consolidated Appropriations Act of 2021. Contractor shall provide, on a monthly basis, a full file of all claim activity to the State's data warehouse vendor. This file shall include Social Security Numbers and be transmitted electronically to a designated VPN connection. This process shall be established through the State of Maryland's consultant.
- G. Contractor shall provide, on a daily basis, a full file of all applicable State Data, to the State's Ongoing Claims Review consultant. This file shall NOT include member Social Security numbers.
- H. Contractor shall furnish in a timely manner a copy of its annual SOC 2 Audit Report under the Statement on Standards for Attestation Engagements ("SSAE 18"), or a substantially similar audit agreeable to State, issued by the independent auditors of Contractor.
- I. Contractor shall provide ad hoc reporting as requested by the State for no additional charge. All ad hoc reporting will be in the form and format as requested by the State.
- 2.3.12 Claims Processing and Payment.** Contractor shall process and pay claims as applicable in an accurate and timely manner pursuant to the Plan Design provided in Attachment S. The Contractor shall provide, at a minimum, claims processing services as outlined in the Participant Bidding Agreement.
- 2.3.13 Promotion Materials and Communication Support**
- A. The Contractor shall provide co-branded materials at no additional charge to inform and educate employees on the purpose and value of the pharmacy benefit and other programs and

information on how to access services. Materials shall include co-branded versions of the following: employee brochures, supervisor handbooks, materials for open enrollment, health fairs, wellness fairs, and quarterly electronic newsletters. The State estimates that the Contractor will need to produce between 20,000 and 25,000 brochures on an annual basis.

- B. The State expects to conduct sixty (60) or more open enrollment and health fairs plus forty (40) or more wellness events throughout the State each year. The Contractor shall be required to attend all open enrollment health fairs and wellness fairs.

**2.3.14 Administrative Requirements.** Significant detailed provisions regarding the minimum expectations of the services to be provided by the Contractor for the prescription drug benefit Plan are provided in **Attachment P – Minimum Qualifications Sample Export** and **Attachment T – Participant Bidding Agreement (PBA) Sample Export**. The Contractor shall agree to the Administrative Requirements as stated in **Attachment P – Minimum Qualifications Sample Export** and **Attachment T – Participant Bidding Agreement (PBA) Sample Export** for both Functional Areas.

**2.3.15 Performance Guarantees.** The Contractor shall comply with the performance guarantees set forth in **Attachment T – Participant Bidding Agreement (PBA) Sample Export** for each Functional Area, as applicable. Performance guarantees are subject to audit by the State.

**2.3.16 Contractor-Supplied Hardware, Software, and Materials**

- A. By responding to this MS-IFB and accepting a Contract award, the Bidder specifically agrees that for any software, hardware, or hosting service that it proposes, the State will have the right to purchase such item(s) from another source, instead of from the selected Bidder.
- B. SaaS applications shall be accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email) or a program interface.
- C. The State shall be permitted limited user-specific application configuration settings.
- D. The Contractor is responsible for the acquisition and operation of all hardware, software and network support related to the services being provided; Contractor shall keep all software current.
- E. All Upgrades and regulatory updates shall be provided at no additional cost.
- F. The State requires that the Bidder price individual software modules separately.
- G. The State also requires that the Bidder provide fully functional, generally available software and multiple-user licenses for purchase as needed throughout the life of the Contract.
- H. The Bidder shall install and provide all documentation for the software furnished under the Contract.
- I. Hardware and software costs procured as part of the MS-IFB cannot exceed 49 percent of the total Contract value.
- J. Material costs shall be passed through with no mark-up by the Contractor.
- K. The Contractor shall prepare software releases and stage at the Department for validation in the system test environment. The Department will provide authorization to proceed. The Department will have the ability to manage the distribution of these releases to the appropriate sites. To support this requirement, the Contractor shall propose, provide and fully describe its solution for updating all sites with any new software releases.

**2.3.17 Required Project Policies, Guidelines and Methodologies**

- A. The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines affecting Information Technology projects, which may be created or changed periodically. Bidder is required to review all applicable links provided below and state compliance in its response.
- B. It is the responsibility of the Contractor to ensure adherence and to remain abreast of new or revised Federal and State laws, regulations, policies, standards and guidelines affecting project execution. These include, but are not limited to:
  - 1) The State of Maryland System Development Life Cycle (SDLC) methodology at: <http://doit.maryland.gov/SDLC/Pages/agile-sdlc.aspx>;
  - 2) The State of Maryland Information Technology Security Policy and Standards at: <http://www.DoIT.maryland.gov>- keyword: Security Policy;
  - 3) The State of Maryland Information Technology Non-Visual Standards at: <http://doit.maryland.gov/policies/Pages/ContractPolicies.aspx>;

## 2.4 Deliverables Submission

- A. Unless specified otherwise, written deliverables shall be compatible with Microsoft Office, Microsoft Project or Microsoft Visio within two (2) versions of the current version. At the Contract Manager's discretion, the Contract Manager may request one hard copy of a written deliverable.
- B. For any deliverable, the Contractor shall comply with the minimum deliverable quality criteria listed in **Section 2.4.3 Minimum Deliverable Quality**. Drafts of each final deliverable, except status reports, are required at least two weeks in advance of when the final deliverables are due (with the exception of deliverables due at the beginning of the project where this lead time is not possible, or where draft delivery date is explicitly specified). Draft versions of a deliverable shall comply with the minimum deliverable quality criteria listed in **Section 2.4.3 Minimum Deliverable Quality**.

### 2.4.1 Deliverable Acceptance

- A. A final deliverable shall satisfy the scope and requirements of this IFB for that deliverable, including the quality and acceptance criteria for a final deliverable as defined in **Section 2.4.4 Deliverable Descriptions/Acceptance Criteria**.
- B. The payment of an invoice does not constitute acceptance of a deliverable. The Department reserves the right to reduce or withhold Contract payment as described in **Section 3.3, Invoicing**.

### 2.4.2 Minimum Deliverable Quality

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

Each deliverable shall meet the following minimum acceptance criteria:

- A. Be presented in a format appropriate for the subject matter and depth of discussion.
- B. Be organized in a manner that presents a logical flow of the deliverable's content.
- C. Represent factual information reasonably expected to have been known at the time of submittal.



- D. In each section of the deliverable, include only information relevant to that section of the deliverable.
- E. Contain content and presentation consistent with industry best practices in terms of deliverable completeness, clarity, and quality.
- F. Meets the acceptance criteria applicable to that deliverable, including any State policies, functional or non-functional requirements, or industry standards.
- G. Contains no structural errors such as poor grammar, misspellings or incorrect punctuation.
- H. Must contain the date, author and page numbers. When applicable for a deliverable, a revision table must be included.
- I. Electronic submissions shall be presented in a form and format that is ready to print. The printed format shall include:
  - 1) Header;
  - 2) Footer;
  - 3) Appropriate title for each page; and
  - 4) Be free of additional blank pages.

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### 3 Contractor Requirements: General

#### 3.1 Contract Initiation Requirements

- A. Contractor shall schedule and hold a kickoff meeting within five (5) Business Days of approval of the contract by the Board of Public Works with the Contract Manager and other State representatives. Within five (5) Business Days of the kickoff meeting, the Contractor shall furnish a draft project schedule describing the activities for the Contractor, the State, and any third parties for fully transitioning to the Contractor's Solution.

#### 3.2 End of Contract Transition

- 3.2.1 The Contractor shall provide transition assistance as requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor, for a period up to one hundred and eighty (180) calendar days prior to Contract end date, or the termination thereof. Such transition efforts shall include, but not be limited to, the following:

- A. Provide additional services and support as requested to successfully complete the transition;
- B. Maintain the services called for by the Contract at the required level of proficiency;
- C. Provide current operating procedures (as appropriate); and
- D. Adhere to a one hundred eighty (180) day run-out period beginning the day after the last day of the final Contract year.

- 3.2.2 The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Manager. The Contract Manager may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of the Contract.

- 3.2.3 The Contractor shall ensure that all necessary knowledge and materials for the tasks completed are transferred to the custody of State personnel or a third party, as directed by the Contract Manager.

- 3.2.4 The Contractor shall support end-of-Contract transition efforts with technical and project support to include but not be limited to:

- A. The Contractor shall provide a draft Transition-Out Plan one hundred and eighty (180) calendar days in advance of Contract end date (or within ten (10) Business Days of notification of termination).
- B. The Transition-Out Plan shall address at a minimum the following areas:
  - 1) Any staffing concerns or issues related to the closeout of the Contract;
  - 2) Communications and reporting process between the Contractor, the Department and the Contract Manager;
  - 3) Security and system access review and closeout;
  - 4) Connectivity services provided, activities and approximate timelines required for transition-out;
  - 5) Plans to complete tasks and any unfinished work items (including open change requests, and known bug or issues);
  - 6) Disclosure of Contractor(s) custom programming rationale for eligibility and claim processing; and

- 7) Any risk factors with the transition-out process and suggested solutions. The Contractor shall document any risk factors and suggested solutions.
- C. If requested, the Contractor shall ensure all documentation and data including, but not limited to, System Documentation and current operating procedures, is current and complete with a hard and soft copy in a format prescribed by the Contract Manager.
- D. The Contractor shall provide copies of any current daily and weekly back-ups to the Department or a third party as directed by the Contract Manager as of the final date of transition, but no later than the final date of the Contract.
- E. Access to any data or configurations of the furnished product and services shall be available after the expiration of the Contract as described in **Section 3.2.5**.

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

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

## **3.3 Invoicing**

### **3.3.1 General**

- A. Monthly remittance of the administrative fees or premiums will be in accordance with the self-administered billing as described in Section 3.3.2.
- B. The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.
- C. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.
- D. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor, however, is not exempt from such sales and use taxes and may be liable for the same.

### **3.3.2 Self-Administered Billing Remittance Schedule**

The Contractor shall receive administration fee payments in accordance with the following schedule.

- A. The State will remit the payment due based on current enrollment volume as of the first of the month by the 15th of the following month. The State will provide worksheets that indicate total enrollment by category, benefit plan, and benefit group to include group totals.
- B. The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.
- C. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.
- D. At the end of the Contract, the State will perform a final reconciliation up to one hundred and eighty (180) calendar days following the final day of the Contract.

### **3.3.3 Invoice Submission Schedule**

#### **3.3.3.1 Payment Procedures – Claims Payment Specifications**

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

1. Invoice the State processed claims on a weekly basis. Invoices shall be sent to the State by 10:00 a.m. Local Time each Monday (or next State Business Day if Monday is a holiday) for claims processed the prior week. Invoices will be processed for payment within 48 hours of receipt.
2. Accept payment via wire transfer within 24 hours or next Business Day following receipt of the invoice.
3. Submit to the State for each claim invoiced, a 100-character record with claims detail (Attachment Q – 100 Character File Layout). The file containing these records must equal the amount invoiced and be submitted within 48 hours of invoice submission.
4. Accept adjustments based on the reconciliation of the invoice amount and the 100-character file. Contractor will be notified of applicable adjustments following an annual eligibility audit. Frequency is subject to change at the State's discretion.

#### **3.3.3.2 Payment Procedures – Non Claims (Administrative) for all Functional Areas**

The Contractor shall:

- 1) Accept monthly payments from the State of administration fees (for the State Plan) based on the State's eligibility files (provided weekly and totaled for remittance purposes).
- 2) Accept payment from the State as processed through normal State transmittal process (i.e., approved transmittal sent to Annapolis, EFT transfer to Contractor). Payment is usually made by the 15th of the month for the preceding month.
- 3) For any recoveries as a result of fraud or an audit, the Contractor shall pay the State any portion due to the State via a separate check payment and provide substantiation on a monthly basis. The Contractor shall report on any aggregate activity twice a year, at six-month intervals, on August 15 and February 15.

