



**Department of Budget and Management  
Employee Benefits Division**

**REQUEST FOR PROPOSALS (RFP)**

**SOLICITATION NO. F10B4400011**

**Issue Date: April 1, 2014**

**SLEOLA Medical Plan Administration and Services  
(PPO, EPO & POS)**

**NOTICE**

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

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

STATE OF MARYLAND  
**NOTICE TO VENDORS**

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

**Title: SLEOLA Medical Plan Administration and Services (PPO, EPO & POS)**  
**Solicitation No: F10B4400011**

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

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

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

REMARKS:

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

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

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

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

**STATE OF MARYLAND  
DEPARTMENT OF BUDGET AND MANAGEMENT  
RFP KEY INFORMATION SUMMARY SHEET**

**Request for Proposals:** *SLEOLA Medical Plan Administration and Services (PPO, EPO & POS)*

**Solicitation Number:** **F10B4400011**

**RFP Issue Date:** **April 1, 2014**

**RFP Issuing Office:** **Department of Budget and Management**

**Procurement Officer:** **Joy Epstein  
Procurement Officer  
Department of Budget and Management  
45 Calvert Street, Room 143  
Annapolis, MD 21401  
joy.epstein@maryland.gov  
Phone: 410-260-7570  
Fax: 410-974-3274**

**Contract Monitor:** **Anne Timmons  
Director, Employee Benefits Division**

**Proposals are to be sent to:** **Department of Budget and Management  
45 Calvert Street, Room 143  
Annapolis, MD 21401  
Attention: Joy Epstein**

**Pre-Proposal Conference:** **April 9, 2014 10:00AM Local Time  
45 Calvert Street  
Conference Room 164 A/B  
Annapolis, MD 21401  
For directions, call 410-260-7570**

**Closing Date and Time:** **April 21, 2014 2:00PM Local Time**

**MBE Subcontracting Goal:** **See RFP Section 1.33**

**VSBE Subcontracting Goal:** **See RFP Section 1.41**

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## SECTION 1 - GENERAL INFORMATION

### 1.1 Summary Statement

The Department of Budget and Management (DBM or the Department) is issuing this Request for Proposals (RFP) to obtain medical insurance benefits for members of the State Law Enforcement Officers Labor Alliance (SLEOLA) and their dependents. The scope of this RFP is to provide Medical benefits plans for eligible members of SLEOLA and their dependents as part of the State of Maryland Employee and Retiree Health and Welfare Benefits Program (the Program) beginning with the anticipated plan year effective January 1, 2015. The State's goal is to offer a full complement of benefits in order to attract and retain valued employees as well as ensure their long term health and well-being.

The State is requesting service be provided for the following functional areas:

#### **Functional Area 1 – Preferred Provider Organization, Self-Funded [PPO-SF]**

#### **Functional Area 2 – Exclusive Provider Organization, Self-Funded [EPO-SF]**

#### **Functional Area 3 –Point of Service Plan, Self-Funded [POS-SF]**

- 1.1.1 It is the State's intention to obtain services, as specified in this RFP, from Contracts between the selected Offerors and the State. The anticipated duration of services to be provided under these Contracts is five (5) years. See Section 1.4 for more information.
- 1.1.2 The Department may award up to one Contract for each Functional Area as a result of this RFP. Offerors may submit a proposal for one or more Functional Areas. An award in each Functional Area is not guaranteed. For each Functional Area being proposed, the Offeror must submit a separate proposal. However, for those Technical Proposal response sections that may require identical information between Functional Areas, and which are identified as such in this RFP, an Offeror only needs to submit one original response and a set of copies for all of its Proposals (ex. RFP Section 4.4.3.10).
- 1.1.3 Offerors, either directly or through their subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Offerors (Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 1.1.4 Please note that The Segal Group/Managed Care Advisors, as the State's benefits consultants, are assisting the State in this procurement.

## 1.2 Abbreviations and Definitions

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

- a. **BAS** – Benefits Administration System; the State’s automated enrollment system.
- b. **Business Day(s)** – The official Working Days of the week to include Monday through Friday. Official Working Days exclude State Holidays (see definition of “Normal State Business Hours” below).
- c. **COB** – Coordination of Benefits.
- d. **COBRA** – Consolidated Omnibus Budget Reconciliation Act.
- e. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us).
- f. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment A**.
- g. **Contract Commencement** – The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works. See Section 1.4.
- h. **Contract Monitor (CM)** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope.
- i. **Contractor** – The selected Offeror that is awarded a Contract by the State.
- j. **Covered Lives** – Each individual enrolled in a plan.
- k. **CPB** – Central Payroll Bureau of the State of Maryland.
- l. **CPT** – Current Procedural Terminology.
- m. **DBM or Department** – The Department of Budget and Management.
- n. **Dependent** – An eligible person as defined in COMAR 17.04.13.03(A)(9), as amended from time to time. See <http://www.dsd.state.md.us/comar/getfile.aspx?file=17.04.13.03.htm>.
- o. **Dependent Child** – An eligible child as defined in COMAR 17.04.13.01(B)(3), as amended from time to time. See <http://www.dsd.state.md.us/comar/getfile.aspx?file=17.04.13.01.htm>.
- p. **Direct Pay Enrollee** – An individual who is billed directly by the Department of Budget and Management for selected benefits, including COBRA Participants, Leave of Absence Participants and Part-Time Employees.
- q. **Disease Management** – An approach to patient care that seeks to limit preventable adverse events by maximizing patient adherence to prescribed treatments and to health-promoting behaviors. For patients with chronic disease, the anticipated benefits of disease management include superior clinical outcomes; improved functional capacity and quality of life; lower

healthcare costs; reduced need for hospitalization, readmission, surgery and other invasive care; and greater access to care.

- r. **EBD** – Employee Benefits Division of the Department of Budget and Management.
- s. **eMM** – eMaryland Marketplace (see RFP Section 1.8).
- t. **EOB** – Explanation of Benefits.
- u. **EPO** – Exclusive Provider Organization with a national network of participating providers.
- v. **FMLA** – Family Medical Leave Act.
- w. **Go-Live Date** – The date, as specified in the Notice to Proceed, when Contractor must begin providing all services required by this solicitation. See Section 1.4.
- x. **HIPAA** – Health Insurance Portability & Accountability Act and its corresponding regulations, including HITECH.
- y. **LAW** – An unpaid leave of absence elected by a permanent employee, who is not eligible for State subsidy of benefits during such leave but is eligible to participate in certain benefits provided by the State of Maryland while on the unpaid leave of absence.
- z. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- aa. **Medical Plan** – One of the following including vision and behavioral health: the PPO & POS, self-funded group health plans which include in-network and out-of-network coverage administered for SLEOLA employees and their dependents; or the EPO, a self-funded group health plan which includes in-network coverage only administered for SLEOLA employees and their dependents.
- bb. **Medical Records Act** – The Maryland Confidentiality of Medical Records Act, Annotated Code of Maryland, Health-General Article, Title 4, Subtitle 3.
- cc. **Member** – An employee or former employee (including Direct Pay) who is a member of SLEOLA and is eligible to participate in the State of Maryland Benefits Program pursuant to COMAR 17.04.13.03A, as amended from time to time, but does not include the member's dependents.
- dd. **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.
- ee. **No Pay** – Refers to situations in which employees do not have a sufficient amount in their paycheck to fund benefits deduction(s). Such insufficient balances may be the result of members not having sufficient leave balances or may be due to administrative error. Members are billed by the State for the insufficient balance and are provided a grace period to pay amount(s) due.
- ff. **Normal State Business Hours** – Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.
- gg. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go Live Date, and is the official start date of the Contract for the

actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Department Contract Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.

- hh. **Offeror** – An entity that submits a Proposal in response to this RFP.
- ii. **Participant** – Each individual covered by a plan (Members and Dependents).
- jj. **Part-Time Employee** – A permanent employee as defined in COMAR 17.04.13.03 (A) (10), as amended from time to time. See <http://www.dsd.state.md.us/Comar/getfile.uspx?file=17.04.13.01.htm>.
- kk. **PEPM** – Per Employee Per Month; the cost for each employee on a monthly basis.
- ll. **PHI** – Protected Health Information, as the phrase is defined in 45 CFR §164.501.
- mm. **POS** – Point of Service Plan.
- nn. **PPACA** – Patient Protection and Affordable Care Act.
- oo. **PPO** – Preferred Provider Organization having a national network of participating providers.
- pp. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment A), including being the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to Contractor.
- qq. **Proposal** – As appropriate, either or both of an Offeror's Technical or Financial Proposal.
- rr. **Reasonable and Customary (R&C)** – A fee for a health service that is within the range of usual fees charged by providers of similar training and experience, for the same service, within the same geographic area.
- ss. **Request for Proposals (RFP)** – This Request for Proposals issued by the Department of Budget and Management, Solicitation Number **F10B4400011** dated **April 1, 2014**, including any addenda.
- tt. **SPS** – State Personnel System.
- uu. **Spouse** – An individual who is joined in marriage to an employee, provided that such marriage is validly contracted in the jurisdiction of celebration.
- vv. **State** – The State of Maryland.
- ww. **TIN** – Tax Identification Number.
- xx. **Total Proposal Price** – The Offeror's total proposed price for services in response to this solicitation, included in the Financial Proposal, and used in the financial evaluation of Proposals (see RFP Section 5.3).
- yy. **TPA** – Third Party Administrator.
- zz. **TTY/TDD** – A telephone-text device used by hearing impaired individuals whereby they communicate via telephone connected to a keyboard and screen.

- aaa. **Use** – With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.
- bbb. **Utilization Review (UR)** – Evaluation of the necessity, quality, effectiveness, or efficiency of medical services, procedures and facilities.
- ccc. **Veteran-owned Small Business Enterprise (VSBE)** – A business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- ddd. **Working Day(s)** – Same as “Business Day(s).”

### **1.3 Contract Type**

The Contracts that result from this RFP shall be a cost reimbursement contract plus fixed fee for certain indefinite quantities pursuant to COMAR 21.06.03.03 and COMAR 21.06.03.02. Claims costs shall be reimbursable as provided in this RFP and administration fees shall be fixed as further described in the Financial Proposal instructions.