### 3.3.3.3 Payment Procedures – Claims Payment Specifications

The Contractor shall:

- 1) Invoice the State processed claims on a weekly basis, with claims broken out by Member/Participant subgroup (Active, Retirees, Satellite Account, Contractual, Direct Pay) for the State Plan.
- 2) Invoice the EGWP State processed claims on a bi-monthly basis for eligible retirees for the State Plan.
- 3) Invoices will be sent to the State by 10:00 a.m. Local Time each Monday (or next State business day if Monday is a holiday) for claims processed the prior week. Invoices received after 10:00 a.m. will be processed for payment as per Section 4 (Consideration and Payment) of the Contract.
- 4) Submit to the State for each claim invoiced, a 100-character record with claims detail (Attachment P-100 Character File Layout). The file containing these records must equal the amount invoiced and be submitted within forty-eight (48) hours of invoice submission.
- 5) Accept adjustments based on the reconciliation of State's invoice amount and 100-character file. Contractor will be notified of applicable adjustments following an annual eligibility audit. Frequency is subject to change at the State's discretion.

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

- A. The amount invoiced is inconsistent with the Contract;
- B. The proper invoice has not been received by the party or office specified in the Contract;
- C. The performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
- D. The items or services do not meet the quality requirements of the Contract; or
- E. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract Manager concerning performance under the Contract and compliance with its provisions.

### 3.3.5 Travel Reimbursement

Travel will not be reimbursed under this MS-IFB.

## 3.4 Liquidated Damages

### 3.4.1 MBE Liquidated Damages

MBE liquidated damages are identified in Attachment M.

### 3.4.2 Performance Guarantees Liquidated Damages other than MBE

It is critical to the success of the State's benefits plans that services are delivered timely and that the Contractor operates reliably. It would be impracticable and extremely difficult to fix the actual damage sustained by the State in the event of certain delays or failures in plan administration services, third party administration, scheduling, reporting, and attendance of Contractor personnel on scheduled work and provision of services to the State's Active Employees served by this Contract.

The State and the Contractor, therefore, presume that in the event of certain such delays and failures, the amount of damage which will be sustained from a failure to perform to certain

standards will be the amounts set forth in PBA Package, Section 4.7 “Performance Guarantees” and the Contractor agrees that in the event of any such failure of performance, the Contractor shall pay such amount as liquidated damages and not as a penalty. The State, at its option for amounts due the State as liquidated damages, may deduct such sums from any money payable to the Contractor or may bill the Contractor as a separate item.

### **3.5 Disaster Recovery and Data**

The following requirements apply to the Contract:

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

- A. Unless specified otherwise in the MS-IFB, Contractor shall maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and other confidential information, Contractor’s processing capability and the availability of hosted services, in each case throughout the Contract term. Any force majeure provisions of the Contract do not limit the Contractor’s obligations under this provision.
- B. The Contractor shall have robust contingency and disaster recovery (DR) plans in place to ensure that the services provided under the Contract will be maintained in the event of disruption to the Contractor/subcontractor’s operations (e.g., disruption to information technology systems), however caused.
  - 1) The Contractor shall furnish a DR site.
  - 2) The DR site shall be at least 100 miles from the primary operations site and have the capacity to take over complete production volume in case the primary site becomes unresponsive.
- C. The contingency and DR plans must be designed to ensure that services under the Contract are restored after a disruption within twenty-four (24) hours from notification and a recovery point objective of one (1) hour or less prior to the outage in order to avoid unacceptable consequences due to the unavailability of services.
- D. The Contractor shall test the contingency/DR plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one (1) annual test shall include backup media restoration and failover/fallback operations at the DR location. The Contractor shall send the Contract Manager a notice of completion following completion of DR testing.
- E. Such contingency and DR plans shall be available for the Department to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

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

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

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

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

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

### **3.6 Insurance Requirements**

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

**3.6.1** The following type(s) of insurance and minimum amount(s) of coverage are required:

- A. Commercial General Liability - of \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.
- B. Errors and Omissions/Professional Liability - \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.
- C. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and the Department should be added as a "loss payee."
- D. Cyber Security / Data Breach Insurance – The Contractor shall possess and maintain throughout the term of the Contractor and for three (3) years thereafter, cyber risk/ data breach insurance (either separately or as part of a broad Professional Liability or Errors and Omissions Insurance) with limits of at least ten million dollars (\$10,000,000) per claim. Any "insured vs. insured" exclusions will be modified accordingly to allow the State additional insured status without prejudicing the State's rights under the policy(ies). Coverage shall be sufficiently broad to respond to the Contractor's duties and obligations under the Contract and shall include, but not be limited to, claims involving privacy violations, information theft,

damage to or destruction of electronic information, the release of Sensitive Data, and alteration of electronic information, extortion, and network security. The policy shall provide coverage for, not by way of limitation, breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

- E. Worker's Compensation - The Contractor shall maintain such insurance as necessary or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act, to not be less than one million dollars (\$1,000,000) per occurrence (unless a state's law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.
- F. Automobile or Commercial Truck Insurance - The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.

**3.6.2** The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance and professional liability.

**3.6.3** All insurance policies shall be endorsed to include a clause requiring the insurance carrier to provide the Procurement Officer, by certified or electronic mail, not less than 30 calendar days' advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) calendar days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least fifteen (15) calendar days prior to the expiration of the insurance policy then in effect.

**3.6.4** Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.

**3.6.5** The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Manager.

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

### **3.7 Security Requirements**

The following requirements are applicable to the Contract:

#### **3.7.1 Employee Identification**

- A. Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.
- B. Contractor Personnel shall cooperate with State site requirements, including being prepared to be escorted at all times, and providing information for State badge issuance.



- C. Contractor shall remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion, that Contractor Personnel has not adhered to the Security requirements specified herein.
- D. The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

### **3.7.2 Criminal Background Check**

- A. A criminal background check for all Contractor Personnel shall be completed prior to providing any services under the Contract.
- B. The Contractor shall obtain at its own expense a Maryland Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, for all Contractor Personnel listed in sub-paragraph A. This check may be performed by a public or private entity.
- C. The Contractor shall provide certification and supporting documentation to the Contract Manager that the Contractor has completed the required criminal background check described in this MS-IFB for each required Contractor Personnel prior to assignment, and that the Contractor Personnel have successfully passed this check.
- D. Persons with a criminal record may not perform services under the Contract unless prior written approval is obtained from the Contract Manager. The Contract Manager reserves the right to reject any individual based upon the results of the background check. Decisions of the Contract Manager as to acceptability of a candidate are final. The State reserves the right to refuse any individual Contractor Personnel to work on State premises, based upon certain specified criminal convictions, as specified by the State.
- E. The CJIS or federal criminal record check of each Contractor Personnel who will work on State premises shall be reviewed by the Contractor for convictions of any of the following crimes described in the Annotated Code of Maryland, Criminal Law Article:
  - 1) §§ 6-101 through 6-104, 6-201 through 6-205, 6-409 (various crimes against property);
  - 2) any crime within Title 7, Subtitle 1 (various crimes involving theft);
  - 3) §§ 7-301 through 7-303, 7-313 through 7-317 (various crimes involving telecommunications and electronics);
  - 4) §§ 8-201 through 8-302, 8-501 through 8-523 (various crimes involving fraud);
  - 5) §§9-101 through 9-417, 9-601 through 9-604, 9-701 through 9-706.1 (various crimes against public administration); or
  - 6) a crime of violence as defined in CL § 14-101(a).
- F. Contractor Personnel with access to systems supporting the State or to State data who have been convicted of a felony or of a crime involving telecommunications and electronics from the above list of crimes shall not be permitted to work on State premises under the Contract; Contractor Personnel who have been convicted within the past five (5) years of a misdemeanor from the above list of crimes shall not be permitted to work on State premises.
- G. A particular on-site location covered by the Contract may require more restrictive conditions regarding the nature of prior criminal convictions that would result in Contractor Personnel not being permitted to work on those premises. Upon receipt of a location's more restrictive

conditions regarding criminal convictions, the Contractor shall provide an updated certification regarding the Contractor Personnel working at or assigned to those premises.

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

- A. For the conditions noted below, Contractor Personnel may be barred from entrance or leaving any site until such time that the State's conditions and queries are satisfied.
- 1) Contractor Personnel may be subject to random security checks when entering and leaving State secured areas. The State reserves the right to require Contractor Personnel to be accompanied while in secured premises.
  - 2) Some State sites, especially those premises of the Department of Public Safety and Correctional Services, require each person entering the premises to document and inventory items (such as tools and equipment) brought onto the site, and to submit to a physical search of his or her person. Therefore, Contractor Personnel shall always have available an inventory list of tools being brought onto a site and be prepared to present the inventory list to the State staff or an officer upon arrival for review, as well as present the tools or equipment for inspection. Before leaving the site, the Contractor Personnel will again present the inventory list and the tools or equipment for inspection. Upon both entering the site and leaving the site, State staff or a correctional or police officer may search Contractor Personnel. Depending upon facility rules, specific tools or personal items may be prohibited from being brought into the facility.
- B. Any Contractor Personnel who enter the premises of a facility under the jurisdiction of the Department may be searched, fingerprinted (for the purpose of a criminal history background check), photographed and required to wear an identification card issued by the Department.
- C. Further, Contractor Personnel shall not violate Md. Code Ann., Criminal Law Art. Section 9-410 through 9-417 and such other security policies of the agency that controls the facility to which the Contractor Personnel seeks access. The failure of any of the Contractor Personnel to comply with any provision of the Contract is sufficient grounds for the State to immediately terminate the Contract for default.

### 3.7.4 Information Technology

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

The Contractor shall:

- 1) Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security such as those listed below (see **Section 3.7.5**);
- 2) Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the Contract; and

- 3) The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at:

<https://doit.maryland.gov/policies/Pages/default.aspx>

### 3.7.5 Data Protection and Controls

- A. Contractor shall ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) provided or used in connection with the performance of the Contract and shall apply or cause application of appropriate controls so as to maintain such a secure environment (“Security Best Practices”). Such Security Best Practices shall comply with an accepted industry standard, such as the NIST cybersecurity framework.
- B. To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):
  - 1) Establish separate production, test, and training environments for systems supporting the services provided under the Contract and ensure that production data is not replicated in test or training environment(s) unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements. The Contractor shall ensure the appropriate separation of production and non-production environments by applying the data protection and control requirements listed in **Section 3.7.5**.
  - 2) Apply hardware and software hardening procedures as recommended by Center for Internet Security (CIS) guides <https://www.cisecurity.org/>, Security Technical Implementation Guides (STIG) <https://public.cyber.mil/stigs/>, or similar industry best practices to reduce the systems’ surface of vulnerability, eliminating as many security risks as possible and documenting what is not feasible or not performed according to best practices. Any hardening practices not implemented shall be documented with a plan of action and milestones including any compensating control. These procedures may include but are not limited to removal of unnecessary software, disabling or removing unnecessary services, removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor’s system configuration files.
  - 3) Ensure that State data is not comingled with non-State data through the proper application of compartmentalization Security Measures.
  - 4) Apply data encryption to protect Sensitive Data at all times, including in transit, at rest, and also when archived for backup purposes. Unless otherwise directed, the Contractor is responsible for the encryption of all Sensitive Data.
  - 5) For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.
  - 6) Encryption algorithms which are utilized for encrypting data shall comply with current Federal Information Processing Standards (FIPS), “Security Requirements for Cryptographic Modules”, FIPS PUB 140-2:

<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>

<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>

- 7) Enable appropriate logging parameters to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers and information security standards, including Maryland Department of Information Technology's Information Security Policy.
- 8) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under the Contract.
- 9) Ensure system and network environments are separated by properly configured and updated firewalls.
- 10) Restrict network connections between trusted and untrusted networks by physically or logically isolating systems from unsolicited and unauthenticated network traffic.
- 11) By default "deny all" and only allow access by exception.
- 12) Review, at least annually, the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
- 13) Perform regular vulnerability testing of operating system, application, and network devices. Such testing is expected to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the security policies applicable to the Contract. Contractor shall evaluate all identified vulnerabilities for potential adverse effect on security and integrity and remediate the vulnerability no later than 30 calendar days following the earlier of vulnerability's identification or public disclosure, or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect the Contractor's policies and procedures and the results of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.
- 14) Enforce strong user authentication and password control measures to minimize the opportunity for unauthorized access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current Maryland Department of Information Technology's Information Security Policy (<https://doit.maryland.gov/policies/Pages/default.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- 15) Ensure State data is not processed, transferred, or stored outside of the United States ("U.S."). The Contractor shall provide its services to the State and the State's end users solely from data centers in the U.S. Unless granted an exception in writing by the State, the Contractor shall not allow Contractor Personnel to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its Contractor Personnel to access State data remotely only as required to provide technical support.
- 16) Ensure Contractor's Personnel shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State, which may be revoked at any time for any reason. The Contractor shall complete any necessary paperwork as directed

and coordinated with the Contract Manager to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

- 17) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under the Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation. The Contractor shall perform routine vulnerability scans and take corrective actions for any findings.
- 18) Conduct regular external vulnerability testing designed to examine the service provider's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service's security and integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.

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

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

### **3.7.7 Security Plan**

- A. The Contractor shall protect State data according to a written security policy ("Security Plan") no less rigorous than that of the State, and shall supply a copy of such policy to the State for validation, with any appropriate updates, on an annual basis.
- B. The Security Plan shall detail the steps and processes employed by the Contractor as well as the features and characteristics which will ensure compliance with the security requirements of the Contract.

### **3.7.8 PCI Compliance**

- A. Contractor shall at all times comply, and ensure compliance with, all applicable Payment Card Industry ("PCI") Data Security Standards ("DSS"), including any and all changes thereto. Contractor shall provide the Department with documented evidence of current compliance to PCI DSS within 30 calendar days of the Department request.
- B. Contractor shall annually furnish to the State evidence of the PCI Security Standards Council's (SSC) acceptance or attestation of the Contractor's conformance to the relevant PCI DSS requirements by a third party certified to perform compliance assessments.
- C. The Contractor shall ensure that the scope of the annual SOC 2 Type II Report specified under Section 3.9 includes testing to confirm the PCI assessment results.

### **3.7.9 Security Incident Response**

- A. The Contractor shall notify the Department in accordance with **Section 3.7.9A-D** when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:
  - 1) notify the Department within one (1) Business Day of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract

- Manager, Department chief information officer and Department chief information security officer;
- 2) notify the Department within one (1) Business Day if there is a threat to Contractor's Solution as it pertains to the use, disclosure, and security of State data; and
  - 3) provide written notice to the Department within one (1) Business Day after Contractor's discovery of unauthorized use or disclosure of State data and thereafter all information the State (or Department) requests concerning such unauthorized use or disclosure.
- B. Contractor's notice shall identify:
- 1) the nature of the unauthorized use or disclosure;
  - 2) the State data used or disclosed,
  - 3) who made the unauthorized use or received the unauthorized disclosure;
  - 4) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
  - 5) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
  - 6) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- C. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.
- D. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the State (or Department) and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

### **3.7.10 Data Breach Responsibilities**

- A. If the Contractor reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:
- 1) Notify the appropriate Contract Manager and the appropriate State-identified contact within twenty-four (24) hours by email in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;
  - 2) Cooperate with the State to investigate and resolve the Data Breach;
  - 3) Promptly implement commercially reasonable remedial measures to remedy the Data Breach; and
  - 4) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services.

B. If a Data Breach is a direct result of the Contractor's breach of its Contract obligation to encrypt State data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all of the above are subject to the Contract's limitation of liability.

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

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

### **3.8 Problem Escalation Procedure**

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

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

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

- A. The process for establishing the existence of a problem;
- B. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- C. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
- D. Expedited escalation procedures and any circumstances that would trigger expediting them;
- E. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- F. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
- G. A process for updating and notifying the Contract Manager of any changes to the PEP.

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

### 3.9 SOC 2 Type 2 Audit Report

3.9.1 A SOC 2 Type 2 Audit applies to the Contract. The applicable trust services criteria are: Security, Availability, Processing Integrity, Confidentiality, and Privacy as defined in the Guidance document identified in Section 3.9.2.

3.9.2 In the event the Contractor provides services for identified critical functions, handles Sensitive Data, or hosts any related implemented system for the State under the Contract, the Contractor shall have an annual audit performed by an independent audit firm of the Contractor's handling of Sensitive Data or the Department's critical functions. Critical functions are identified as all aspects and functionality of the Solution including any add-on modules and shall address all areas relating to Information Technology security and operational processes. These services provided by the Contractor that shall be covered by the audit will collectively be referred to as the "Information Functions and Processes." Such audits shall be performed in accordance with audit guidance: Reporting on an Examination of Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:

- A. The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the "SOC 2 Audit" or "SOC 2 Report"). All SOC2 Audit Reports shall be submitted to the Contract Manager as specified in Section F below. The initial SOC 2 Audit shall be completed within a timeframe to be specified by the State. The audit period covered by the initial SOC 2 Audit shall start with the Contract Effective Date unless otherwise agreed to in writing by the Contract Manager. All subsequent SOC 2 Audits after this initial audit shall be performed at a minimum on an annual basis throughout the Term of the Contract, and shall cover a 12-month audit period or such portion of the year that the Contractor furnished services.
- B. The SOC 2 Audit shall report on the suitability of the design and operating effectiveness of controls over the Information Functions and Processes to meet the requirements of the Contract, including the Security Requirements identified in **Section 3.7**, relevant to the trust services criteria identified in 3.9.1: as defined in the aforementioned Guidance.
- C. The audit scope of each year's SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services criteria of Security, Availability, Processing Integrity, Confidentiality, and Privacy) to accommodate any changes to the environment since the last SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and Processes through modifications to the Contract or due to changes in Information Technology or the operational infrastructure. The Contractor shall ensure that the audit scope of each year's SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- D. The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the TO Contractor or essential support to the Information Functions and Processes provided to the Department under the Contract. The Contractor shall ensure the audit includes all such subcontractors operating in performance of the Contract.



- E. All SOC 2 Audits, including those of the Contractor, shall be performed at no additional expense to the Department.
- F. The Contractor shall provide to the Contract Manager, within 30 calendar days of the issuance of each SOC 2 Report, but no later than May 1<sup>st</sup> for the preceding calendar year, a complete copy of the final SOC 2 Report(s) and a documented corrective action plan addressing each audit finding or exception contained in the SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor along with the date(s) when each remedial action is to be implemented.
- G. If the Contractor currently has an annual, independent information security assessment performed that includes the operations, systems, and repositories of the Information Functions and Processes being provided to the Department under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Department will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).
- H. If the Contractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in **Section 3.9.2.A**, the Department shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and Processes utilized or provided by the Contractor and under the Contract. The Contractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The Department will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.
- I. Provisions in **Section 3.9.1-2** shall survive expiration or termination of the Contract. Additionally, the Contractor and shall flow down the provisions of **Section 3.9.1-2** (or the substance thereof) in all subcontracts.

### **3.10 Experience and Personnel**

#### **3.10.1 Bidder Experience**

The following experience is expected and will be reviewed as part of the determination of technical acceptability:

- A. Contractor shall have experience providing pharmacy benefits management services and purchasing pool management to government entities as demonstrated by the number of years the Contractor has provided similar services and the number of clients/customers and geographic locations that the Contract currently serves.

#### **3.10.2 Personnel Experience**

The following experience is expected and will be reviewed as part of the determination of technical acceptability:

- A. Contractor personnel, including any staff of proposed subcontractor(s), must have experience and qualifications related to their specific responsibilities.

#### **3.10.3 Number of Personnel to Propose**

As part of the PBA, the Bidder shall submit five (5) Key Personnel who are expected to be available as of the start date specified in the Notice to Proceed (NTP) Date. Bidders shall

describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the Department. Bidders may generally describe planned positions in a Staffing Plan. Such planned positions may not be used as evidence of fulfilling personnel minimum qualifications.

#### **3.10.4 Key Personnel Identified**

For the Contract, the following positions to be identified in the PBA will be considered Key Personnel, and shall be required to meet the qualifications stated in **Section 3.10** and **Appendix 4**.

- A. Two Contractor Account Executives (one (1) full-time equivalent (FTE) for FA 1, designated but not dedicated; one (1) FTE for FA 2, designated but not dedicated)
- B. Clinical Services Account Manager (one (1) FTE, designated but not dedicated)
- C. Two Contractor Account Service Representatives (one (1) FTE for FA 1, dedicated to the State; one (1) FTE for FA 2, dedicated to the State)

The State of Maryland reserves the right to accept or decline the designated Contractor's Key Personnel for any reason at any time during the contract. If requested by the State, the Key Personnel will be replaced with one that the State is allowed to interview and approved before reassignment. The Contractor will be requested to submit resumes for replacement Key Personnel.

#### **3.10.5 Labor Categories**

- A. The Labor Categories are identified and described in Appendix 4. To be responsive to this MS-IFB, Bidders must be capable of providing personnel meeting the minimum requirements for all the labor categories listed. Actual resumes shall be provided only for Key Personnel as described in Section 3.10.4. Resumes for resources provided later shall be coordinated by the Contract Manager.
- B. Each Labor Category includes Titles, Position Description, Education, and Experience (General and Specialized).
- C. Education and Experience described above in the Labor Category constitute the minimum requirements for candidates performing work under this MS-IFB. All experience required must have occurred within the most recent ten (10) years.

#### **3.10.6 Contractor(s) Personnel Experience Equivalency (including Key Personnel submitted in response to this MS-IFB)**

- A. Substitution of Education for Experience: A Master's Degree may be substituted for two years of specialized experience for those labor categories requiring a Bachelor's Degree. Substitution will be reviewed and approved by the State at its discretion.
- B. Substitution of Experience for Education: Substitution of experience may be permitted at the discretion of the State.
- C. Substitution of Professional Certificates for Experience: Professional certification (e.g., Certified Employee Benefit Specialist (CEBS)) may be substituted for up to two (2) years for specialized experience at the discretion of the State.

#### **3.10.7 Contractor Personnel Maintain Certifications**

Any Contractor Personnel provided under this MS-IFB shall maintain in good standing any required professional certifications for the duration of the Contract.

### 3.10.8 Work Hours

Unless otherwise specified, the following work hours requirements are applicable:

- A. State-Mandated Closings: Contractor(s) Personnel shall be required to participate in any State-mandated closings. In this event, the Contractor(s) will be notified in writing by the Contract Manager of these details.
- B. Leave time: Notice for leave of any Key Personnel shall be submitted to the Contract Manager in advance. The Contractor shall identify and assign a previously identified substitute.

### 3.11 Substitution of Personnel

#### 3.11.1 Continuous Performance of Key Personnel

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

- A. Key Personnel shall be available to perform Contract requirements as of the NTP Date. Unless explicitly authorized by the Contract Manager or specified in the Contract, Key Personnel shall be assigned to the State of Maryland as a designated or dedicated resource, as described in Section 3.10.4.
- A. Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Bid. Key Personnel may not be removed by the Contractor from working under the Contract without the prior written approval of the Contract Manager.