### **1.4 Contract Duration**

- 1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works (“Contract Commencement”).
- 1.4.2 The period of time from the date of Contract Commencement through the Go-Live Date (see Section 1.2 definition and Section 1.4.3) will be the Contract “Start-up Period.” During the Start-up Period Contractor shall perform start-up activities such as are necessary to enable Contractor to begin the successful performance of Contract activities as of the Go Live Date. No compensation will be paid to Contractor for any activities it performs during the Start-up Period.
- 1.4.3 As of the Go-Live Date contained in a Notice to Proceed (see Section 1.2 definition), anticipated to be January 1, 2015. Contractor shall perform all activities required by the Contract, including the requirements of this solicitation, and the offerings in its Technical Proposal, for the compensation described in its Financial Proposal.
- 1.4.4 The duration of the Contract will be for the period of time from Contract Commencement to the Go-Live Date (the Start-Up Period as described in Section 1.4.2) plus five (5) years from the Go-Live Date for the provision of all services required by the Contract and the requirements of this solicitation including run-out, audits, and reconciliation processes following the last covered plan year. It is anticipated that the first plan year covered by the Contract will begin January 1, 2015 and that run-out, audits, and reconciliation processes will conclude within 18 months of the last day of the last plan year covered by the Contract. Following the end of this Contract, Contractor shall be responsible for handling claims payments for claims incurred prior to the end of the Contract; Contractor’s obligations as insurer with respect to covered services during a period of coverage shall survive the expiration of the Contract.
- 1.4.5 Contractor’s obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification

obligations of the Contract (see Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

#### **1.5 Procurement Officer**

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

**Joy Epstein**  
**Procurement Officer**  
**Department of Budget and Management**  
**45 Calvert Street, Room 143**  
**Annapolis, MD 21401**  
joy.epstein@maryland.gov  
**Phone: 410-260-7570**  
**Fax: 410-974-3274**

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

#### **1.6 Contract Monitor**

The Contract Monitor is:

**Anne Timmons**  
**Director, Employee Benefits Division**  
**Department of Budget and Management**  
**301 W. Preston Street, Room 510**  
**Baltimore, Maryland 21201**  
[Anne.Timmons@Maryland.gov](mailto:Anne.Timmons@Maryland.gov)  
**Phone: 410-767-4787**  
**Fax: 410-767-3122**

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

#### **1.7 Pre-Proposal Conference**

A Pre-Proposal Conference (the Conference) will be held on April 9, 2014, beginning at 10:00AM Local Time, at 45 Calvert Street, Room 164 A/B, Annapolis, MD 21401. All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

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

In order to assure adequate seating and other accommodations at the Conference, please e-mail, mail, or fax to 410-974-3274 the Pre-Proposal Conference Response Form to the attention of the Procurement Officer no later than 4:00 p.m. Local Time on **April 7, 2014**. The Pre-Proposal Conference Response Form is included as **Attachment E** to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement

Officer no later than **April 4, 2014**. The Department will make a reasonable effort to provide such special accommodation.

### **1.8 eMarylandMarketplace**

Each Offeror is requested to indicate its eMarylandMarketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted at the time of its Proposal submission to this RFP.

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DBM website, <http://dbm.maryland.gov/agencies/procurement/Pages/ProcurementsinProgress.aspx> and possibly other means for transmitting the RFP and associated materials, the solicitation and summary of the Pre-Proposal Conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM.

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

### **1.9 Questions**

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

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

### **1.10 Procurement Method**

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

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

Proposals, in the number and form set forth in Section 4.2 "Proposals" must be received by the Procurement Officer at the address listed on the Key Information Summary Sheet, no later than **2:00PM**, Local Time on **April 21, 2014** in order to be considered.

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

Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in this section for receipt of Proposals.

Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.

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

#### **1.12 Multiple or Alternate Proposals**

Multiple and/or alternate Proposals will not be accepted. Submitting a Proposal for more than one Functional Area is not considered to be "multiple" Proposals.

#### **1.13 Economy of Preparation**

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror's Proposal, using double-sided printing where appropriate, to meet the requirements of this RFP.

#### **1.14 Public Information Act Notice**

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., State Government Article, Title 10, Subtitle 6. (Also, see RFP Section 4.4.3.2 "Claim of Confidentiality"). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

#### **1.15 Award Basis**

Contracts shall be awarded to the responsible Offeror(s) submitting the Proposal(s) determined to be the most advantageous to SLEOLA / the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP Section 5 for further award information. The Department may award up to one (1) Contract for each Functional Area as a result of this RFP.

### **1.16 Oral Presentation**

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

### **1.17 Duration of Proposal**

Proposals submitted in response to this RFP are irrevocable for 180 days following the closing date for submission of Proposals or best and final offers if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

### **1.18 Revisions to the RFP**

If it becomes necessary to revise this RFP before the due date for Proposals, the Department shall endeavor to provide addenda to all prospective Offerors that were sent this RFP or which are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the Department's procurement web page and through eMM. It remains the responsibility of all prospective Offerors to check all applicable websites for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Offerors that submitted a timely Proposal and that remain under award consideration as of the issuance date of the addenda.

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal (see RFP Section 4.4.3.3). Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum.

### **1.19 Cancellations**

The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, to waive or permit the cure of minor irregularities, and to conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

### **1.20 Incurred Expenses**

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

### **1.21 Protest/Disputes**

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

### **1.22 Offeror Responsibilities**

The selected Offeror shall be responsible for all products and services required by this RFP for each Functional Area for which a Proposal is submitted. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this RFP (see Section 1.33 "Minority Business Enterprise Goals" and Section 1.41 "Veteran-Owned Small Business Enterprise Goals.")

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

A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience and/or qualifications of the parent under any evaluation criteria pertaining to the Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualification of the parent are transferred to and shared with the Offeror, the parent is directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

### **1.23 Substitution of Personnel**

#### **A. Continuous Performance of Key Personnel**

Unless substitution is approved per paragraphs B-D of this section, key personnel shall be the same personnel proposed in Contractor's Technical Proposal, which will be incorporated into the Contract by reference. Such identified key personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key personnel may not be removed by Contractor from working under this Contract, as described in the RFP or Contractor's Technical Proposal, without the prior written approval of the Contract Monitor.

If the Contract is task order based, the provisions of this section apply to key personnel identified in each task order proposal and agreement.

#### **B. Definitions**

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

**Extraordinary Personal Circumstance** – means any circumstance in an individual’s personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and that precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual’s home that causes a major disruption in the individual’s normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

**Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual’s position in the RFP or Contractor’s Technical Proposal.

**Sudden** – means when Contractor has less than thirty (30) days’ prior notice of a circumstance beyond its control that will require the replacement of any key personnel working under the Contract.

#### C. Key Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution described in paragraph D of this section.

1. Contractor shall demonstrate to the Contract Monitor’s satisfaction that the proposed substitute key personnel have qualifications at least equal to those of the key personnel for whom the replacement is requested.
2. Contractor shall provide the Contract Monitor with a substitution request that shall include:
  - A detailed explanation of the reason(s) for the substitution request;
  - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
  - The official resume of the current personnel for comparison purposes; and
  - Any evidence of any required credentials.
3. The Contract Monitor may request additional information concerning the proposed substitution. In addition, the Contract Monitor and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Monitor will notify Contractor in writing (including email) of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a requested key personnel replacement.

#### D. Replacement Circumstances

1. Voluntary Key Personnel Replacement

To voluntarily replace any key personnel, Contractor shall submit a substitution request as described in paragraph C of this section to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph D.2 of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

2. Key Personnel Replacement Due to Vacancy

Contractor shall replace key personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section D.1 of this section.).

Under any of the circumstances set forth in this paragraph D.2, Contractor shall identify a suitable replacement and provide the same information or items required under paragraph C of this section within fifteen (15) days of the actual vacancy occurrence or from when 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

If any key personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, Contractor shall identify a suitable replacement and provide the same information or items to the Contract Monitor as required under paragraph C of this section.

However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor, at the option and sole discretion of the Contract Monitor, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

4. Directed Personnel Replacement

a. The Contract Monitor may direct Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 4.b. If after such remediation the Contract Monitor determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Monitor can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

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

- b. If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to Contractor, describing the problem and delineating the remediation requirement(s). Contractor shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.

Should performance issues persist despite the approved Remediation Plan, the Contract Monitor will 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 personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the key personnel at issue.

Replacement or substitution of 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.

#### **1.24 Mandatory Contractual Terms**

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment A**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 4.4.3.4).**

#### **1.25 Bid/Proposal Affidavit**

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

#### **1.26 Contract Affidavit**

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

### **1.27 Compliance with Laws/Arrearages**

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

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

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

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

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

### **1.29 False Statements**

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

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

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

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

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

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

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

COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

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

### **1.31 Prompt Payment Policy**

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. Contractor must comply with the prompt payment requirements outlined in the Contract, Section 31 "Prompt Payment" (see **Attachment A**). Additional information is available on GOMA's website at: [http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs\\_000.pdf](http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs_000.pdf)

### **1.32 Electronic Procurements Authorized**

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder/Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
  1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
    - (a) the solicitation (e.g., the IFB/RFP);
    - (b) any amendments;
    - (c) pre-Bid/Proposal conference documents;
    - (d) questions and responses;
    - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
    - (f) notices of award selection or non-selection; and

- (g) the Procurement Officer's decision on any Bid protest or Contract claim.
2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:
    - (a) ask questions regarding the solicitation;
    - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
    - (c) submit a "No Bid/Proposal Response" to the solicitation.
  3. The Procurement Officer, the Contract Monitor, and Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
1. submission of initial Bids or Proposals;
  2. filing of Bid Protests;
  3. filing of Contract Claims;
  4. submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
  5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from Contractor or Bidder/Offeror be provided in writing or hard copy.
- F. Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

<b>1.33 Minority Business Enterprise Goals</b>
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1.33.1 Establishment of Goal and Subgoals.

The minimum overall MBE subcontractor participation goals for each Functional Area is four percent (4%) of the total administrative fees paid to Contractor(s).

There are no MBE subcontractor participation subgoals for this procurement.

1.33.2 **Attachment D** – Minority Business Enterprise participation, instructions, and forms are provided to assist Bidders/Offerors. A Bidder/Offeror must include with its Bid/Proposal a completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) for each Functional Area being proposed, whereby:

- (a) The Bidder/Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and

- (b) The Bidder/Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of contract value associated with each MBE subcontractor identified on the MBE participation schedule.

***If a Bidder/Offeror fails to submit a completed Attachment D-1 with the Bid/Proposal as required, the Procurement Officer shall determine that the Bid is non-responsive or the Proposal is not reasonably susceptible of being selected for award.***

- 1.33.3 Bidders/Offerors are responsible for verifying that each of the MBE(s) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1** is appropriately certified and has the correct NAICS codes allowing it to perform the intended work.
- 1.33.3.1 Payments Attributable to the Goal. Contractor shall only include and report payments to MBE subcontractors which are attributable to the SLEOLA Contract.
- 1.33.3.2 When preparing **Attachment D-1**, the Offeror must consider and include ***only those MBE payments that are attributable to the SLEOLA contract.***
- 1.33.3.3 The **Attachment D-1** is to be completed using only the amount of the MBE participation that is attributable to the SLEOLA Contract. The Attachment D-1 shall indicate the percentage (%) of the Contract to be subcontracted to each MBE firm.
- 1.33.3.4 Failure of the Offeror to complete, sign, and submit Attachment D-1 ***for each Functional Area*** being proposed at the time it submits its Response(s) to the RFP will result in the State's rejection of the Offeror's Proposal to the RFP. ***This failure is not curable.***
- 1.33.4 Within ten (10) Working Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Bidder/Offeror must provide the following documentation to the Procurement Officer.
- (a) Outreach Efforts Compliance Statement (**Attachment D-2**).
- (b) Subcontractor Project Participation Certification (**Attachment D-3**).
- (c) 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.
- (d) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

***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.***

- 1.33.5 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://www.mdot.state.md.us>. 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.**

- 1.33.6 Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE Participation:
- (a) **Attachment D-4** (MBE Participation Prime Contract Paid/Unpaid MBE Invoice Report).
  - (b) **Attachment D-5** (MBE Participation Subcontractor/Contractor Unpaid MBE Invoice Report).
- 1.33.7 A Bidder/Offeror requesting a waiver of the goal or any of the applicable subgoals will be responsible for submitting the following form if applicable within ten (10) Working Days of recommendation for award and all documentation as required in **COMAR 21.11.03.11 - Waiver: Attachment D-6** (MBE Minority Contractor Unavailability Certificate).
- 1.33.8 All documents, including **Attachment D**, completed and submitted by the Bidder/Offeror in connection with its certified MBE participation commitment shall be considered to be a part of the resulting 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/Proposal for order of precedence purposes (see **Attachment A**, § 2.1).
- 1.33.9 The Bidder/Offeror is advised that liquidated damages will apply in the event Contractor fails to comply in good faith with the provisions of the MBE program and pertinent Contract provisions. (See **Attachment A**, §36).
- 1.33.10 Contractual Compliance.
- 1.33.10.1 Contractor shall fulfill the commitments made in **Attachment D-1**. These MBE commitments reported in the Technical Proposal and **Attachment D-1** (as to items of work, service, or supply and the amount to be paid) are contractual obligations that must be met by Contractor during the term of the Contract. Contractor shall structure its award(s) of subcontract(s) under the Contract(s) in a good faith effort to achieve the goal in such subcontract awards by businesses certified by the State of Maryland as minority owned and controlled. MBE requirements are specified in **Attachment D**, "Minority Business Enterprise Participation." Subcontractors used to meet the MBE goal of this RFP must be identified in the Offeror's proposal.
- 1.33.10.2 In completing the **Attachments D-4 and D-5** each month, Contractor and all MBE Subcontractors shall report both the full amount of MBE participation and the attributable amounts of MBE participation for each MBE to the SLEOLA Contract. If any Offeror is awarded a Contract in more than one Functional Area, the requirements in connection with the MBE subcontracting goal and **Attachment D** submissions are determined on a per-Contract basis. If an MBE performs services for more than one Functional Area (PPO, EPO or POS), Contractor must report the portion of the work for each Contract and may not duplicate reporting of payments to the MBE.

1.33.10.2.1 MBE participation to meet the goal must be related and attributable to the Contract(s) awarded pursuant to this solicitation.

1.33.11 Anticipated Sub-contracting Opportunities.

Offerors should review Section 3 of this RFP and the related Technical and Financial Proposal forms to determine the services that the State anticipates to be provided as part of the Contract(s) for each Functional Area. Offerors are encouraged to seek MBE participation in those areas, but are not limited to using MBEs in those areas.

1.33.12 Questions and More Information.

Questions or concerns regarding the MBE requirements of this solicitation must be raised before the opening of bids or receipt of initial proposals.

**1.34 Living Wage Requirements**

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Md. Code Ann., State Finance and Procurement Article, Title18. Additional information regarding the State's living wage requirement is contained in **Attachment G**. Bidders/Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**) with their Bid/Proposal. If a Bidder/Offeror fails to complete and submit the required documentation, the State may determine a Bidder/Offeror to be not responsible under State law.

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

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

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

Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website

<http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

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

### **1.35 Federal Funding Acknowledgement**

This Contract does not contain Federal funds.

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

A Conflict of Interest Affidavit is not required pursuant to COMAR 21.05.08.08(F) for this procurement. An Offeror shall disclose to the procurement officer any actual or potential conflict of interest as it arises, before or after award, in accordance with COMAR 21.05.08.08.1.37

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

All potential Offerors are advised that this solicitation and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment J**.

In order to obtain access to certain confidential data that is necessary to complete a Proposal in response to this RFP, each potential Offeror must complete and submit to the Procurement Officer this Non-Disclosure Agreement.

The information that will be provided to the potential Offeror after submission of the Non-Disclosure Agreement includes the following:

1. Demographic data showing the date of birth, gender, city, state, zip and county for approximately 1,400 active employees, to be used in completing the Geo-Access reports required in Attachment S-1 for FA1 and FA2.
2. For Functional Area 1 – PPO (Self-Funded), Attachment FA1 Attachment S - Technical Response (Part II) including data on the most utilized providers and facilities and disruption reports for completion.
3. For Functional Area 2 – EPO (Self-Funded), Attachment FA2 Attachment S - Technical Response (Part II) including data on the most utilized providers and facilities and disruption reports for completion.
4. For Functional Area 3 – POS (Self-Funded), Attachment FA3 Attachment S - Technical Response (Part II) including data on the most utilized providers and facilities and disruption reports for completion.
5. Utilization and enrollment data by plan to be used in the preparation of Financial Proposal.

In order to obtain the data, a potential Offeror must 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 found at **Attachment J**, “Non-Disclosure Agreement,” with a request for the data. A potential Offeror may also provide the signed Non-Disclosure Agreement to the Procurement Officer at the Pre-Proposal Conference (see RFP Section 1.7). The confidential data and information will be provided via a secure file transfer protocol (FTP) website to each potential

Offeror that has submitted a completed, signed Non-Disclosure Agreement to the Procurement Officer. **The confidential data will not be e-mailed to Offerors.**

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

The HIPAA Business Associate Agreement for this solicitation is included in the Compliance Checklist for each Functional Area.

### **1.39 Nonvisual Access**

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

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

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

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

#### **1.41.1 NOTICE TO BIDDERS/OFFERORS**

Questions or concerns regarding the Veteran-Owned Small Business Enterprise (VSBE) subcontractor participation goal of this solicitation must be raised before the due date for submission of Bids/Proposals.

#### **1.41.2 PURPOSE**

Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the VSBE subcontractor participation goal stated in this solicitation. VSBE performance must be in accordance with this section and **Attachment M**, as authorized by COMAR 21.11.13. Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and **Attachment M**.

#### **1.41.3 VSBE GOALS**

The minimum overall VSBE subcontractor participation goals for each Functional Area is 0.5 percent (0.5%) of the total administrative fees paid to Contractor(s).

By submitting a response to this solicitation, the Bidder or Offeror agrees that the proposed percentage will be performed by verified Veteran-owned Small Business Enterprises.

#### **1.41.4 SOLICITATION AND CONTRACT FORMATION**

A Bidder/Offeror must include with its Bid/Proposal a completed Veteran-Owned Small Business Enterprise Utilization Affidavit and Subcontractor Participation Schedule (**Attachment M-1**) whereby:

(1) the Bidder/Offeror 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/Offeror commits to

the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal.

- (2) the Bidder/Offeror 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/Proposal submission. The Bidder/Offeror shall specify the percentage of contract value associated with each VSBE subcontractor identified on the VSBE Participation Schedule.

***If a Bidder/Offeror fails to submit Attachment M-1 with the Bid/Proposal as required, the Procurement Officer may determine that the Bid is non-responsive or that the Proposal is not reasonably susceptible of being selected for award.***

Within ten (10) Working Days from notification it is the recommended awardee, the recommended awardee must provide the following documentation to the Procurement Officer.

- (1) VSBE Project Participation Statement (**Attachment M-2**);
- (2) If the recommended awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request which complies with COMAR 21.11.13.07; and
- (3) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the VSBE subcontractor participation goal.

***If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine the apparent awardee is not responsible and therefore not eligible for contract award.***

#### 1.41.5 CONTRACT ADMINISTRATION REQUIREMENTS

Contractor, once awarded the Contract shall:

- (1) Submit monthly to the Department a report 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. (**Attachment M-3**)
- (2) Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly to the Department a report which identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. (**Attachment M-4**)
- (3) 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 Contractor and furnished to the Procurement Officer on request.
- (4) Consent to provide such documentation as reasonably requested and to provide right-of entry at reasonable times for purposes of the State's representatives verifying compliance with the

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

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

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

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

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

This solicitation does not require a DHR Hiring Agreement.

#### **1.44 Performance Guarantees and Liquidated Damages**

It is critical to the success of the State's SLEOLA benefits plans that services be maintained in a timely manner and that Contractor operates in an extremely reliable manner. 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 claims administration, service, reporting, and attendance of Contractor personnel on scheduled work and provision of services to SLEOLA employees and dependents served by this Contract. The State and 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 the "Performance Guarantees" section for each applicable Functional Area, and Contractor agrees in the event of any such failure of performance, Contractor shall pay such amount as liquidated damages and not as a penalty. The State, at its option for amount due the State as liquidated damages, may deduct such from any money payable to Contractor or may bill Contractor as a separate item.

For additional information and measurement parameters, please refer to Attachment S-12 Performance Guarantees.

#### **1.45 Electronic File Transfers**

All electronic file transfers between the Department of Budget and Management and Contractor shall be exchanged using SFTP (secure file transfer protocol), HTTPS (http over SSL), or FTPS/TLS (secure FTP over SSL) connection approved by the State of Maryland, Department of Budget and Management.

#### **1.46 NAIC 120-1 Model COB Contract Provisions**

By submitting a response to this solicitation, each Offeror represents that it shall comply with the NAIC Model Coordination of Benefits Contract Provisions, included as **Attachment P**.

## SECTION 2 – MINIMUM QUALIFICATIONS

### **2.1 Offeror Minimum Qualifications**

There are no Offeror Minimum Qualifications for this procurement.

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## SECTION 3– SCOPE OF WORK

### 3.1 Background and Purpose

The State provides an expansive range of employee benefit plans to approximately 1,600 active SLEOLA employees (1,400 of which are enrollees) and their covered dependents.

Current benefit plans include medical (including behavioral health and vision), dental, group term life, accidental death and dismemberment, flexible spending accounts, prescription drug, and long term care.

These benefits are offered to public safety personnel at more than 300 different worksites.

Due to the large number of SLEOLA employees, diverse population and numerous employee work locations, the State sponsors annual Benefit Fairs during each annual open enrollment period. The State expects to conduct 100 or more Open Enrollment Benefit Fairs throughout the State each year to answer employee questions and provide plan overview information.

SLEOLA / The State is seeking Contractors that can provide the best in class Medical Plan Administration and Services and together with the State support overall member health improvement and increase access to quality care and efficiency of service delivery.

The scope of this RFP is to provide Administrative and nationwide provider network management services for eligible Participants of the SLEOLA’s employee medical benefits program beginning with the anticipated plan year effective January 1, 2015.

The State of Maryland currently offers its SLEOLA Members two (2) self-funded preferred provider organization (PPO) plans, three (3) self-funded point of service (POS) plans, and three (3) self-funded Exclusive Provider Organization (EPO) plans as follows:

Vendor	Plan Type	Funding Arrangement
CareFirst	PPO, POS, EPO	Self-Funded
United Healthcare	PPO, POS, EPO	Self-Funded
Aetna	POS, EPO	Self-Funded

There are approximately 1400 Members enrolled in the State’s SLEOLA medical plans. Percentages enrolled by current plan type are as follows:

Plan Type	Percent Enrolled
Preferred Provider Organization (PPO)	51%
Exclusive Provider Organization (EPO)	22%
Point of Service (POS)	27%

Participants currently receive State subsidized health benefit coverage.

Summaries of current plan coverage are provided at the DBM web site:

<http://dbm.maryland.gov/benefits/Pages/SLEOLA.aspx>

### **3.2 Implementation Schedule**

The following are the high-level milestones and the State's desired due dates, where applicable:

<b>DATE (anticipated)</b>	<b>ACTIVITY</b>
Within 10 business days of the approval of contract award by Board of Public Works	Kick off meeting with State of Maryland
Within 30 calendar days of the approval of contract award by Board of Public Works	Begin implementation meetings with the State of Maryland.
June 19, 2014	Provide Plan Benefits documents to State for review and approval.
	Develop marketing plan for open enrollment and health fairs.
	Establish necessary account with the Comptroller's Office to enable electronic funds transfer.
July 30, 2014	Provide Open Enrollment marketing materials for open enrollment training and health fairs to State for review and approval.
	Provide necessary forms to State for review and approval.
	Begin electronic testing to ensure accurate and secure transmission of enrollment data.
August 2014	Attend Benefits Coordinator Open Enrollment Training Sessions
September 2014	Attend Open Enrollment Health Fairs
Beginning November 2014	Receive, load and audit positive files for open enrollment for coverage beginning January 1, 2015.
Mid-December 2014	Issue identification cards to be received one week prior to January 1, 2015 effective date.
January 1, 2015	Commence benefit coverage and administration of plan/benefits.

### 3.3 General Requirements for All Functional Areas

Eligibility for coverage under the group medical plans administered by Contractor shall be determined pursuant to the terms of this RFP. See RFP section 1.2 for definitions of eligible Participants and Dependents.