#### 3.11.2 Definitions

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

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

#### 3.11.3 Contractor Personnel General Substitution Provisions

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

- A. The Contractor shall demonstrate to the Contract Manager’s satisfaction that the proposed substitute has qualifications at least equal to those of the Contractor Personnel proposed to be replaced.
- B. The Contractor shall provide the Contract Manager with a substitution request that shall include:
  - 1) A detailed explanation of the reason(s) for the substitution request;
  - 2) The resume of the proposed substitute, signed by the substituting individual and his/her formal supervisor;

- 3) The latest available resume of the current personnel for comparison purposes; and
  - 4) Evidence of any required credentials.
- C. The Contract Manager may request additional information concerning the proposed substitution and may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
- D. The Contract Manager will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Manager will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

#### **3.11.4 Replacement Circumstances**

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

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

**B. Key Personnel Replacement**

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

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

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

### 3.12 Minority Business Enterprise (MBE) Reports

The Contractor shall:

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

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

The Contractor shall:

- A. Submit the following reports by the 10<sup>th</sup> of the month following the reporting period to the Contract Manager and the Department VSBE representative:
  - 1) VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report (Attachment E-3) listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice and the reason payment has not been made; and
  - 2) **Attachment E-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Manager and the VSBE Liaison Officer.
- B. Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly by the 10th of the month following the reporting period to the

- Contract Manager and Department VSBE representative a report that identifies the prime contract and lists all payments received from Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amount of those invoices (**Attachment E-4**).
- C. Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
  - D. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State’s representatives verifying compliance with the VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the Contract.
  - E. At the option of the Department, upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE subcontractors.

### **3.14 Additional Clauses**

#### **3.14.1 Purchasing and Recycling Electronic Products**

This section does not apply to this solicitation.

#### **3.14.2 Change Control and Advance Notice**

The Contractor shall give seven (7) calendar days advance notice to the State for any routine upgrades or modifications that may impact service availability and performance.

The Contractor shall provide at least six (6) months advance notice to the State of any planned system upgrades or changes, including claims, customer service, eligibility, and corporate operating systems.

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

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

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## 4 Procurement Instructions

### 4.1 Pre-Bid Conference

- 4.1.1 A pre-Bid Teleconference (Conference) will be held via Google Meet at the date, time, and location indicated on the Key Information Summary Sheet.
- 4.1.2 Participation in the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Bids. If the solicitation includes an MBE goal, failure to attend the Conference will be taken into consideration as part of the evaluation of a Bidder's good faith efforts if there is a waiver request.
- 4.1.3 It is highly recommended that ALL Prime Contractors bring their intended subcontractors to the Conference to ensure that all parties understand the requirements of the contract and the MBE Goal.
- 4.1.4 MBE subcontractors are encouraged to attend the Conference to market their participation to potential prime contractors.
- 4.1.5 Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see **Section 4.2.1 eMMA**).
- 4.1.6 Those wishing to attend the web conference may request a meeting invitation by emailing Tyler K. Russell at [tyler.russell@maryland.gov](mailto:tyler.russell@maryland.gov) no later than 5:00 PM on January 29, 2024. An invitation e-mail is required for registration, and therefore attendance. Upon receipt of the email, the Procurement Officer will reply with a registration email with a link that may be used to register for the conference. Registration must be completed by 5:00 PM January 29, 2024.

### 4.2 eMaryland Marketplace Advantage (eMMA) and Milliman RFP360 Platform

- 4.2.1 eMMA is the electronic commerce system for the State of Maryland. The MS-IFB, Conference summary and attendance sheet, Bidders' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMMA.
- 4.2.2 In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to [emma.maryland.gov](http://emma.maryland.gov), click on "New Vendor? Register Now" to begin the process, and then follow the prompts.
- 4.2.3 The Milliman RFP360 platform is an online reverse auction system where Bidders will complete and submit their bids. All MS-IFB phases will be conducted via Milliman's RFO 360 platform. Bidders are not to submit anything through eMMA.
- 4.2.4 In order to access the Milliman RFP360 platform, Bidders must complete and return a signed Non-Disclosure Agreement and Intent to Bid (Appendix 3) to the Procurement Officer. The Bidder shall include a main point of contact who will receive an invitation to the platform.

### 4.3 Questions

- 4.3.1 All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title (BPM039929 - Pharmacy Benefits Management Services and Purchasing Pool Management), and shall be submitted in writing via e-mail to the Procurement Officer no later than the date and time specified the Key Information Summary Sheet. The Procurement Officer, based on the availability of time to



research and communicate an answer, shall decide whether an answer can be given before the Bid due date.

**4.3.2** Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for MS-IFB amendments, and posted on eMMA.

**4.3.3** The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the Department unless it issues an amendment in writing.

#### **4.4 Procurement Method**

A Contract will be awarded in accordance with the Multi-Step Competitive Sealed Bidding method under COMAR 21.05.02.

#### **4.5 Bid Due (Closing) Date and Time**

**4.5.1** Minimum Qualification submissions, in the number and form set forth in **Section 5 Bid Format**, must be submitted through the Milliman RFP360 platform and received by the Procurement Officer no later than the Bid due date and time indicated on the Key Information Summary Sheet in order to be considered. PBA and reverse auction submissions will be due at the date and time provided to Bidders during the procurement.

**4.5.2** Requests for extension of this date or time shall not be granted.

**4.5.3** Bidders submitting Bids should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.02.10, Bids received after the due date and time listed in the Key Information Summary Sheet will not be considered.

**4.5.4** The date and time of an online submission is determined by the date and time of arrival in the Milliman RFP 360 platform.

**4.5.5** Bids may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the Key Information Summary Sheet for receipt of Bids.

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

**4.5.7** Potential Bidders not responding to this solicitation are requested to submit the “Notice to Vendors” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

#### **4.6 Multiple or Alternate Bids**

Multiple or alternate Bids will not be accepted. Bidder responses to the PBA apply to all services for both Functional Area 1 and Functional Area 2 unless explicitly stated otherwise.

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

**4.7.1** All submissions will be received through the Milliman RFP360 platform, which will record the submissions. Minimum Qualification and PBA submissions will not be made public.

**4.7.2** Following each round of the reverse auction, a register of bids will be prepared. The name of each Bidder, the Total Projected Cost, and such other information as is deemed appropriate shall be made available following the final round of the reverse auction.

#### **4.8 Confidentiality of Bids/Public Information Act Notice**

- 4.8.1** The Bidder should give specific attention to the clear identification of those portions of its Bid that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. This information should be identified by page and section number and placed in the Transmittal Letter with the Bid.
- 4.8.2** Bidders are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed. Nondisclosure is permissible only if approved by the Office of the Attorney General.

#### **4.9 Award Basis**

A Contract shall be awarded to the responsible Bidder(s) submitting a responsive Bid with most favorable bid price or most favorable evaluated bid price (as referenced in COMAR 21.05.02.13) after completion of the reverse auction. Bidders must bid all line items. Partial or incomplete bids will be rejected unless otherwise stated in the solicitation. See MS-IFB **Section 6** for Bid evaluation and award information.

#### **4.10 Tie Bids**

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

#### **4.11 Duration of Bids**

Bids submitted in response to this MS-IFB are irrevocable for the latest of the following: 180 days following the date and time when the reverse auction closes or the date any protest concerning this MS-IFB is finally resolved. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

#### **4.12 Revisions to the MS-IFB**

- 4.12.1** If the MS-IFB is revised before the due date for Phase I, Minimum Qualifications submissions, the Department shall post any addenda to the MS-IFB on eMMA and shall endeavor to provide such addenda to all prospective Bidders that were sent this MS-IFB or are otherwise known by the Procurement Officer to have obtained this MS-IFB. It remains the responsibility of all prospective Bidders to check eMMA for any addenda issued prior to the submission of Bids.
- 4.12.2** No revisions will be made to the MS-IFB after the due date for Phase I, Minimum Qualifications submissions.
- 4.12.3** Acknowledgment of the receipt of all addenda to this MS-IFB shall be included in the Transmittal Letter accompanying the Bidder's Minimum Qualifications submission.
- 4.12.4** Failure to acknowledge receipt of an addendum does not relieve the Bidder from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Bid to be deemed not responsive.

### 4.13 Cancellations

- 4.13.1 The State reserves the right to cancel this MS-IFB, accept or reject any and all Bids, in whole or in part, received in response to this MS-IFB and to waive or permit the cure of minor irregularities.
- 4.13.2 In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled and the award processed in accordance with COMAR 21.01.03.01.A(4).
- 4.13.3 If the services that are the subject of the MS-IFB are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the MS-IFB may be cancelled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

### 4.14 Incurred Expenses

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

### 4.15 Protest/Disputes

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

### 4.16 Bidder Responsibilities

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

#### 4.17 Acceptance of Terms and Conditions

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

#### 4.18 Bid Affidavit

A Bid submitted by the Bidder shall be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as **Attachment C** of this MS-IFB.

#### 4.19 Contract Affidavit

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

#### 4.20 Compliance with Laws/Arrearages

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

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

#### 4.21 Verification of Registration and Tax Payment

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

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

#### 4.22 False Statements

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

##### 4.22.1 In connection with a procurement contract a person may not willfully:

- A. Falsify, conceal, or suppress a material fact by any scheme or device.
- B. Make a false or fraudulent statement or representation of a material fact.

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

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

**4.22.3** A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

#### **4.23 Payments by Electronic Funds Transfer**

By submitting a Bid in response to this solicitation, the Bidder, if selected for award:

**4.23.1** Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Bidder shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.

**4.23.2** Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

<https://www.marylandtaxes.gov/forms/state-accounting/static-files/GADX10Form.pdf>

#### **4.24 Prompt Payment Policy**

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

<http://www.gomsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

#### **4.25 Electronic Procurements Authorized**

**4.25.1** Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.

**4.25.2** Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this MS-IFB, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.

**4.25.3** "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://procurement.maryland.gov>, Milliam RFP360), and electronic data interchange.

- 4.25.4** In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., MS-IFB § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:
- A. The Procurement Officer may conduct the procurement using eMMA, Milliman’s RFP360, or e-mail to issue:
    - 1) The MS-IFB;
    - 2) Any amendments;
    - 3) Pre-Bid conference documents;
    - 4) Questions and responses;
    - 5) Communications regarding the solicitation or Bid to any Bidder or potential Bidder;
    - 6) Notices of award selection or non-selection; and
    - 7) The Procurement Officer’s decision on any Bid protest or Contract claim.
  - B. The Bidder or potential Bidder may use eMMA or e-mail to:
    - 1) Ask questions regarding the solicitation;
    - 2) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or through eMMA, but only on the terms specifically approved and directed by the Procurement Officer;
    - 3) Submit a "No Bid Response" to the MS-IFB;
    - 4) Filing a Bid protest; and
    - 5) File a Contract claim.
  - C. The Procurement Officer, the Contract Manager, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.5** of this subsection, utilizing e-mail or other electronic means if authorized by the Procurement Officer or Contract Manager.
- 4.25.5** The following transactions related to this procurement and any Contract awarded pursuant to it are **not authorized** to be conducted by electronic means:
- A. Submission of initial Bids through any electronic means other than Milliman’s RFP360 platform;
  - B. Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications); or
  - C. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder be provided in writing or hard copy.
- 4.25.6** Any e-mail transmission is only authorized to the e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Manager.

## 4.26 MBE Participation Goal

### 4.26.1 Establishment of Goal and Subgoals

An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the Contract administrative fees amount for the base Contract term and any option year, if exercised, as set forth in the Bidder's Financial Bid, including all renewal option terms, if any, has been established for this procurement. The goal will be based on the administrative fees portion of the Bidder's Total Projected Cost for both Functional Area 1 and Functional Area 2.