#### 3.3.1 Disease Management

Contractor must identify participants to be enrolled in a Disease Management Program, based on industry standard metrics. Contractor must offer additional programs for participants with Chronic Conditions and Disease Management Programs including but not limited to: diabetes, asthma, congestive heart failure (CHF) hypertension, coronary artery disease (CAD), chronic obstructive pulmonary disease (COPD), hyperlipidemia, and depression. For these participants, Contractor must provide and track on a quarterly basis, active participation in a designated disease management program and follow-up on disease management call-in treatment guidelines of the care manager or complete/graduate from the Disease Management Program. It is expected that all high and moderate acuity participants will be eligible for telephonic outreach by Contractor, with all acuity levels (high, moderate, low) receiving other forms (i.e. mail, email, text) of outreach.

#### 3.3.2 Staffing

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, network management, implementation management, and data management, production and analytics.

#### 3.3.3 Program Communication Materials and Tools

Contractor shall develop and provide employee communication materials that fully and accurately describe, at a minimum, the benefits for the program, how the program works, where how and when additional information can be obtained, and how to access benefits, and develop additional communication materials, tools and resources as needed to focus on specific program components. Contractor's materials must be closely coordinated with the State's communications materials with State-approved branding.

#### 3.3.4 Performance Guarantees

Contractor shall comply with the performance guarantees as applicable for the particular Functional Area set forth in **Attachment S-12 - Performance Guarantees**. (See also RFP Section 1.44).

#### 3.3.5 Data and Reporting

A. Contractor shall provide reports and submit data to the State and to other entities on behalf of the State. To the extent that reports are requested that are substantially different from the reporting requirements detailed in the RFP, please see Section 2.3 of the Contract (Attachment A).

- B. Contractor shall provide to the State the reports as outlined under the reporting section in the Compliance Checklist for the particular Functional Area set forth in **Attachment S-9 - Compliance Checklist**.
- C. Contractor shall comply with all applicable external reporting requirements, including but not limited to, federal reporting requirements to the Centers for Medicare and Medicaid Services regarding enrollment and eligibility data in connection with the particular medical benefits plan Contractor is administering for SLEOLA / the State.
- D. Contractor shall provide standard reports (per Contractor's Technical Proposal) 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.

#### 3.3.6 Claims Processing and Payment

Contractor shall process and pay claims in an accurate and timely manner pursuant to the Plan Designs provided in **Attachment S-2: Plan Design**, for the particular Functional Area(s). Contractor shall provide, at a minimum, claims processing services as outlined under the Claims Processing section in the Compliance Check List for the particular Functional Area(s).

#### 3.3.7 Internal Claims Eligibility Audits

Contractor shall assign a supervisor from each of its eligibility and claims areas to support monthly claims eligibility audits performed by the EBD Audit Unit. Contractor will agree to performance guarantee(s) associated with this requirement as noted in the **Performance Guarantees** for the particular Functional Area(s).

#### 3.3.8 Fraud Detection and Prevention

Contractor shall administer fraud prevention and detection programs and cooperate with the State's efforts to eliminate and prosecute healthcare fraud. Contractor shall provide current fraud prevention and detection program information upon award and annually thereafter to the Department as outlined in the **Compliance Checklist** for the particular Functional Area(s).

#### 3.3.9 Customer Satisfaction

Health Services must be delivered to ensure the highest level of customer service for SLEOLA plan participants. At least 90% of the participants responding to the State's annual Customer Satisfaction Survey must rate their overall experience with the program as "satisfactory" or better.

#### 3.3.10 Network Development and *Maintenance*

Contractor shall meet the healthcare needs of SLEOLA's eligible participants through the development and maintenance of a/an adequate provider network(s). Contractor agrees to develop and adhere to a detailed network development and maintenance plan based on SLEOLA's needs and agreed to by the Contract Monitor.

### 3.4 Functional Area Specifications – PPO, EPO & POS Attachments

- A. Significant detailed provisions regarding the minimum expectations of the services to be provided by Contractor for each Functional Area are provided in the attachments that accompany this RFP, as detailed below. However, in order to receive all of the Attachments that contain data and confidential information, a Non-Disclosure Agreement must be completed and submitted. See RFP Section 1.37.
- B. The RFP includes files containing response pages and supporting data to complete a proposal to the technical requirements of this RFP. **Attachment S** for Functional Areas 1, 2 and 3 are in Microsoft Word (.docx) format and **Attachment S, Part II** and **Attachment U**, which will be provided after receipt of a signed non-disclosure agreement, will be in Microsoft Excel (.xlsx) format. These files are summarized as follows:

#### **Attachment S: Technical Proposal (Part I)**

[Filename: FA1 Attachment S\_PPO-SF Technical Proposal.docx]

[Filename: FA2 Attachment S\_EPO-SF Technical Proposal.docx]

[Filename: FA3 Attachment S\_POS-SF Technical Proposal.docx]

Attachment S-1: Plan Information

Attachment S-2: Explanations and Deviations

Attachment S-3: Plan Design

Attachment S-4: Participating Physicians

Attachment S-5: Adult PCPs

Attachment S-6: Access to Pediatricians

Attachment S-7: Access to OB/GYN

Attachment S-8: Access to Hospitals

Attachment S-9: Compliance Checklist

Attachment S-10: Questionnaire

Attachment S-11 (a-f): Subcontractor Questionnaires

Attachment S-12: Performance Guarantees

#### **Attachment S: Technical Proposal (Part II)**

[Filename: FA1 Attachment S Disruption Analysis.docx]

[Filename: FA2 Attachment S Disruption Analysis.docx]

[Filename: FA3 Attachment S Disruption Analysis.docx]

#### **Attachment U: Supporting Data**

[Filename: Attachment U Supporting Data.xlsx]

Attachment U-1: PPO Claims & Enrollment

Attachment U-2: PPO Claims Re-Pricing Files

Attachment U-3: EPO Claims & Enrollment

Attachment U-4: EPO Claims Re-Pricing Files

Attachment U-5: POS Claims & Enrollment

Attachment U-6: POS Claims Re-Pricing Files

Attachment U-7: Current Census

### 3.5 Payment and Invoice Specifications

For all Functional Areas, Contractor shall not receive compensation for implementation services performed prior to the coverage start date.

#### 3.5.1 Payment Procedures - Claims Payment Specifications

Contractor shall:

1. Invoice the State processed claims on a weekly basis. Invoices will be sent to the State by 10:00AM 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 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; and
4. Accept adjustments based on the reconciliation of SLEOLA's invoice amount and the 100-character file. Applicable adjustments will be made to a subsequent invoice.

#### 3.5.2 Payment Procedures - Non Claims (Administrative) for All Functional Areas

Contractor shall:

1. Accept monthly payments from the State for administration fees based on SLEOLA's payroll deduction report data (calculated by the State). [ex. November's payment reconciles September actual deductions to September's estimated payment and estimates November payment based on September's actual enrollment];
2. Accept payment from the State as processed through the normal State transmittal process (i.e., approved transmittal sent to Annapolis, EFT transfer to Contractor. Payment is usually made by the last day of each month);
3. For any recoveries as a result of fraud or an audit, the Contractor shall pay the State any portion due it via separate check payment and provide substantiation on a monthly basis. Contractor shall report on any aggregate activity twice a year, at six-month intervals; and
4. The State shall make payment to Contractor as follows:

**Active employees:** Active SLEOLA employees are generally paid on a biweekly basis, with deductions for health plan coverage taken from 24 paychecks.

The State will send a payment to Contractor once a month. The first payment for the calendar/plan year is made in mid-February. This payment will provide an estimated payment for the months of January and February. The estimate is based on the first Central Payroll Bureau deduction report for the month of January. The State will multiply this first payroll by four, thereby estimating two

months' worth of deductions. The next payment for the plan year will be paid in March and will include reconciliation for January. Contractor should receive this payment around mid-March.

For example:

**Payment #1 – January and February Payment**

First deduction report in January for CPB employees		\$500,000
January estimated payment	2 x \$500,000 =	\$1,000,000
February estimated payment	2 x \$500,000 =	<u>\$1,000,000</u>
Payment #1 of plan year (Mid-February)		\$2,000,000

**Payment #2 – March Payment**

Actual deductions for January	CPB – 1 <sup>st</sup> pay period	\$500,000
	– 2 <sup>nd</sup> pay period	<u>\$550,000</u>
Total January actual deductions		\$1,050,000
January estimated payment:	2 x \$500,000 =	\$1,000,000
Reconcile Adjustment for January		\$50,000
March estimated payment based on January actual payment		\$1,050,000
Payment #2 – March 15 <sup>th</sup> or 30 <sup>th</sup>		\$1,100,000

Payment # 3 will adjust for February and provide an estimated payment for April.

Payments #4 through #12 will follow same procedure through the plan year as payment number three.

These payments will also include any retroactive adjustments and No Pay payments (i.e. late payments for a prior period of coverage) received during the month.

**Direct Pay Enrollees:** This category includes individuals who are billed directly by the State for their health coverage. The State will send a payment to the Contractor once a month. These payments are based on actual premiums received during a calendar month. The first payment for the fiscal year is paid in early February. This payment will include all premiums received during the month of January, regardless of the month(s) for which premiums are being paid. For example, if the State receives a payment from an individual in January that pays for the months of January through April, the State will forward payment for the four months. A report detailing individuals for whom premiums have been received during the prior month will be forwarded to Contractor to support the monthly payment.

Payment #1 - January payment will be paid toward the end of February based on the actual premiums received during the month of January.

Payment #2 - February payment will be paid toward the end of March based on the actual premiums received during the month of February.

Payments #3 through #12 will follow the same procedure.

### **3.6 Security Requirements**

#### 3.6.1 Employee Identification

- (a) Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.
- (b) At all times at any facility, Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visible location at all times.

#### 3.6.2 Information Technology

- (a) Contractor shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and 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) Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

### **3.7 Insurance Requirements**

- 3.7.1 Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by Contractor, its agents, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 3.7.2 Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per occurrence.
- 3.7.3 Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.
- 3.7.4 Within five (5) Business Days of execution of a Contract with the State, Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of Contractor's current certificate of insurance shall contain at minimum the following:
  - (1) Workers' Compensation –Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.

- (2) Commercial General Liability as required in Section 3.7.1.
- (3) Errors and Omissions/Professional Liability as required in Section 3.7.2.
- (4) Employee Theft Insurance as required in Section 3.7.3.

3.7.5 The State shall be listed as an additional insured on the policies with the exception of Worker's Compensation Insurance and Professional Liability Insurance. Certificates of insurance evidencing coverage shall be provided prior to the commencement of any activities in the Contract. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 45 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.

3.7.6 Contractor shall require that any subcontractors providing services under this Contract obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of Contractor.

### **3.8 Problem Escalation Procedure**

3.8.1 Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how 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.

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

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

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

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

### 3.9 MBE Reports

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

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

### 3.10 VSBE Reports

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

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

### 3.11 SOC 2 Type II Audit Report

Contractor shall have an annual audit performed by an independent audit firm of its handling of the Department's critical functions and/or sensitive information, which is identified as Insurance Claims Processing Services, to include member portal, enrollment eligibility and billing functions (collectively referred to as the "Information Functions and/or Processes"). Such audits shall be performed in accordance with audit guidance: *Reporting on 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:

- i. The type of audit to be performed in accordance with the Guidance is a SOC 2 Type II Report. The SOC 2 Report shall be completed annually at the following intervals: Report to be submitted by May 1 for the preceding calendar year.
- ii. The SOC 2 Report shall report on a description of Contractor's system and the suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes relevant to the following trust principles: Processing Integrity, Security, Availability, Confidentiality, and Privacy as defined in the Guidance.

- iii. The SOC 2 Report shall include work performed by subcontractors that provide essential support to Contractor for the Information Functions and/or Processes for the services provided to the Department under the Contract. Contractor shall ensure the performance of the SOC 2 Audits includes its subcontractor(s).
- iv. All SOC 2 Audits, including the SOC 2 Audits of Contractor's subcontractors, shall be performed at Contractor's expense.
- v. Contractor shall promptly provide a complete copy of the final SOC 2 Report to the Department's Contract Manager upon completion of each SOC 2 Audit engagement.
- vi. Contractor shall provide to the Department's Contract Manager, within 30 calendar days of the issuance of the final SOC 2 Report, a documented corrective action plan which addresses 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 Contractor along with the date(s) when each remedial action is to be implemented.
- vii. If Contractor fails during the Contract term to obtain an annual SOC 2 Report by May 1 for the preceding calendar year, the Department shall have the right to retain an independent audit firm to perform an audit engagement to issue a SOC 2 Report of the Information Functions and/or Processes being hosted by Contractor. Contractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and provide reasonable support to the independent audit firm in the performance of the engagement. The Department will invoice Contractor for the expense of the SOC 2 Audit(s), or deduct the cost from future payments to Contractor.

### **3.12 End of Contract Transition**

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

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## SECTION 4 – PROPOSAL FORMAT

### 4.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

- Volume I – TECHNICAL PROPOSAL
- Volume II – FINANCIAL PROPOSAL

Clearly identify the name of the Functional Area (FA1 – PPO, FA2 – EPO, or FA3 – POS) being proposed for on the cover of each Proposal volume. **Offerors shall provide a Technical Proposal and Financial Proposal for each Functional Area being proposed.** For those Technical Proposal response sections that may require identical information between Functional Areas, and which are identified as such in this RFP, an Offeror only needs to submit one original response and set of copies for all of its Proposals (e.g., RFP Section 4.4.3.10).

### 4.2 Proposals

4.2.1 Volume I – Technical Proposal, and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, email address, and telephone number of the Offeror be included on the outside of the packaging for each volume. Each Volume shall contain an unbound original, so identified, and six (6) copies. The two (2) sealed Volumes for each Functional Area proposed shall be submitted together in a single package including a label bearing:

- The RFP title and number (**F10B4400011**),
- Name and address of the Offeror,
- Functional Area proposed, and
- Closing date and time for receipt of Proposals

to the Procurement Officer (see Section 1.5 “Procurement Officer”) prior to the date and time for receipt of Proposals (see Section 1.11 “Proposals Due (Closing) Date and Time”).

4.2.2 Two (2) electronic copies (on CD or DVD) of the Technical Proposal in Microsoft Word format must be enclosed with the original Technical Proposal for each Functional Area proposed. Two (2) electronic copies (on CD or DVD) of the Financial Proposal must be enclosed with the original Financial Proposal for each Functional Area proposed. CD/DVDs must be labeled on the outside with the RFP title and number, name of the Offeror, Functional Area, and volume number. CD/DVDs must be packaged with the original copy of the appropriate Proposal (Technical or Financial).

4.2.3 A third electronic version of both Volume I and Volume II in searchable Adobe .pdf format shall be submitted on a separate CD or DVD for Public Information Act (PIA) requests, for each Functional Area proposed, in a separately-sealed envelope labeled “Redacted Copy – Volume I and II.” This copy shall be redacted so that any Offeror-designated confidential and/or proprietary information has been removed (see Section 1.14 “Public Information Act Notice”).

4.2.4 All pages of both proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page “x”). A “Proposal Submission Checklist” is included as **Attachment R** to assist Offerors with their Proposal Submissions.

4.2.5 Proposals and any modifications to Proposals will be shown only to State employees, members of the Evaluation Committee, or other persons deemed by the Department to have a legitimate interest in them.

### **4.3 Delivery**

Offerors may either mail or hand-deliver Proposals.

4.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. An Offeror using first class mail will not be able to prove a timely delivery at the mailroom and it could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit.

4.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, Offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.

4.3.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

### **4.4 Volume I – Technical Proposal**

**Note: No pricing information is to be included in the Technical Proposal (Volume I). Pricing information is to be included only in the Financial Proposal (Volume II).**

#### **4.4.1 Format of Technical Proposal**

Inside a sealed package described in Section 4.2 “Proposals,” the unbound original, six (6) copies, and two (2) electronic copies (on CD or DVD) shall be provided. The RFP sections are numbered for ease of reference. Section 4.4.3 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 4.4.3.1 “Title and Table of Contents,” Section 4.4.3.2 “Claim of Confidentiality,” Section 4.4.3.3 “Transmittal Letter,” Section 4.4.3.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 3.3.1 Response . . . ; “Section 3.3.2 Response . . .,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 5.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

#### 4.4.2 Additional Required Technical Submissions

4.4.2.1 The following documents shall be completed, signed, and included in the original Technical Proposal only for each Functional Area proposed, each in its own section that follows the material submitted in response to Section 4.4.3.

- a. Completed Bid/Proposal Affidavit (**Attachment B**).
- b. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D1**) \*see Section 1.33.
- c. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**).
- d. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule (**Attachment M-1**) \*see Section 1.41.
- e. Completed Location of the Performance of Services Disclosure (**Attachment N**) \*see Section 1.42.

4.4.3 **The Technical Proposal** shall include the following documents and information in the order specified as follows:

##### 4.4.3.1 Title Page and Table of Contents

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

##### 4.4.3.2 Claim of Confidentiality

Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror's Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 1.14 "Public Information Act Notice"). The entire Proposal cannot be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

##### 4.4.3.3 Transmittal Letter

A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. If an Offeror is submitting a Proposal for more than one Functional Area, a transmittal letter should be submitted for each Functional Area. The Transmittal Letter should include the following:

- Name and address of the Offeror;
- Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- Solicitation Title, Solicitation Number, and Functional Area that the Proposal is in response to;
- Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- Offeror's eMM number;

- Offeror’s MBE certification number (if applicable);
- Acceptance of all SLEOLA / State RFP and Contract terms and conditions (see Section 1.24); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.4.3.4);
- Location(s) from which services will be provided (see Section 1.43); and
- Acknowledgement of all addenda to this RFP.

#### 4.4.3.4 **Executive Summary**

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.” The Summary should identify the Functional Area for which the Offeror is proposing to provide services. The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. Exceptions to terms and conditions may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

If the Offeror has taken no exceptions to the requirements of this RFP, the Executive Summary shall so state.

Any additional/optional services being offered at no additional charge or Performance Guarantees proposed by an Offeror (in addition to those detailed in RFP Section 1.44 and 3.3.8) shall be detailed in the Executive Summary of the Offeror’s Proposal.

#### 4.4.3.5 **Minimum Qualifications Documentation**

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

#### 4.4.3.6 **Offeror Technical Response to RFP Requirements and Proposed Work Plan**

- a. The Offeror shall address each Scope of Work requirement (Section 3) in its Technical Proposal and describe how its proposed services, including the services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work requirement shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

For each Functional Area that an Offeror chooses to submit a Proposal for, the Offeror shall complete the appropriate Technical Proposal Attachments for that particular Functional Area, as specified in RFP Section 3.4 and more specifically below. All required signatures, explanations, and attachments must be included in the Offeror’s Proposal for each Functional Area.

##### **Functional Area 1: PPO Self-Funded**

[Filename: FA1 Attachment S\_PPO-SF Technical Proposal.docx]

FA1 Attachment S-1: Plan Information

FA1 Attachment S-2: Explanations and Deviations

FA1 Attachment S-3: Plan Design

FA1 Attachment S-4: Participating Physicians

FA1 Attachment S-5: Adult PCPs  
FA1 Attachment S-6: Access to Pediatricians  
FA1 Attachment S-7: Access to OB/GYN  
FA1 Attachment S-8: Access to Hospitals  
FA1 Attachment S-9: Compliance Checklist  
FA1 Attachment S-10: Questionnaire  
FA1 Attachment S-11 (a-f): Subcontractor Questionnaires  
FA1 Attachment S-12: Performance Guarantees

**FA1 Attachment S: Technical Proposal (Part II)**

[Filename: FA1 Attachment S Disruption Analysis.docx]

**Functional Area 2: EPO Self-Funded**

[Filename: FA2 Attachment S\_EPO-SF Technical Proposal.docx]

FA2 Attachment S-1: Plan Information  
FA2 Attachment S-2: Explanations and Deviations  
FA2 Attachment S-3: Plan Design  
FA2 Attachment S-4: Participating Physicians  
FA2 Attachment S-5: Adult PCPs  
FA2 Attachment S-6: Access to Pediatricians  
FA2 Attachment S-7: Access to OB/GYN  
FA2 Attachment S-8: Access to Hospitals  
FA2 Attachment S-9: Compliance Checklist  
FA2 Attachment S-10: Questionnaire  
FA2 Attachment S-11 (a-f): Subcontractor Questionnaires  
FA2 Attachment S-12: Performance Guarantees

**FA2 Attachment S: Technical Proposal (Part II)**

[Filename: FA2 Attachment S Disruption Analysis.docx]

**Functional Area 3: POS Self-Funded**

[Filename: FA3 Attachment S\_POS-SF Technical Proposal.docx]

FA3 Attachment S-1: Plan Information  
FA3 Attachment S-2: Explanations and Deviations  
FA3 Attachment S-3: Plan Design  
FA3 Attachment S-4: Participating Physicians  
FA3 Attachment S-5: Adult PCPs  
FA3 Attachment S-6: Access to Pediatricians  
FA3 Attachment S-7: Access to OB/GYN  
FA3 Attachment S-8: Access to Hospitals  
FA3 Attachment S-9: Compliance Checklist  
FA3 Attachment S-10: Questionnaire  
FA3 Attachment S-11 (a-f): Subcontractor Questionnaires  
FA3 Attachment S-12: Performance Guarantees

**FA3 Attachment S: Technical Proposal (Part II)**

[Filename: FA3 Attachment S Disruption Analysis.docx]

- b. The Offeror shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology and techniques to be used by the Offeror in providing the required services as outlined in RFP Section 3, Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered Contract deliverables must be recognized in the Work Plan.
- c. The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State’s requirements as outlined in this RFP.
- d. The Offeror must provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department’s Contract Monitor should problems arise under the Contract and explain how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures must be submitted as indicated in RFP Section 3.8.
- e. Additional Required Technical Submissions (for each Functional Area proposed) are below. For the required Technical Submissions that are identical between functional areas and which are identified as such in this RFP, the Offeror only needs to submit one original response and set of copies for all of its proposals.