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

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

**A Bidder that does not commit to meeting the entire MBE participation goal outlined in this Section 4.26 implies that it is requesting a full or partial waiver for the remainder of the MBE goal or subgoals as applicable and, if recommended for award, shall submit documentation supporting its good faith efforts to meet the MBE goal made prior to submission of its Bid as outlined in Attachment D-1B, Waiver Guidance. Failure of a Bidder to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the MS-IFB may result in the State's rejection of the Bidder's Bid.**

### 4.26.2 Attachments.

- A. D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Bidders:
1. Attachment D-1A, MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Bid)
  2. Attachment D-1B, Waiver Guidance
  3. Attachment D-1C, Good Faith Efforts Documentation to Support Waiver Request
  4. Attachment D-2, Outreach Efforts Compliance Statement
  5. Attachment D-3A, MBE Subcontractor Project Participation Certification
  6. Attachment D-3B, MBE Prime Project Participation Certification
  7. Attachment D-4A, Prime Contractor Paid/Unpaid MBE Invoice Report
  8. Attachment D-4B, MBE Prime Contractor Report
  9. Attachment D-5, Subcontractor Paid/Unpaid MBE Invoice Report

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

**A Bidder shall properly complete and submit a separate Attachment D-1A, MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule, for EACH Functional Area (1 and 2) for which it is submitting a Bid. If a Bidder is submitting a Bid for each of Functional Areas I and II, the Bidder shall submit two separate Attachment D-1As, one for each of the two Functional Areas.**

*If the Bidder fails to submit a completed Attachment D-1A with the Bid as required, the Procurement Officer shall determine that the Bid is not reasonably susceptible of being selected for award, unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04.*

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

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

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



- 4.26.5 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**
- 4.26.6 The Bidder that requested or implied to request a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.
- 4.26.7 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Bidder in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Bid for order of precedence purposes (see Contract – **Attachment M, Section 2.1**).
- 4.26.8 The Bidder is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment M, Liquidated Damages for MBE, section 39**).
- 4.26.9 As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract.

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

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

## 4.27 VSBE Goal

### 4.27.1 Purpose

- A. The Contractor shall structure its procedures for the performance of the work required in the Contract to attempt to achieve the VSBE participation goal stated in this solicitation. VSBE performance must be in accordance with this section and **Attachment E**, as authorized by COMAR 21.11.14. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and **Attachment E**.

- B. A certified Veteran-Owned Small Business Enterprises (VSBE) must be verified by the State Department of Veterans Affairs or US Department of Veteran's Affairs [Vets First Verification Program](#) (VetBiz) and registered as a VSBE on the State's eProcurement platform, eMaryland Marketplace Advantage (eMMA). The listing of VSBEs is available through the "Vendor Search" on [eMMA](#).

#### 4.27.2 VSBE Goal

- A. A VSBE participation goal of 1% of the Contract administrative fees amount of Functional Areas 1 and 2 has been established for this procurement as identified in the Key Information Summary Sheet.
- B. By submitting a response to this solicitation, the Bidder agrees that this percentage of the total dollar amount for the base Contract term and any option years, if exercised, has been established for this procurement. By submitting a response to this solicitation, the Bidder agrees that this percentage of the administrative fee portion of the Contract will be performed by verified veteran-owned small business enterprises.

#### 4.27.3 Solicitation and Contract Formation

- A. In accordance with COMAR 21.11.14.05 C (1), this solicitation requires Bidders to:
- 1) Identify specific work categories within the scope of the procurement appropriate for subcontracting;
  - 2) Solicit VSBEs before Bids are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;
  - 3) Attempt to make personal contact with the VSBEs solicited and to document these attempts;
  - 4) Assist VSBEs to fulfill, or to seek waiver of, bonding requirements; and
  - 5) Attempt to attend pre-Bid or other meetings the procurement agency schedules to publicize contracting opportunities to VSBEs.
- B. The Bidder shall include with its Bid a completed VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment E-1**) whereby the Bidder:
- 1) Acknowledges it: a) intends to meet the VSBE participation goal; or b) requests a full or partial waiver of the VSBE participation goal. If the Bidder commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal; and
  - 2) Responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBEs at the time of Bid submission. The Bidder shall specify the percentage of contract value associated with each VSBE prime/subcontractor identified on the VSBE Participation Schedule.

**A Bidder must properly complete and submit a separate Attachment E-1, VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule, for EACH Functional Area (1 and 2) for which it is submitting a proposal. If a Bidder is submitting a proposal for each of Functional Areas 1 and 2, the Bidder must submit two separate Attachment E-1s, one for each of the two Functional Areas.**

- C. As set forth in COMAR 21.11.14.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the VSBE Prime Contractor performs with its own work force towards meeting up to one hundred percent (100%) of the VSBE goal.
- D. In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (**Attachment E-1**) and include information regarding the work it will self-perform. For any remaining portion of the VSBE goal that is not to be performed by the VSBE Prime, the VSBE Prime must also identify verified VSBE subcontractors used to meet the remainder of the goal.
- E. Within 10 Business Days from notification that it is the apparent awardee, the awardee must provide the following documentation to the Procurement Officer:
  - 1) VSBE Project Participation Statement (**Attachment E-2**);
  - 2) If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.14.07; and
  - 3) Any other documentation required by the Procurement Officer to ascertain Bidder responsibility in connection with the VSBE participation goal.

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

#### 4.28 Living Wage Requirements

- A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Maryland Department of Labor requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
- B. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.
- C. Additional information regarding the State's living wage requirement is contained in **Attachment F**. Bidders must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Bids. If the Bidder fails to complete and submit the required documentation, the State may determine the Bidder to not be responsible under State law.
- D. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area

or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.

- 1) The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, the Contract will be determined to be a Tier 1 Contract.
  - 2) The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Bidder shall identify in its Bid the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
  - 3) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
  - 4) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- E. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.
- F. The Bidder shall identify in the Bid the location from which services will be provided.
- G. **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change or a change in the State minimum wage.

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

This Contract does not contain federal funds.

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

- 4.30.1** The Bidder shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Bid.
- 4.30.2** By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.
- 4.30.3** Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.
- 4.30.4** Participation in Drafting of Specifications: Disqualifying Event: Bidders are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that “an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for Bids for a procurement, or the selection or award made in response to an invitation for

bids or a request for Bids, or a person that employs the individual, may not: (1) submit a bid or Bid for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or Bid for that procurement.” Any Bidder submitting a Bid in violation of this provision shall be classified as “not responsible.” See COMAR 21.05.03.03.

#### 4.31 Non-Disclosure Agreement (NDA)

##### 4.31.1 Non-Disclosure Agreement (Bidder)

In order to have access to certain confidential data that is necessary to complete a Bid in response to this MS-IFB and to access the Milliman RFP360 platform, each Bidder shall complete a Non-Disclosure Agreement (Bidder), contained in this solicitation as **Appendix 3**. The following confidential information will be provided to the Bidder after submission of the Non-Disclosure Agreement:

- Attachment Q: Standard Reporting Format; and
- Attachment R: Supporting Data.

In order to obtain the confidential data, a Bidder shall first print, sign and return to the Procurement Officer (scanned copy with the appropriate signature and transmitted by e-mail is acceptable) the Non-Disclosure Agreement (Bidder) found at **Appendix 3** with a request for the data. By submitting the NDA, a Bidder represents that it intends to propose services in response to the solicitation. After submission of the signed agreement, Bidders will be provided with instructions to access the confidential data.

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

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

#### 4.32 HIPAA - Business Associate Agreement

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

#### 4.33 Nonvisual Access

The bidder or offeror warrants that the information technology offered under this bid or proposal (1) provides equivalent access for effective use by both visual and nonvisual means consistent with the standards of § 508 of the federal Rehabilitation Act of 1973 and Code of Maryland Regulations 14.33.02; (2) provides an individual with disabilities with nonvisual access in a way that is fully and equally accessible to and independently usable by the individual with disabilities

so that the individual is able to acquire the same information, engage in the same interactions, and enjoy the same services as users without disabilities, with substantially equivalent ease of use; (3) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (4) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (5) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The bidder or offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than 15 percent.

Within 18 months after the award of any contract the Secretary of the Department of Information Technology, or the Secretary's designee, will determine whether the information technology procured under this bid or proposal meets the nonvisual access standards set forth in COMAR 14.33.02. If the information technology procured under this solicitation does not meet the nonvisual access standards set forth in COMAR 14.33.02, the State will notify the Bidder in writing that the Bidder, at its own expense, has 12 months after the date of the notification to modify the information technology in order to meet the nonvisual access standards. If the Bidder fails to modify the information technology to meet the nonvisual access standards within 12 months after the date of the notification, the Bidder may be subject to a civil penalty of a fine not exceeding \$5,000 for a first offense, and a fine not exceeding \$10,000 for a subsequent offense.

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

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

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

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

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

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

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

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

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

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

#### 4.38 Maryland Healthy Working Families Act Requirements

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

#### 4.39 Drug Substitution Transactions

Contractor shall abide by Md. Ann. Code, Insurance Art. §15-1633 through §15-1635. In addition, at the participant's request, the Contractor shall provide disclosures to individual participants when the individual participant is subject to other drug switching or drug substitution transactions, whether the transaction occurs at retail, mail order, or specialty pharmacy. Such disclosures shall include:

- a) The name of the drugs involved in the switch or substitution;
- b) The cost savings associated with the switch or substitution at the time of the switch or substitution;
- c) Any differences in the individual participant's copayments or other out-of-pocket expenses;
- d) The circumstances under which the originally prescribed drug will be covered;
- e) Notification that the participant may decline the drug switch or drug substitution if the originally prescribed drug remains on the participant's formulary and the participant is willing to pay the difference in the copayment amount; and
- f) A toll-free telephone number the participant may use to communicate with the Contractor.

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## 5 Bid Format

### 5.1 Multi-Step Invitation for Bids: Three Part Submission

5.1.1 Each Bidder shall submit its Bid through the Milliman RFP360 online platform as follows. All bidders are to submit their response to minimum qualifications. Bidders who are determined to meet minimum requirements will next complete and submit the Participant Bidding Agreement (PBA). Bidders who are determined to satisfy the technical requirements through their PBA will be invited to participate in a Reverse Auction.

### 5.2 Bid Delivery and Packaging

5.2.1 Bids delivered by facsimile or e-mail, or through eMMA shall not be considered.

5.2.2 Provide no pricing information in the PBA.

5.2.3 Bidders will receive access to Bid through the Milliman RFP360 online platform after receipt of Intent to Bid.

5.2.4 The Procurement Officer must receive all electronic Bid material in response to the Minimum Qualifications by the Bid due date and time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Bids received by the Procurement Officer after the due date will not be considered.

5.2.5 Bidders shall provide their Bids in three separate online platform submissions, as set out below.

5.2.6 Platform Submission:

A. Minimum Qualifications (Phase I) consisting of:

- 1) Minimum Qualification Responses; and
- 2) Requesting supporting material in Microsoft Word format, version 2007 or greater, Adobe PDF, or Microsoft Excel as specified in the Minimum Qualifications section.

Bidder is required to include redacted and unredacted versions of any provided materials.

B. PBA (Phase II, if invited to submit) consisting of:

- 1) PBA; and
- 2) Requested supporting material in Microsoft Word format, version 2007 or greater, PDF, or Microsoft Excel as specified in PBA section.

Bidder is required to include unredacted and redacted versions of any provided materials.

C. Reverse Auction (Phase III, if invited to participate) consisting of:

- 1) Financial Bid entered into the price form within the online platform and all required supporting material in Microsoft Excel format.

Bidder is required to include unredacted and redacted versions of any provided materials.



## **5.3 Minimum Qualifications**

### **5.3.1 Minimum Qualification Requirements**

- 5.3.1.1 Bidder is required to submit all documentation required to show that the Bidder meets all of the Minimum Qualifications for both Functional Area 1 and Functional Area 2 as set out in Section 1 of this MS-IFB.
- 5.3.1.2 A Transmittal Letter shall accompany the Minimum Qualification submission. The purpose of the transmittal letter is to transmit the Bidder's first submission and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Bidder to all the services specified in the MS-IFB and PBA at the prices of the services to be submitted in the Reverse Auction. The signature on the transmittal letter shall signify the Bidder's concurrence with and obligation to all contents of all submissions it has made and will make in response to this MS-IFB. The transmittal letter should also include the Bidder's company name, address and Federal Employer Identification Number (FEIN). Bidder should also indicate the name, title, telephone number and email address for their internal contact person regarding this solicitation and MS-IFB.
- 5.3.2 The Minimum Qualification submission will also include the Bidder Information Sheet (see Appendix 2) and acknowledgement of all addenda to this MS-IFB.

## **5.4 Participant Bidding Agreement**

### **5.4.1 PBA Requirements**

- 5.4.1.1 After the State has confirmed Bidder meets the minimum qualifications, each qualified Bidder will be invited to participate in Phase II, PBA responses.
- 5.4.1.2 The Bidder shall complete all applicable sections of the PBA and provide submission by the stated deadlines. If the State is seeking Bidder agreement to any requirement(s), the Bidder shall state its agreement or disagreement. Any exception to a requirement, term, or condition will result in having the Bid classified as not responsive or the Bidder deemed not responsible, and the PBA determined not acceptable.
- 5.4.1.3 Electronic responses will be facilitated through the Milliman RFP360 online platform. Paper submissions or submissions in any other form or format will not be accepted.
- 5.4.1.4 The Bidder shall give a definitive description of the proposed plan to meet the requirements of the MS-IFB, i.e., a Work Plan. It shall include the specific methodology and techniques to be used by the Bidder in providing the required services as outlined in MS-IFB Section 2, Scope of Work. The description shall include an outline of the overall management concepts employed by the Bidder and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
- 5.4.1.5 PBA responses will not be opened publicly. PBA will then be reviewed. Prior to the Reverse Auction, PBA responses will be shown only to State employees and members of the review committee with a legitimate interest in them.

#### **5.4.2 Technical Criteria**

The following criteria shall be used to determine the acceptability of each item listed or provided under Section 5.4.1, “PBA Requirements.” All criteria are pass/fail. PBA submissions are not ranked but determined to be acceptable or not acceptable.

5.4.2.1 The Bidder’s comprehensive understanding of work requirements and master of the subject matter, including an explanation of how the work will be done.

5.4.2.2 The Bidder’s Work Plan.

5.4.2.3 The Bidder’s Problem Escalation Procedure.

**5.4.3** After PBA responses have been reviewed, Bidders whose PBA responses are determined not to be technically acceptable, based on the technical criteria as set forth in Section 5.4.2, will be notified in writing that their Bids are not acceptable and are rejected and they will not be invited to participate in the Reverse Auction Phase of the procurement.

**5.4.4** A Bidder must include the following with its PBA submission:

5.4.4.1 Bidder Proposed Work Plan

A. The Bidder shall give a definitive section-by-section description of the proposed plan to meet the requirements of the MS-IFB, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Bidder in providing the required goods and services as outlined in MS-IFB **Section 2**, Contractor Requirements: Scope of Work. The description shall include but is not limited to:

- 1) A proposed implementation schedule;
- 2) An outline of the overall management concepts employed by the Bidder;
- 3) A project management plan, including project control mechanisms; and
- 4) Overall timelines.

B. The Bidder shall identify the location(s) from which it proposes to provide services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State’s requirements as outlined in this MS-IFB.

5.4.4.2 The Bidder shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Manager should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in **Section 3.8**.

5.4.4.3 Attachment P: The Bidder shall complete and submit all questions via the Reverse Auction Platform.

5.4.4.4 Experience and Qualifications of Proposed Staff

As part of the Bid for this MS-IFB, the Bidder shall propose a Contract Administrator and shall describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the Department. All other planned positions shall be described generally in the Staffing Plan and may not be used as evidence of fulfilling company or personnel minimum qualifications.

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

- 1) Identify and provide a resume for the individual assigned to serve as the Contractor Account Executive, as identified in **Section 3.10.3**, if a contract is awarded.
- 2) Describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan.
- 3) Include individual resumes for Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Bidder is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation.
- 4) Include letters of intended commitment to work on the project, including letters from any proposed subcontractor(s). Bidders should be aware of restrictions on substitution of Key Personnel prior to MS-IFB award (see Substitution Prior to and Within 30 Days After Contract Execution in **Section 3.11.5**).
- 5) Provide an Organizational Chart outlining Personnel and their related duties. The Bidder shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Bidders using job titles other than those commonly used by industry standards must provide a crosswalk reference document.
- 6) If proposing differing personnel work hours than identified in the MS-IFB, describe how and why it proposes differing personnel work hours.

#### 5.4.4.5 Bidder Qualifications and Capabilities

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

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

#### 5.4.4.6 Completed Required Attachments

- 1) All forms required for the submission are identified in Table 1 of **Section 7** – MS-IFB Attachments and Appendices. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the PBA submission.

- 2) In addition to the information specified above, the Bidder shall complete and submit the following attachments:

**For Functional Area 1**

<b>Required Submission</b>	<b>Title</b>
Certificates of Insurance including Errors and Omissions and Commercial General Liability	Label as <b>“Response Attachment FA1: Certificates of Insurance”</b>
Service Area Map	Label as <b>“Response Attachment FA1: Service Area Map”</b>
Management Reporting Package	Label as <b>“Response Attachment FA1: Management Reporting Package”</b>
Audited Financial Statements	Label as <b>“Response Attachment FA1: Financial Audit Statements”</b>
Financial Ratings	Label as <b>“Response Attachment FA1: Financial Ratings”</b>
Field Audit Findings Report	Label as <b>“Response Attachment FA1: Field Audit Findings Report”</b>
Utilization Management Program List	Label as <b>“Response Attachment FA1: Utilization Management Program List”</b>
Drug Utilization Review Report	Label as <b>“Response Attachment FA1: DUR Report”</b>
Clinical Management Performance Report	Label as <b>“Response Attachment FA1: Clinical Management Performance Report”</b>
Physician Score Card / Client Reporting	Label as <b>“Response Attachment FA1: Physician Score Card / Client Reporting”</b>
Member Communications Materials	Label as <b>“Response Attachment FA1: Member Communication Package”</b>
Proposed Formulary	Label as <b>“Response Attachment FA1: Proposed Commercial Formulary”</b>
Implementation Schedule	Label as <b>“Response Attachment FA1: Implementation Schedule”</b>
Implementation Team Organizational Chart	Label as <b>“Response Attachment FA1: Implementation Team Organizational Chart”</b>
Account Management Team Organizational Chart and Resumes	Label as <b>“Response Attachment FA1: Account Management Team Organizational Chart and Resumes”</b>
Account Management Plan	Label as <b>“Response Attachment FA1: Account Management Plan”</b>
Diabetes Care Program	Label as <b>“Response Attachment FA1: Diabetes Care Solution”</b>
Completed Bid/Bid Affidavit	Attachment C
Certified MBE Utilization and Fair Solicitation Affidavit	Attachment D–1
Veteran–Owned Small Business Enterprise Utilization Affidavit	Attachment E–1
Completed Living Wage Affidavit of Agreement	Attachment F–1

<b>Required Submission</b>	<b>Title</b>
Location of the Performance of Services Disclosure	Attachment L
Current copy of the Bidder’s Certificate of Authority issued by MIA or evidence of acknowledgement of receipt of application for Certificate of Authority by the Go-Live Date (January 1, 2025).	Label as <b>“Self Insured, Current Certificate of Authority or Acknowledgement of Application Receipt”</b>

**For Functional Area 2**

<b>Required Submission</b>	<b>Title</b>
Promotional Materials and Management Reporting Package	Label as <b>“Response Attachment FA2: Management Reporting Package”</b>
Certificates of Insurance including Errors and Omissions and Commercial General Liability	Label as <b>“Response Attachment FA2: Certificates of Insurance”</b>

- 3) Bidders shall furnish any and all agreements and terms and conditions the Bidder expects the State to sign or to be subject to in connection with or in order to use the Bidder’s services under this Contract. This includes physical copies of all agreements referenced and incorporated in primary documents, including but not limited to any software licensing agreement for any software proposed to be licensed to the State under this Contract (e.g., EULA, Enterprise License Agreements, Professional Service agreement, Master Agreement) and any AUP. The State does not agree to terms and conditions not provided in an Bidder’s Technical Bid and no action of the State, including but not limited to the use of any such software, shall be deemed to constitute acceptance of any such terms and conditions. Failure to comply with this section renders any such agreement unenforceable against the State.
- 4) For each service, hardware or software proposed as furnished by a third-party entity, Bidder shall identify the third-party provider and provide a letter of authorization or such other documentation demonstrating the authorization for such services. In the case of an open source license, authorization for the open source shall demonstrate compliance with the open source license.
- 5) A Letter of Authorization shall be on letterhead or through the provider’s e-mail. Further, each Letter of Authorization shall be less than twelve (12) months old and must provide the following information:
  - i) Third-party point of contact (POC) name and alternate for verification
  - ii) Third-party POC mailing address
  - iii) Third-party POC telephone number
  - iv) Third-party POC email address
  - v) If available, a Re-Seller Identifier

5.4.4.7 References.

Submit in platform as References.

#### 5.4.4.8 List of Current or Prior State Contracts

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

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

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

#### 5.4.4.9 Financial Capability

The Bidder shall demonstrate financial stability by submitting:

- a) Bidder's most recent financial report;
- b) Most recent independent auditor's report; and
- c) SSAE 16, SAS-70, or equivalent external audit of Bidder's operations.

Please attach proof of financial stability meeting this requirement.

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

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

#### 5.4.4.10 Certificate of Insurance

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

#### 5.4.4.11 Subcontractors

The Bidder shall provide a complete list of all subcontractors that will work on the Contract if the Bidder receives an award, including those utilized in meeting the MBE and VSBE subcontracting

goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this MS-IFB. The Bidder shall include this description in its response to the Subcontractor Questions, Attachment T-1, Sample Required Document Formats, Item 33, for each subcontractor proposed to be used in this contract.

#### 5.4.4.12 Legal Action Summary

This summary shall include:

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

## 5.5 Reverse Auction Bid

The Reverse Auction Bid shall contain all price information in the format specified on the platform. The Bidder shall complete the Reverse Auction Bid only as provided in the Instructions and the platform itself. The Bidder may not amend, alter, or leave blank any items on the Reverse Auction Bid or include additional clarifying or contingent language on or attached to the responses. Bidder will be held to its responses from Phase I and Phase II for application of financial bids through the Reverse Auction Phase.

Failure to adhere to any of these instructions may result in the Bid being determined to be non-responsive and rejected by the Department.

### 5.5.1 Reverse Auction Financial Bid Format and Instructions

- A. The Financial Bid must contain all cost information in the format specified in Reverse Auction platform.
- B. Bidder shall provide fixed guarantees for administration fees, minimum discounts, fixed dispensing fees, minimum rebates, based on projected program utilization as outlined in the Reverse Auction platform, which contains supplemental prescription drug data including historical claims, enrollment, and census information and will be provided upon receipt of a Non-Disclosure Agreement (Bidder) noted in Appendix 3.
- C. All fees must be quoted on a fully loaded basis, i.e., fees must include all direct and indirect costs, general and administrative overhead, purchasing burden and profit. No other fees or charges may be added to the contract after award, nor will the Contractor be compensated on any basis other than the applicable fully loaded rates.
- D. The State expects the Bidder who is awarded a contract under this solicitation to validate its rates and minimum guarantees for contract years 1 through 3 and, if warranted based on renewal negotiations with the State, to improve terms quoted in its Bid.