Required Submission	Title
Transitional Care Information	Label as “Response Attachment: Transitional Care Information”
Service Area Map	Label as “Response Attachment S-1: Service Area Map”
Geo-Access Report	Label as “Response Attachment: Geo-Access Report”
Management Reporting Package	Label as “Response Attachment: Management Reporting Package”
Claims Appeal Protocol	Label as “Response Attachment: Claims Appeal Protocol”
Certificates of Insurance including Errors and Omissions and Commercial General Liability	Label as “Response Attachment: Certificates of Insurance”
New Member Communications Package	Label as “Response Attachment: Member Communication Package”
Health Promotions Material	Label as “Response Attachment: Health Promotions Material”
Network Organization Chart	Label as “Response Attachment: Network Organization Chart”
Provider Satisfaction Survey	Label as “Response Attachment: Provider Satisfaction Survey”
Biographies of Medical Management staff	Label as “Response Attachment: Medical Management Biographies”
Sample Financial Reports	Label as “Response Attachment: Sample Financial Reports”

Required Submission	Title
Implementation Team Organizational Chart and Resumes	Label as "Response Attachment: Implementation Team Organizational Chart and Resumes"
Implementation Plan	Label as "Response Attachment: Implementation Plan"
Account Management Team Organizational Chart and Resumes	Label as "Response Attachment: Account Management Team Organizational Chart and Resumes"
Account Management Support	Label as "Response Attachment: Account Management Plan"

f. **Non-Compete Clause Prohibition:**

The Department seeks to maximize the retention of personnel working under this Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and to maximize the maintenance of institutional knowledge accumulated by such personnel. To help achieve this objective of staff retention, each Offeror shall agree that if awarded the Contract, the Offeror's employees and agents filling the position set forth in the staffing requirement of Section 3.3.2 working on the State contract shall be free to work for the contractor awarded the State contract notwithstanding any non-compete clauses to which the employee(s) may be subject. The Offeror agrees not to enforce any non-compete restriction against the State with regard to these employees and agents if a different vendor succeeds it in the performance of the Contract. To evidence compliance with this non-compete clause prohibition each Offeror must include an affirmative statement in its technical proposal that the Offeror, if awarded a Contract agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State contract.

**4.4.3.7 Experience and Qualifications of Proposed Staff**

The Offeror shall identify the number and types of staff proposed to be utilized under the Contract for each Functional Area proposed.

The Offeror shall 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. The Offeror shall include individual resumes for the key personnel, including key personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.

The Offeror shall provide an Organizational Chart outlining personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

**4.4.3.8 Offeror Qualifications and Capabilities**

The Offeror shall include information on past experience with similar projects and/or services. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

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

#### 4.4.3.9 References

References are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP for each Functional Area proposed. Offeror may not list current Department personnel as references for this RFP.

Reference information shall be included in the Technical Proposal response Attachments for each Functional Area proposed. The Department reserves the right to request additional references or utilize references not provided by an Offeror.

#### 4.4.3.10 List of Current or Prior State Contracts *(If identical information between Functional Areas, Offerors need only include one original response and set of copies for this Section if proposing to multiple Functional Areas.)*

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

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
- c. The dollar value of the contract;
- d. The term of the contract;
- e. The State employee contact person (name, title, telephone number, and e-mail address); and
- f. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

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

**4.4.3.11 Financial Capability** *(If identical information between Functional Areas, Offerors need only include one original response and set of copies for this Section if proposing to multiple Functional Areas.)*

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

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

- a. Dunn and Bradstreet Rating;
- b. Standard and Poor's Rating;
- c. Lines of credit;
- d. Evidence of a successful financial track record; and
- e. Evidence of adequate working capital.

**4.4.3.12 Certificates of Insurance**

Copies of the Offeror's Certificates of Insurance are requested as part of the Technical response Attachments for all Functional Areas proposed (see Section 4.4.3.6.e). *(If identical information between Functional Areas, Offerors need only include one original response and set of copies for this Section if proposing to multiple Functional Areas.)*

**4.4.3.13 Subcontractors**

The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal. 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. See Section 4.4.3.6 and 4.4.3.7 for additional Offeror requirements related to Subcontractors. If this varies based on Functional Area, information must be provided for each Functional Area proposed. *(If identical information between Functional Areas, Offerors need only include one original response and set of copies for this Section if proposing to multiple Functional Areas.)*

**4.4.3.14 Legal Action Summary** *(If identical information between Functional Areas, Offerors need only include one original response and set of copies for this Section if proposing to multiple Functional Areas.)*

This summary shall include:

- a. A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- b. A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;

- c. A description of any judgments against the Offeror within the past five (5) years, including the case name, court case docket number, and what the final ruling or determination was from the court; and
- d. In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.

#### 4.4.3.15 Economic Benefit Factors

The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of this contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. See COMAR 21.05.03.03A(3). *(If identical information between Functional Areas, Offerors need only include one original response and set of copies for this Section if proposing to multiple Functional Areas.)*

Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.

Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.

As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.

Please note that in responding to this section, the following do not generally constitute economic benefits to be derived from this Contract:

- a. Generic statements that the State will benefit from the Offeror's superior performance under the Contract;
- b. Descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under this Contract; or
- c. Tax revenues from Maryland based employees or locations, other than those that will be performing, or used to perform, work under this Contract.

Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded this Contract.

Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:

- The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;

- The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels. If no new positions or subcontracts are anticipated as a result of this Contract, so state explicitly;
- Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
- Subcontract dollars committed to Maryland small businesses and MBEs; and
- Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

#### **4.5 Volume II – Financial Proposal**

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 4.2 “Proposals,” the Offeror shall submit an unbound original, six (6) copies, and two (2) electronic copies (on CD or DVD) of the Financial Proposal for each Functional Area proposed. The Financial Proposal shall contain all price information in the format specified in **Attachment F** and the accompanying Attachments for each Functional Area (see below). The Offeror shall complete the appropriate Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

##### 4.5.1 Transmittal Letter

A Transmittal Letter shall accompany the Financial Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the prices proposed in response to this RFP. If an Offeror is submitting a Proposal for more than one Functional Area, a transmittal letter should be submitted for each Functional Area. The Transmittal Letter should include the following:

- Name and address of the Offeror;
- Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- Solicitation Title, Solicitation Number, Functional Area that the Proposal is in response to;
- Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual’s Social Security Number (SSN);
- Offeror’s eMM number;
- Offeror’s MBE certification number (if applicable);

- Acceptance of all State RFP and Contract terms and conditions (see Section 1.24); if any exceptions are taken in the Financial Proposal, they are to be noted in this Transmittal Letter that accompanies the Offeror’s Financial Proposal; and
- Acknowledgement of all addenda to this RFP.

**4.5.2 Functional Area 1 – PPO (Self-Funded)**

In Attachment T, “PPO Financial Proposal,” and its related Exhibits, complete the financial sheets as provided here and in the Financial Proposal Instructions on the Cover Page tab.

All per employee per month (PEPM) 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 Contractor be compensated on any basis other than the applicable fully loaded PEPM rate.

The RFP contains an Excel file for Attachment T, “FA1 Attachment T \_ PPO (Self-Funded) Financial Proposal.xlsx,” containing instructions, response pages, and historical enrollment and claims information. An Offeror’s **Volume II – Financial Proposal** must be submitted in the format specified below.

<b>Attachment T (PPO): PPO Financial Proposal</b>	
Filename: FA1 Attachment T_PPO (Self-Funded) Financial Proposal.xlsx	
FA1 PPO-SF Attachment T-1:	Financial Proposal Instructions
FA1 PPO-SF Attachment T-2:	Financial Compliance Checklist
FA1 PPO-SF Attachment T-3:	Explanations and Deviations
FA1 PPO-SF Attachment T-4:	Administration and Network Access Fees
FA1 PPO-SF Attachment T-5:	Claims Re-Pricing Analysis
FA1 PPO-SF Attachment T-6:	Financial Proposal Summary

The files are in Microsoft Excel (.xlsx) format and have been compressed to a self-extracting ZIP (.zip) file using WinZip.

**4.5.3 Functional Area 2 – EPO (Self-Funded)**

The Financial Proposal must contain all financial information in the format specified in Attachment T, “EPO (Self-Funded) Financial Proposal,” and its related Exhibits. Complete the financial sheets as provided here and in the Price Proposal Instructions on the Cover Page tab.

All per employee per month (PEPM) 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 Contractor be compensated on any basis other than the applicable fully loaded PEPM rate.

The RFP contains an Excel file for Attachment T, labeled “FA2 Attachment\_T EPO (Self-Funded) Financial Proposal.xlsx,” containing instructions, response pages, and historical enrollment and claims information. An Offeror’s **Volume II – Financial Proposal** must be submitted in the format specified below.

<b>Attachment T (EPO): EPO (Self-Funded) Financial Proposal</b>	
Filename: FA2 Attachment T_EPO (Self-Funded) Financial Proposal.xlsx	
FA2 EPO-SF Attachment T-1	Financial Proposal Instructions (Self-Funded EPO)
FA2 EPO-SF Attachment T-2	Financial Compliance Checklist
FA2 EPO-SF Attachment T-3	Explanations and Deviations
FA2 EPO-SF Attachment T-4	Administration and Network Access Fees
FA2 EPO-SF Attachment T-5	Claims Re-Pricing Analysis
FA2 EPO-SF Attachment T-6	Financial Proposal Summary

The files are in Microsoft Excel (.xlsx) format and have been compressed to a self-extracting ZIP (.zip) file using WinZip.

#### 4.5.4 Functional Area 3 – POS (Self-Funded)

The Financial Proposal must contain all financial information in the format specified in Attachment T, “POS (Self-Funded) Financial Proposal,” and its related Exhibits. Complete the financial sheets as provided here and in the Price Proposal Instructions on the Cover Page tab.

All per employee per month (PEPM) 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 Contractor be compensated on any basis other than the applicable fully loaded PEPM rate.

The RFP contains an Excel file for Attachment T, labeled “FA3 Attachment\_T POS (Self-Funded) Financial Proposal.xlsx,” containing instructions, response pages, and historical enrollment and claims information. An Offeror’s **Volume II – Financial Proposal** must be submitted in the format specified below.

<b>Attachment T (POS): POS (Self-Funded) Financial Proposal</b>	
Filename: FA3 Attachment T_POS (Self-Funded) Financial Proposal.xlsx	
FA3 POS-SF Attachment T-1	Financial Proposal Instructions (Self-Funded POS)
FA3 POS-SF Attachment T-2	Financial Compliance Checklist
FA3 POS-SF Attachment T-3	Explanations and Deviations
FA3 POS-SF Attachment T-4	Administration and Network Access Fees
FA3 POS-SF Attachment T-5	Claims Re-Pricing Analysis
FA3 POS-SF Attachment T-6	Financial Proposal Summary

The files are in Microsoft Excel (.xlsx) format and have been compressed to a self-extracting ZIP (.zip) file using WinZip.

## SECTION 5 – EVALUATION COMMITTEE, EVALUATION CRITERIA, AND SELECTION PROCEDURE

### 5.1 Evaluation Committee

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

### 5.2 Technical Proposal Evaluation Criteria

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

The State prefers an Offeror's response to requirements in the RFP that is concise, clear, and illustrate a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done. Proposals which include responses that do not directly relate to the work requirements or limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate a clear understanding of the work requirements and include plans to meet or exceed them. Following are the criteria:

5.2.2 Offeror Qualifications and Capabilities, including proposed Subcontractors. See RFP Sections 4.4.3.8 – 4.4.3.14 and the Questionnaire included in Attachment S for the particular Functional Area(s). Including, but not limited to, the Offeror's capacity to deliver services, experience in providing required service, and past performance on similar contracts. Evaluation of an Offeror's capability shall include but not be limited to consideration of the following sub factors:

- Claims processing;
- Member services;
- Eligibility;
- Reporting and Analysis;
- Comprehensive IT support for all functions; and
- Administration.

5.2.3 Network Access and Management, including but not limited to, the Offeror's current network size, accessibility and stability. See RFP Section 4.4.3.6 and the following attachments:

- S-1: Plan Information;
- S-4: Participating Physicians;
- S-5: Access to Adult PCPs;
- S-6: Access to Pediatricians;
- S-7: Access to OB/GYN;
- S-8: Access to Hospitals;and
- S-10: Questionnaire (Network Management).

5.2.4 Offeror’s ability to cover current eligible Participants. See RFP Section 4.4.3.6 and the following attachments:

<b>Functional Area</b>	<b>Attachments</b>
FA1	FA1 Attachment S (Part II) Disruption Analysis
FA2	FA2 Attachment S (Part II) Disruption Analysis
FA3	FA3 Attachment S (Part II) Disruption Analysis

5.2.5 Ability to administer required Plan Design. See RFP Section 4.4.3.6 and Attachment S-3, Plan Design for the respective Functional Area;

5.2.6 Experience and Qualifications of Proposed Staff (See RFP Section 4.4.3.7). Including, but not limited to, Staffing Plan (Account Management and Implementation), Personnel Qualifications, and Professional Experience; and

5.2.7 Economic Benefit to State of Maryland (See RFP Section 4.4.3.15).

**5.3 Financial Proposal Evaluation Criteria**

All Qualified Offerors (see Section 5.5.2.4) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price in the respective Functional Area within the stated guidelines set forth in this RFP and as submitted in the particular Financial Proposal Forms for that respective Functional Area.

The ranking will be based on the “The Five-Year Total Cumulative Cost” as calculated in the Financial Proposal on line 19 of Attachment T-6: Financial Proposal Summary.

**5.4 Reciprocal Preference**

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

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

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

## 5.5 Selection Procedures

### 5.5.1 General

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

In either case (i.e., with or without discussions), the State may determine an Offeror to be not responsible and/or an Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, that Offeror's Financial Proposal will be returned if the Financial Proposal is unopened at the time of the determination.

### 5.5.2 Selection Process Sequence

5.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule (**Attachment M-1**) is included and is properly completed, if there is a VSBE goal.

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

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

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

5.5.2.5 When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.

### 5.5.3 Award Determination

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract(s) to the responsible Offeror(s) that submitted the Proposal(s) determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive equal weight with financial factors.

## 5.6 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, signed if applicable with original signatures, and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each of the following documents:

- a. Contract (**Attachment A**);
- b. Contract Affidavit (**Attachment C**);
- c. MBE **Attachments D-2 and D-3**, within ten (10) Working Days, if applicable; **\*see Section 1.33**;
- d. MBE Waiver Justification within ten (10) Working Days, , usually including **Attachment D-6**, if a waiver has been requested (if applicable; **\*see Section 1.33**);
- e. HIPAA Business Associate Agreement (**Attachment K**), if applicable; **\*see Section 1.38**;
- f. VSBE **Attachments M-2 and M-3**, if applicable **\*see Section 1.41**, and
- g. Copies of current Certificate(s) of Insurance with the prescribed limits set forth in Section 3.7 "Insurance Requirements," naming the State as an additional insured, if applicable; **\*see Section 3.7**.

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## **RFP ATTACHMENTS**

### **ATTACHMENT A – Contract**

This is the sample contract used by the Department. It is provided with the RFP for informational purposes and is not required to be submitted at Proposal submission time. Upon notification of recommendation for award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer three (3) executed copies of the Contract within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to Contractor.

### **ATTACHMENT B – Bid/Proposal Affidavit**

This Attachment must be completed and submitted with the Technical Proposal.

### **ATTACHMENT C – Contract Affidavit**

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award.

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

If required (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D-1 through D-6. Attachment D-1 must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed not reasonably susceptible of being selected for award and rejected. Within 10 Working Days of receiving notification of recommendation for Contract award, the Offeror must submit Attachments D-2 and D-3 and, if the Offeror has requested a waiver of the MBE goal, usually Attachment D-6.

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

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

### **ATTACHMENT F – Financial Proposal Instructions**

The Financial Proposal Form(s) must be completed and submitted in the Financial Proposal package as instructed.

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

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

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

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

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

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

**ATTACHMENT J – Non-Disclosure Agreement**

If required (see Section 1.37), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

**ATTACHMENT K – HIPAA Business Associate Agreement**

If required (see Section 1.38), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

**ATTACHMENT L – Mercury Affidavit**

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

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

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

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

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

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

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

**ATTACHMENT P – NAIC Model Coordination of Benefits Contract Provisions**

**ATTACHMENT Q – 100 Character File Layout**

**ATTACHMENT R – Proposal Submission Checklist**

**ATTACHMENT S – Technical Proposal for each Functional Area**

**ATTACHMENT T – Financial Proposal for each Functional Area**

**ATTACHMENT U – Supporting Data for each Functional Area**

## SLEOLA Medical Plan Administration and Services (PPO, EPO, POS)

THIS CONTRACT (the “Contract”) is made this (“X<sup>th</sup>”) day of (month), (year) by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the Department of Budget and Management.

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

### 1. Definitions

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract” means this Contract for Health Plan [(Preferred Provider Organization) (Point of Service) (Exclusive Provider Organization)] Administration and Services.
- 1.3 “Contract Monitor” means the Department employee identified in Section 1.6 of the RFP as the Contract Monitor.
- 1.4 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.5 “Department” means the Department of Budget and Management.
- 1.6 “Financial Proposal” means Contractor’s Financial Proposal dated (Financial Proposal date).
- 1.7 “Procurement Officer” means the Department employee identified in Section 1.5 of the RFP as the Procurement Officer.
- 1.8 “RFP” means the Request for Proposals for SLEOLA Medical Plan Administration and Services (PPO, EPO, POS) Solicitation # **F10B4400011**, and any addenda thereto issued in writing by the State.
- 1.9 “State” means the State of Maryland.
- 1.10 “Technical Proposal” means Contractor’s Technical Proposal dated (Technical Proposal date).

### 2. Scope of Contract

- 2.1 Contractor shall provide deliverables, programs, goods, and services specific to the Contract awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract

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

Exhibit A – The RFP

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

Exhibit C – The Proposal (Technical and Financial)

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle 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 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. 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 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 Contractor from proceeding with the Contract as changed.

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

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

3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately five (5) years beginning January 1, 2015 and ending on December 31, 2019.

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

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

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay Contractor in accordance with the terms of this Contract and at the prices quoted on the Financial Proposal Form (Attachment F).

4.2 Payments to Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by Contractor, acceptance by the Department of services provided by Contractor, and pursuant to the conditions outlined in Section 4 of this Contract.

Each invoice for services rendered must include Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is (Contractor's FEIN or SSN). Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 as from time-to-time amended, are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, 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 Contractor to be reduced or withheld until such time as Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.
- 4.4 Contractor's eMarylandMarketplace vendor ID number is (Contractor's eMM number).

## **5. Rights to Records**

- 5.1 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 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 Contractor other than that specifically provided by this Contract.
- 5.2 Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, 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 Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by Contractor with respect to all data delivered under this Contract.
- 5.4 Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## **6. Exclusive Use**

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

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

- 7.1 If Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 7.2 Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.
- 7.3 If any products furnished by Contractor become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **8. Confidentiality**

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HITECH ACT, and the Maryland Medical Records Act, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.
- 8.2 This Section 8 shall survive expiration or termination of this Contract.

## **9. Loss of Data**

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

## **10. Indemnification**

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

10.2 This indemnification clause shall not be construed to mean that Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.

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

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

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

10.6 This Section 10 shall survive termination of this Contract.

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

No official or employee of the State, as defined under Md. Code Ann., State Government Article, § 15-102, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of 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, 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, 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, Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

### **13. Maryland Law**

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

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

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

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

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

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

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's

rights or Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. 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 Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

#### **17. Termination for Cause**

If Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by Contractor shall, at the State's option, become the State's property. The State shall pay Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to Contractor, 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 Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, 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**

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

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of 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 Contractor or the subcontractors or suppliers.

#### **20. Suspension of Work**

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

## **21. Pre-Existing Regulations**

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

## **22. Financial Disclosure**

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

## **23. Political Contribution Disclosure**

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

## **24. Documents Retention and Inspection Clause**

Contractor and subcontractors shall retain and maintain all records and documents relating to this contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. This Section 24 shall survive expiration or termination of the Contract.

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

24.1 That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly-authorized

representatives, shall be granted access to Contractor's contract, books, documents, and records necessary to verify the cost of the services provided under this contract, until the expiration of four (4) years after the services are furnished under this contract; and

24.2 That similar access will be allowed to the books, documents, and records of any organization related to Contractor or controlled by Contractor (as those terms are defined in 42 C.F.R. (420.301) if that organization is subcontracting to provide services with a value of \$10,000 or more in a twelve (12) month period to be reimbursed through funds provided by this contract.

## **25. Compliance with Laws**

Contractor hereby represents and warrants that:

25.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

25.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

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

25.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

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

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

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

## **27. Subcontracting; Assignment**

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

## **28. Liability**

28.1 For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, Contractor shall be liable as follows:

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

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

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

## **30. Commercial Nondiscrimination**

30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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

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

- 31.1 If 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 Contractor until payment to the subcontractor is verified;
  - b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
  - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
  - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - e. Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by 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 Contractor and a subcontractor under this provision, may not:
- a. Affect the rights of the contracting parties under any other provision of law;
  - b. Be used as evidence on the merits of a dispute between the Department and Contractor in any other proceeding; or
  - c. Result in liability against or prejudice the rights of the Department.

- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
  - b. This verification may include, as appropriate:
    - i. Inspecting any relevant records of Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.
  - c. Verification shall include a review of:
    - i. 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 Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
  - d. If the Department determines that Contractor is not in compliance with certified MBE participation goals, then the Department will notify Contractor in writing of its findings, and will require Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
  - e. If the Department determines that 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.
  - f. Upon completion of the Contract, but before final payment or release of retainage or both, Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

### **32. Contract Monitor and Procurement Officer**

The work to be accomplished under this Contract shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

### **33. Notices**

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

If to the State:

**Anne Timmons**  
**Director, Employee Benefits Division**  
**Department of Budget and Management**  
**301 W. Preston Street, Room 510**  
**Baltimore, Maryland 21201**  
[Anne.Timmons@Maryland.gov](mailto:Anne.Timmons@Maryland.gov)  
**Phone: 410-767-4787**  
**Fax: 410-767-3122**

with a copy to:

**Joy Epstein**  
**Procurement Officer**  
**Department of Budget and Management**  
**45 Calvert Street, Room 143**  
**Annapolis, MD 21401**  
[joy.epstein@maryland.gov](mailto:joy.epstein@maryland.gov)  
**Phone: 410-260-7570**  
**Fax: 410-974-3274**

If to Contractor:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

34.1 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. 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.

34.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the selected Bidder/Offeror shall execute a business associate

agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form as required by the Department.

- 34.3 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.

### **35. Miscellaneous**

- 35.1 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.
- 35.2 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. Liquidated Damages**

- 36.1 The Contract requires Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and Contract provisions. The State and Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent 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 or impossible to ascertain with precision and that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

Upon a determination by the State that Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained, Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. Contractor expressly agrees that the State may withhold payment on any invoices as an offset against liquidated damages owed. 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 each violation.

- 36.1.1 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.

- 36.1.2 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.
- 36.1.3 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/or 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.
- 36.1.4 Failure to meet Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- 36.1.5 Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$100.00 per day until the undisputed amount due to the MBE subcontractor is paid.
- 36.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and to exercise any and all other rights or remedies which may be available under the Contract or which otherwise may be available at law or in equity.

**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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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



**ATTACHMENT B – BID/PROPOSAL AFFIDAVIT**

**A. AUTHORITY**

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

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

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

**B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.**

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

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

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

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

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

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

#### C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

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D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

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

person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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**E. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

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**G. SUBCONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

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

#### H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

#### I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

#### J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

#### K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities: \_\_\_\_\_.

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. ACKNOWLEDGEMENT

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

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

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

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

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

**ATTACHMENT C – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

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

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

I FURTHER AFFIRM THAT:

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

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

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

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

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

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

**C. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

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

\$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

#### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

#### E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Bid/Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
  - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
  - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;
  - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;

- (ii) The business's policy of maintaining a drug and alcohol free workplace;
  - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;
- (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
- (i) Abide by the terms of the statement; and
  - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
- (i) Take appropriate personnel action against an employee, up to and including termination; or
  - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
  - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
  - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

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

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

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

## ATTACHMENT D – MINORITY BUSINESS ENTERPRISE FORMS

### PURPOSE

Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the Minority Business Enterprise (MBE) subcontractor participation goal stated in this solicitation. MBE performance shall be in accordance with this Attachment and as set forth in COMAR 21.11.03. Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Attachment.