- E. The Reverse Auction platform contains instructions to complete tables, upload documentation, and response to specific financial terms.
- F. After the completion of Phase I and Phase II, Qualified Bidders will be invited to participate in a financial Reverse Auction. The Reverse Auction Phase will contain three rounds of bidding. Aggregate Reverse Auction rankings of bids based on the comparative costs and qualitative aspects will be shown relative to all other Bidders on a blinded basis. Bidders will then have the opportunity to make changes to their financial Bid through additional rounds of Reverse Auction Bids.
- G. All Bids shall remain valid from the submission deadline until the contract award. A Bidder's disclosure or distribution of submission other than to the State, shall be grounds for disqualification. No more than one (1) Bid per Bidder shall be submitted.
- H. Additional instructions for completing the Reverse Auction will be provided to all Bidders after Phase II has been completed.

## **5.6 Delivery**

- 5.6.1** Bids shall only be accepted via the Milliman RFP360online platform. Bidders may not mail or hand-deliver Bids or submit through the State's internet based electronic procurement system, eMMA.

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

Upon receipt of a notification of recommendation for contract award, the following documents shall be completed and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit one (1) electronic copy of each of the following documents:

- A. Signed contract (Attachment M),
- B. Completed Contract Affidavit (Attachment N),
- C. Completed MBE Attachments D-2 and D-3A and B, within ten (10) Business days, if applicable; see MS-IFB Section 4.26,
- D. MBE waiver justification within ten (10) Business days (see MBE Waiver Guidance and forms in Attachments D-1B and D-1C), if a waiver has been requested (if applicable; see MS-IFB Section 4.26),
- E. Completed VSBE Attachment E-2, if applicable see MS-IFB Section 4.27,
- F. Signed Non-Disclosure Agreement (Attachment I), if applicable; see MS-IFB Section 4.31,
- G. Signed HIPAA Business Associate Agreement (Attachment J), if applicable; see MS-IFB Section 4.32,
- H. Completed DHS Hiring Agreement, Attachment O, if applicable see MS-IFB Section 4.36, and
- I. Copy of a current certificate of insurance with the prescribed limits set forth in MS-IFB Section 3.1 "Insurance Requirements," listing the State as an Additional Insured, if applicable; see MS-IFB Section 3.1.

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## 6 Bid Evaluation and Award

### 6.1 Reciprocal Preference

- 6.1.1** Although Maryland law does not authorize procuring agencies to favor resident Bidders in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. COMAR 21.05.01.04 permits procuring agencies to apply a reciprocal preference under the following conditions:
- A. The Maryland resident business is a responsible Bidder;
  - B. The most advantageous Bid is from a responsible Bidder whose principal office, or principal base of operations is in another state;
  - C. The other state gives a preference to its resident businesses through law, policy, or practice; and
  - D. The preference does not conflict with a federal law or grant affecting the procurement Contract.
- 6.1.2** The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

### 6.2 Award Determination

All Bidders whose submissions have been determined to be technically acceptable shall enter the Reverse Auction Phase of this procurement.

Award will be made to the responsible Bidder whose Total Projected Cost is lowest at the conclusion of the Reverse Auction Phase of this procurement. The Total Projected Cost shall be weighted.

The Total Projected Cost is the sum of the final Reverse Auction round bids of Functional Area 1 and Functional Area 2. The relative weighting of the Functional Areas is based on the number of members. Refer to 2.2.5 of this solicitation for approximate membership count.

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

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

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## 7 MS-IFB ATTACHMENTS AND APPENDICES

### Instructions Page

A Bid submitted by the Bidder shall be accompanied by the completed forms and/or affidavits identified as “with Bid” in the “When to Submit” column in Table 1 below. All forms and affidavits applicable to this MS-IFB, including any applicable instructions and/or terms, are identified in the “Applies” and “Label” columns in Table 1.

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

**Table 1: MS-IFB ATTACHMENTS AND APPENDICES**

Applies?	When to Submit	Label	Attachment Name
Y	Before Bid	A	Pre-Bid Conference Response Form
Y	NA	B	Reverse Auction Instruction and Sample Export
Y	With PBA Submission	C	Bid/Bid Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Bid-Affidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Bid-Affidavit.pdf</a> )
Y	With PBA Submission	D	MBE Forms D-1A (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> ) <b>IMPORTANT:</b> If this MS-IFB contains different Functional Areas or Service Categories. A separate Attachment D-1A is to be submitted for each Functional Area or Service Category where there is a MBE goal.
Y	10 Business Days after recommended award	D	MBE Forms D-1B, D-1C,D-2, D-3A, D-3B (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> ) <b>Important:</b> Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award.
Y	As directed in forms	D	MBE Forms D-4A, D-4B, D-5 (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> )

Applies?	When to Submit	Label	Attachment Name
Y	With PBA Submission	E	<p>Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a>)</p> <p><b>IMPORTANT:</b> If this MS-IFB contains different Functional Areas or Service Categories. A separate Attachment E-1A is to be submitted for each Functional Area or Service Category where there is a VSBE goal.</p>
Y	5 Business Days after recommended award	E	<p>VSBE Forms E-1B, E-2, E-3 (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a>)</p> <p><b>Important:</b> Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award.</p>
Y	With PBA Submission	F	<p>Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf</a>)</p>
Y	With PBA Submission	H	<p>Conflict of Interest Affidavit and Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf</a>)</p>
Y	5 Business Days after recommended award – However, suggested with PBA Submission	I	<p>Non-Disclosure Agreement (Contractor) (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf</a>)</p>
Y	5 Business Days after recommended award – However, suggested with PBA Submission	J	<p>HIPAA Business Associate Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf</a>)</p>
Y	With PBA Submission	L	<p>Location of the Performance of Services Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf</a>)</p>
Y	5 Business Days after recommended award	M	<p>Sample Contract (included in this MS-IFB)</p>
Y	5 Business Days after recommended award	N	<p>Contract Affidavit (see link at <a href="https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf">https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf</a>)</p>

Applies?	When to Submit	Label	Attachment Name
Y	5 Business Days after recommended award	O	DHS Hiring Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf</a> )
Y	NA	P	Minimum Qualifications Sample Export
Y	NA	Q	Standard Reporting Format
Y	NA	R	Supporting Documentation
Y	NA	S	Plan Design and Clinical Programs
Y	NA	T	Participant Bidding Agreement (PBA) Sample Export
Appendices			
Applies?	When to Submit	Label	Attachment Name
Y	NA	1	Abbreviations and Definitions (included in this MS-IFB)
Y	With Minimum Qualification Submission	2	Bidder Information Sheet (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_BidderInformationSheet.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_BidderInformationSheet.pdf</a> )
Y	Before Due Date, as directed in the MS-IFB	3	Non-Disclosure Agreement and Intent to Bid (Bidder)
Y	NA	4	Labor Categories
Exhibits			
Y	NA	1	MBE, VSBE, and (if applicable) SBR Research Factors
Applies?	When to Submit	Label	Document Name
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see <b>Section 3.6</b> ); 1 copy
Y	10 Business Days after recommended award		PEP; 1 copy

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

**Solicitation Number BPM039929**

Pharmacy Benefits Management Services and Purchasing Pool Management

A Pre-Bid conference will be held virtually on January 30, 2024, at 10 AM.

Please return this form by 5 PM January 29, 2024, advising whether or not your firm plans to attend. The completed form should be returned via e-mail or fax to the Procurement Officer at the contact information below:

Tyler Russell  
Office of State Procurement, Department of General Services  
E-mail: tyler.russell@maryland.gov

Please indicate:

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

Attendees:

- 1.
- 2.
- 3.

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

Please specify whether any reasonable accommodations are requested (see MS-IFB § 4.1 “Pre-Bid conference”):

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

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

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

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

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

**Attachment B. Reverse Auction and Sample Export**

See link at [Attachment B](#).

### Attachment C. Bid Affidavit

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

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

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

This solicitation includes a Minority Business Enterprise (MBE) participation goal of 5% percent and no subgoals.

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

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

This solicitation includes a VSBE participation goal of 1%.

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

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

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
  - (1) A Contractor who:
    - (a) Has a State contract for services valued at less than \$100,000, or
    - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
  - (2) A subcontractor who:
    - (a) Performs work on a State contract for services valued at less than \$100,000,
    - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or

- (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B (3) or C below.
- (3) Service contracts for the following:
  - (a) Services with a Public Service Company;
  - (b) Services with a nonprofit organization;
  - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement (“Unit”); or
  - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry’s website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer’s share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee’s wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer’s share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer’s contribution to an employee’s deferred compensation plan. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer’s contribution to an employee’s deferred compensation plan shall not lower the employee’s wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.



- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dlir.state.md.us/labor/prev/livingwage.shtml> and clicking on Living Wage for State Service Contracts.

### **Attachment G. Federal Funds Attachments**

This solicitation does not include a Federal Funds Attachment.

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

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

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

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

### **Attachment J. HIPAA Business Associate Agreement**

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

### **Attachment K. Mercury Affidavit**

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

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

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

**Attachment M. Contract**

Department of Budget and Management (DBM)

“Pharmacy Benefits Management Services and Purchasing Pool Management”

BPM039929

THIS CONTRACT (the “Contract”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (the “Contractor”) and the STATE OF MARYLAND, acting through the Maryland Department of Budget and Management (“DBM” or the “Department”).

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

**1. Definitions**

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace Advantage vendor ID number is (eMMA Number).
- 1.3 “Financial Bid” means the Contractor’s Financial Bid at the close of the reverse auction.
- 1.4 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.5 “MS-IFB” means the Request for Bids for Pharmacy Benefits Management Services and Purchasing Pool Management, Solicitation #BPM039929 and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Submission” means the Contractor’s Minimum Qualifications submission and PBA submission.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the MS-IFB.

**2. Scope of Contract**

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

- Exhibit A – The MS-IFB
- Exhibit B – The Contract Affidavit, executed by the Contractor and dated (date of Attachment C)
- Exhibit C – The Minimum Qualifications and PBA submissions

- Exhibit D – The final Financial Bid through the Reverse Auction
- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

**3. Period of Performance**

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the “Effective Date”). The Contract shall have a period of approximately 3 years beginning January 1, 2025 and ending December 31, 2028 (“Initial Term”).
- 3.2 In its sole discretion, the Department shall have the unilateral right to extend the Contract for two (2) successive two years renewal options (each a “Renewal Term”) at the prices established in the Contract. “Term” means the Initial Term and any Renewal Term(s).
- 3.3 The Contractor’s performance under the Contract shall commence as of the date provided in a written NTP.
- 3.4 The Contractor’s obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

**4. Consideration and Payment**

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Bid. Unless properly modified (see above Section 2), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

Contractor shall notify the Contract Manager, in writing, at least sixty (60) days before payments reach the NTE Amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult and work in good faith with the Department to establish a plan of action to assure that every reasonable effort is undertaken by the Contractor to

- complete State-defined critical work in progress prior to the date the NTE Amount will be reached; and (b) when applicable secure databases, systems, platforms, and applications on which the Contractor is working in an industry standard manner so as to prevent damage or vulnerabilities to any of the same due to the existence of any such unfinished work.
- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor as required by MS-IFB section 3.3.
- (a) The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:
- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
  - (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.
- (b) The State is not liable for interest:
- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
  - (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.
- (c) 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.
- (d) Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.
- 5. Rights to Records**
- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights,

- title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.
- 6. Exclusive Use**
- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.
- 7. Patents, Copyrights, and Intellectual Property**
- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the Department or licensed by the Department from third parties, including all information provided by the Department to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Department will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such

- Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 7.3 Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 7.4 Without limiting Contractor's obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.
- 7.7 The Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without the Department's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

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

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those set forth in this Contract.
- 8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

**9. Loss of Data**

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

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

- 10.1 At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 10.2 The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim

or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.

- 10.3 Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request. .

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

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

#### **12. Disputes**

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

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

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

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

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract



except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**15. Contingent Fee Prohibition**

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

**16. Non-Availability of Funding**

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

**17. Termination for Default**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**18. Termination for Convenience**

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

**19. Delays and Extensions of Time**

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

**20. Suspension of Work**

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

**21. Pre-Existing Regulations**

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

**22. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$200,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**23. Political Contribution Disclosure**

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

**24. Retention of Records**

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

**25. Right to Audit**

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

**26. Compliance with Laws**

The Contractor hereby represents and warrants that:

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

**27. Cost and Price Certification**

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

**28. Subcontracting; Assignment**

The Contractor may not subcontract any of its obligations under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

**29. Limitations of Liability**

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 7 "Patents, Copyrights, Intellectual Property"** of this Contract;
  - (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
  - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited.
  - (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.
- 29.2 Contractor's indemnification obligations for Third party claims arising under Section 10 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.
- 29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

**30. Commercial Nondiscrimination**

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex,

age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- 30.2 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.
- 30.3 The Contractor shall include the language from 30.1, or similar clause approved in writing by the Department, in all subcontracts.

**31. Prompt Pay Requirements**

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
  - (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
  - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
  - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
  - (b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
  - (c) Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.Verification shall include a review of:
    - i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
    - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
  - (b) If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
  - (c) If the Department determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
    - i. Terminate the Contract;
    - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
    - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
  - (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

**32. Living Wage**

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

**33. Use of Estimated Quantities**

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

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

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

**35. Effect of Contractor Bankruptcy**

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

**36. Miscellaneous**

36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.

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

36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.

36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

**37. Contract Manager and Procurement Officer**

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

**38. Notices**

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State:

Sherreon Washington  
Department of Budget and Management, Office of Personnel Services and Benefits  
301 W. Preston Street, Baltimore, MD 21201  
Phone Number: 410-767-8006  
E-Mail: sherreon.washington1@maryland.gov

With a copy to:

Tyler Russell  
Office of State Procurement (OSP), Department of General Services (DGS)  
301 W. Preston Street, Baltimore, Maryland 21201 Phone Number: 410-767-5857  
E-Mail: tyler.russell@maryland.gov

If to the Contractor:

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

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

Parent Company Guarantor

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

**39. Liquidated Damages for MBE**

- 39.1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.



- 39.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$31.65 per day until the monthly report is submitted as required.
  - (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$112.10 per MBE subcontractor.
  - (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
  - (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
  - (e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$100 per day until the undisputed amount due to the MBE subcontractor is paid.
- 39.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

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

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

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

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

- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
  - (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract; and
  - (c) Otherwise providing good information management practices regarding all health information and medical records.
- 41.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the selected Bidder shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.504 and in the form as required by the Department.
- 41.3 “Protected Health Information” as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.
- 42. Limited English Proficiency**
- The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and MDH Policy 02.06.07.
- 43. Maryland’s Green Purchasing Reporting Requirements**
- The State of Maryland reserves the right to request from the Contractor quarterly sales data over the life of this contract. This information must include details about the recycled content, third-party sustainability certifications, and other environmental attributes of products and services sold on this price agreement per the contract specifications.
- This information will enable Maryland State agencies to comply with Article §14–405 of the Annotated Code of Maryland and COMAR 21.13.01.14, effective October 1, 2014, which requires Maryland state agencies to report to the Department of General Services on their procurement of environmentally preferable products and services.
- To facilitate consistent reporting on targeted contracts, the Contractor will be provided with a VENDOR GREEN SALES REPORT template by the Maryland Department of General Services.
- 44. Hiring Agreement**
- 44.1 The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Services (DHS) Hiring Agreement (Attachment O). The Hiring Agreement is to be executed by the Bidder and delivered to the Procurement Officer within ten (10) Business Days following receipt of notice by the Bidder that it is being recommended for Contract award. The Hiring Agreement will become effective concurrently with the award of the Contract.

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

**45. Parent Company Guarantee (If applicable)**

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

(Corporate name of Contractor's Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor's Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, lawsuit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

SIGNATURES ON NEXT PAGE

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

Contractor

State of Maryland  
Department of Budget and Management  
(DBM)

By:

By: Helene Grady, Secretary of Budget and  
Management or designee

Date

PARENT COMPANY (GUARANTOR) (if  
applicable)

By:

\_\_\_\_\_

\_\_\_\_\_

By:

Date

\_\_\_\_\_

Date

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

\_\_\_\_\_

Assistant Attorney General

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

\_\_\_\_\_

(Date)

(BPW Item #)

### **Attachment N. Contract Affidavit**

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

### **Attachment O. DHS Hiring Agreement**

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

### **Attachment P. Minimum Qualifications Sample Export**

See attached document labeled [Attachment P](#) – Minimum Qualifications Sample Export.

### **Attachment Q. Standard Reporting Format**

Attachment Q – Standard Reporting Format will be provided after the submission of the Bidder’s signed Non-Disclosure Agreement and Intent to Bid (Bidder).

### **Attachment R. Supporting Data**

Attachment R – Supporting Data will be provided after the submission of the Bidder’s signed Non-Disclosure Agreement and Intent to Bid (Bidder).

### **Attachment S. Plan Design and Clinical Programs**

See attached document labeled [Attachment S](#) – Plan Design and Clinical Programs

### **Attachment T. Participant Bidding Agreement (PBA) Sample Export**

See [attached document labeled Attachment T](#) – Participant Bidding Agreement (PBA) Sample Export

### **Appendix 1. – Abbreviations and Definitions**

The Abbreviations and Definitions are contained in Attachment T – Participant Bidding Agreement (PBA) Sample Export, Section 4.2.1.

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

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

### **Appendix 3. – Non-Disclosure Agreement and Intent to Bid (Bidder)**

See [attached document labelled Appendix 3](#) - Non-Disclosure and Intent to Bid Agreement (Bidder)

## Appendix 4. – Labor Categories

### **Contractor Account Executive (One (1) full-time equivalent (FTE) for each Functional Area, designated but not dedicated)**

Position Description: The Contractor Account Executive serves as the single point of contact for the State regarding day-to-day project operations. The position shall oversee and direct all resources provided under this MS-IFB. The Contractor Account Executive's responsibilities shall include overall project governance, communications with executives, planning, execution, monitoring, control, quality assurance, and implementing course corrections as needed. The Contractor Account Executive is responsible for performing the following:

1. Managing day-to-day project activities;
2. Identifying issues and risks and recommending possible issue and risk mitigation strategies;
3. Facilitating State agency and Contractor discussions and meetings;
4. Ensuring that performance is within scope, consistent with requirements, and delivered on time;
5. Identifying critical paths, tasks, dates, testing, and acceptance criteria;
6. Providing solutions to improve efficiency (e.g., reduce costs while maintaining or improving performance levels);
7. Monitoring issues and providing resolutions for up-to-date status reports); and
8. Documenting and delivering project management related artifacts.

Education: This position requires a Bachelor's degree from an accredited college or university in Accounting, Finance, Management, Communications, Business, or a related discipline.

General Experience: The proposed candidate must have at least ten (10) years of experience in managing large scale employee benefit projects. (Note: Experience managing large scale federal or State employee benefit projects is preferred but not required.)

### **Clinical Services Account Manager (One (1) full-time equivalent (FTE) designated but not dedicated)**

Position Description: The Clinical Services Account Manager works closely with the Employee Benefits Division of the Department of Budget and Management to ensure the smooth running of the program from a clinical perspective. The Clinical Services Account Manager is responsible for performing the following:

1. Communicating and interpreting pharmacy data and reports;
2. Identifying drug utilization trends and proposing utilization management rules and clinical programs to optimize clinical effectiveness and plan cost;
3. Providing analysis of formulary effectiveness and clinical and financial analysis of major formulary changes;
4. Communicating important and emerging industry developments such as new drug introductions and changes in treatment guidelines;
5. Responding to clinical member issues raised by the State;
6. Using excellent written and verbal communication skills.

Education: This position requires a designation of PharmD or RPh.

General Experience: The proposed candidate must have at least ten (10) years of professional pharmacy experience, including at least five (5) years of employee benefit program or project management.

**Contractor Account Service Representative (One (1) 100% full-time equivalent (FTE) for each Functional Area, dedicated to the State)**

Position Description: The Contractor Account Service Representative works closely with the Department of Budget and Management to ensure the smooth running of the program and project(s). The Contractor Account Service Representative is responsible for performing the following:

1. Project scheduling;
2. Assigning staff;
3. Allocating resources;
4. Assessing risk and its management;
5. Coordinating the various components which contribute to the program and project(s) as a whole to ensure they are being delivered on time;
6. Ensuring deadlines are met;
7. Updating staff and keeping all stakeholders in the program and/or project(s) informed of progress and any issues which may arise;
8. Supporting the State in operations;
9. As directed by the State, organizing, directing, and coordinating the planning and production of contract activities, projects and support activities, including those of subcontractors;
10. Developing work breakdown structures, charts, tables, graphs, major milestone calendars, and diagrams to assist in analyzing problems and making recommendations, as needed; and
11. Using excellent written and verbal communications skills.

Education: This position requires a Bachelor's degree from an accredited college or university.

General Experience: The proposed candidate must have at least ten (10) years of experience in employee benefit program or project management.

**Exhibit 1. – MBE, VSBE, and (if applicable) SBR Research Factors**

**Solicitation Title: Pharmacy Benefits Management Services and Purchasing Pool  
 Management MS-IFB  
 eMMA Solicitation No. BPM039929**

*This exhibit serves as a summary of the factors the State used, in conjunction with guidance from the Governor’s Office of Small, Minority, and Women’s Business Affairs, to determine:*

1. *The expected degree of Minority Business Enterprise (MBE) participation for the procurement contract, including subcontracting opportunities identified for the project, any applicable North American Industry Classification System (NAICS) codes linked to the subcontracting opportunities, and the number of certified MBEs in those industries;*
2. *The expected degree of Veteran-owned Small Business Enterprise (VSBE) participation for the procurement contract, including subcontracting opportunities identified for the project, any applicable United Nations Standard Products and Services Codes (UNSPSC) [identified in eMaryland Marketplace Advantage (eMMA) as Categories] linked to the subcontracting opportunities, and the number of certified VSBEs in those industries; and*
3. *If this procurement is for a Statewide Master Contract where secondary competition may occur, the expected degree of Small Business Reserve (SBR) participation for the secondary competition agreement (such as a task order agreement or purchase order agreement) to be designated as an SBR, including opportunities identified for the secondary competition agreement, any applicable UNSPSCs linked to the subcontracting opportunities, and the number of certified SBRs in those industries.*

***Disclaimer:*** *This summary’s research results are not all inclusive and do not exclude any other subcontracting opportunities that the Bidder/Offeror may identify in preparing a Bid/Proposal to submit in response to the solicitation.*

<b>MBE Research by NAICS Code</b>	
<b>MBE Research by Keywords</b>	
<b>Keywords</b>	<b># MBEs in MDOT Directory</b>
Healthcare (Pharmacy) Benefit Consultants	8
Staffing (virtual event)	143
Call Center, Customer and Web Based Services	72
Graphics and Printing	115

<b>VSBE Research by UNSPSC/eMMA Category Code</b>	
<b>Subcontract Area Description</b>	<b>#VSBEs in this area</b>
Healthcare (Pharmacy Benefit Consultants)	52
Staffing (virtual events)	33
Call Center, Customer and Web Based Services	3
Graphics and Printing	25