In order to attempt to meet the MBE subcontractor participation goal using MBE subcontractors, all Bidders/Offerors shall comply with the requirements of COMAR 21.11.03.09 and shall:

- ❑ Identify specific work categories within the scope of the solicitation appropriate for subcontracting;
- ❑ Solicit certified MBEs in writing at least 10 days before Bids or Proposals are due, describing the identified work categories and providing instructions on how to provide a quote on the subcontracts;
- ❑ Attempt to make personal contact with the certified MBEs solicited and to document those attempts;
- ❑ Assist certified MBEs in fulfilling, or seeking a waiver of any bonding requirements; and
- ❑ Attend Pre-Bid/Proposal Conferences or other meetings that the Department schedules to publicize contracting opportunities for certified MBEs.

### MBE GOAL AND SUB GOALS

The following MBE subcontract participation goals have been established for this procurement, as set forth in RFP Section 1.33: 4 percent (4%) of the total administrative fees paid to Contractor(s) for each Functional Area being proposed.

Contractor, including an MBE prime contractor, shall attempt to achieve the MBE subcontracting goal and any subgoals established for this Contract by subcontracting to one or more MDOT-certified MBEs a sufficient portion of the Bidder/Offeror's scope of work that results in total MBE payments that meet or exceed the MBE subcontractor participation goals and, if applicable, subgoals.

### SOLICITATION AND CONTRACT FORMATION

- A Bidder/Offeror must include with its Bid/Proposal a completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) whereby:
  - (1) the Bidder/Offeror acknowledges the certified MBE subcontractor participation goal and any subgoals, and commits to make a good faith effort to achieve the goal and any subgoals or requests a full or partial waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
  - (2) the Bidder/Offeror responds to the expected degree of MBE subcontractor participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of

contract value associated with each MBE subcontractor identified on the MBE Participation Schedule (**Attachment D-1**).

If the Bidder/Offeror specifies a range for a proposed MBE subcontractor, only the lowest amount in the range can be considered for MBE commitment purposes. Ex: If a range of "5-15%" is proposed for a MBE subcontractor, only "5%" can be considered for purposes of totaling the actual MBE commitment for that particular MBE subcontractor. It is suggested that the Bidder/Offeror provide a specific percentage, and not a percentage range, for each MBE subcontractor proposed.

**(3) SEPARATE FORMS (ATTACHMENT D-1) ARE REQUIRED FOR EACH FUNCTIONAL AREA FOR WHICH A BID/PROPOSAL IS SUBMITTED.**

- *If a Bidder/Offeror fails to submit a completed **Attachment D-1** with the Bid/Proposal, the Procurement Officer shall deem the Bid non-responsive or shall determine that the Proposal is not reasonably susceptible of being selected for award.*
- Within 10 (ten) Working Days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee shall provide the following documentation to the Procurement Officer:
  - a) Outreach Efforts Compliance Statement (**Attachment D-2**)
  - b) Subcontractor Project Participation Certification (**Attachment D-3**)
  - c) If the recommended awardee has requested a waiver (in whole or in part) of the overall MBE goal, it shall submit a fully documented waiver request that complies with COMAR 21.11.03.11, and usually the Minority Contractor Unavailability Certificate (**Attachment D-6**).
  - d) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE participation goal.

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

## MBE REPORTING INSTRUCTIONS

### **Contractor shall:**

1. Submit by the 10<sup>th</sup> of each month to the Department's Contract Monitor or designee a Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4) listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice, and the reason payment has not been made.
2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors shall submit by the 10<sup>th</sup> of each month to the Department's Contract Monitor or a designee a Subcontractor Paid/Unpaid MBE Invoice Report (Attachment D-5) that identifies the Contract and lists all payments received from Contractor under this Contract in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. 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, the type of work performed by each subcontractor, and the actual dollar value of work performed. Subcontract agreements must be retained by Contractor and furnished to the Procurement Officer upon request.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
5. At the sole option of the Department, upon completion of the Contract and before final payment and/or release of any retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

### ATTACHMENTS

- A. MDOT Certified MBE Utilization and Fair Solicitation Affidavit – Attachment D-1 (must be submitted with the Bid/Proposal)
- B. Outreach Efforts Compliance Statement – Attachment D-2 (must be submitted within 10 Working Days of notification of apparent award or actual award, whichever is earlier)
- C. Subcontractor Project Participation Certification – Attachment D-3 (must be submitted within 10 Working Days of notification of apparent award or actual award, whichever is earlier)
- D. Prime Contractor Paid/Unpaid MBE Invoice Report – Attachment D-4 (must be submitted by the 10<sup>th</sup> of each month by the Prime Contractor)
- E. Subcontractor Paid/Unpaid MBE Invoice Report – Attachment D-5 (must be submitted by the 10<sup>th</sup> of each month by the Subcontractor)

- F. Minority Contractor Unavailability Certificate – Attachment D-6 (if a waiver has been requested, Attachment D-6 usually must be submitted within 10 Working Days of notification of apparent award or actual award whichever is earlier)

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

**Attachment D-1**  
**MDOT Certified MBE Utilization and Fair Solicitation Affidavit**  
**(submit with Proposal for each Functional Area Proposed)**

This document **MUST BE** included with the Bid/Proposal. If the Bidder/Offeror fails to complete and submit this form with the Bid/Proposal, the Procurement Officer shall deem the Bid non-responsive or shall determine that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Bid/Proposal submitted in response to Solicitation No. **F10B4400011** I affirm the following:

1.  I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of 4% percent of the Total Admin. Fees for each Functional Area proposed and, if specified in the solicitation, the following subgoals (complete for only those subgoals that apply):

<u>N/A</u> percent African-American	<u>N/A</u> percent Asian-American
<u>N/A</u> percent Hispanic-American	<u>N/A</u> percent Woman-Owned

Therefore, I will not be seeking a waiver pursuant to COMAR 21.11.03.11.

**OR**

- I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver in whole or in part of the overall goal and/or subgoals. Within 10 Working Days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.03.11. If this request is for a partial waiver, I have identified the portion of the MBE goal that I intend to meet in this Attachment D-1.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 Working Days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.
- (a) Outreach Efforts Compliance Statement (Attachment D2);
  - (b) Subcontractor Project Participation Certification (Attachment D3); and
  - (c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE participation goal.

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

3. In the solicitation of subcontract quotes, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.
4. Set forth below are the (i) certified MBEs I intend to use and (ii) the percentage of the total Contract amount allocated to each MBE for this project and the work activity(ies) each MBE will provide under the Contract. I hereby affirm that the MBE firms are only providing those work activities for which they are MDOT certified.

**MBE Subcontractor Participation Schedule**

Prime Contractor: (Firm Name, Address, Phone)	Project Description:
Solicitation Number: <b>F10B4400011</b>	

List Information For Each Certified MBE Subcontractor On This Project

Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total admin. fees to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Total admin. fees to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Total admin. fees to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Total admin. fees to be provided by this MBE _____%	
Description of Work to Be Performed:	

Continue on a separate page, if needed.

## **SUMMARY**

Total *African-American* MBE Participation: \_\_\_\_\_ % of total Contract value

Total *Asian American* MBE Participation: \_\_\_\_\_ % of total Contract value

Total *Hispanic American* MBE Participation: \_\_\_\_\_ % of total Contract value

Total *Woman-Owned* MBE Participation: \_\_\_\_\_ % of total Contract value

Total *Other* Participation: \_\_\_\_\_ % of total Contract value

**Total All MBE Participation:** \_\_\_\_\_ % of total Contract value

**Note:** The percentages entered above must reflect the actual percentage committed to be paid to MBE subcontractor(s). (i.e., if the total MBE commitment is 25%, the subgroup percentages listed above should total 25%).

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

\_\_\_\_\_  
Bidder/Offeror Name  
(PLEASE PRINT OR TYPE)

\_\_\_\_\_  
Signature of Affiant

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

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

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

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

**Attachment D-2  
Outreach Efforts Compliance Statement**

**Complete and submit this form within 10 (ten) working days of notification of apparent award or actual award, whichever is earlier.**

In conjunction with the Bid/Proposal submitted in response to Solicitation No. **F10B4400011**, the Bidder/Offeror states the following:

1. Bidder/Offeror identified opportunities to subcontract in these specific work categories.
2. Attached to this form are copies of written solicitations (with instructions) used to solicit MDOT certified MBEs for these subcontract opportunities.
3. Bidder/Offeror made the following attempts to contact personally the solicited MDOT certified MBEs.
4. Select ONE of the following:
  - a.  This project does not involve bonding requirements.

**OR**

  - b.  Bidder/Offeror assisted MDOT certified MBEs to fulfill or seek waiver of bonding requirements (*describe efforts*).
5. Select ONE of the following:
  - a.  Bidder/Offeror did/did not attend the Pre-Bid/Proposal Conference.

**OR**

  - b.  No Pre-Bid/Proposal Conference was held.

\_\_\_\_\_ By: \_\_\_\_\_  
Bidder/Offeror Printed Name Signature

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

**Attachment D-3  
Subcontractor Project Participation Certification**

*Please complete and submit one form for each MDOT certified MBE listed on Attachment D-1 within 10 Working Days of notification of apparent award.*

\_\_\_\_\_ (prime contractor) has entered into a Contract with  
\_\_\_\_\_ (subcontractor) to provide services in connection with the Solicitation described below.

Prime Contractor Address and Phone	Project Description
Project Number <b>F10B4400011</b>	Total Contract Amount \$
Minority Firm Name	MBE Certification Number
Address	FEIN
Work To Be Performed	
Percentage of Total Contract	
Total Subcontract Amount \$	

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Bid/Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Bid/Proposal;
- (3) fail to use the certified Minority Business Enterprise in the performance of the Contract; or
- (4) pay the certified Minority Business Enterprise solely for the use of its name in the Bid/Proposal.

**PRIME CONTRACTOR SIGNATURE**

**SUBCONTRACTOR SIGNATURE**

By: \_\_\_\_\_  
Name, Title  
Date \_\_\_\_\_

By: \_\_\_\_\_  
Name, Title  
Date \_\_\_\_\_

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

**Attachment D-4**

**The Department of Budget and Management  
Minority Business Enterprise Participation**

**Prime Contractor Paid/Unpaid MBE Invoice Report**

Report #: _____	Contract #: _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
<b>Report is due to the MBE Liaison by the 10<sup>th</sup> of the month following the month the services were provided.</b>	Contract Amount: _____
	MBE Subcontract Amt: _____
	Project Begin Date: _____
	Project End Date: _____
	Services Provided: _____
<b>Note: Please number reports in sequence</b>	

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	Fax:	E-mail:	
Subcontractor Name:		Contact Person:	
Phone:	Fax:		
Subcontractor Services Provided:			
<b>List all payments made to MBE subcontractor named above during this reporting period:</b>		<b>List dates and amounts of any outstanding invoices:</b>	
	<u>Invoice#</u>	<u>Amount</u>	
1.			<u>Invoice #</u>
2.			<u>Amount</u>
3.			1.
			2.
			3.
<b>Total Dollars Paid: \$</b> _____		<b>Total Dollars Unpaid: \$</b> _____	

\*\*If more than one MBE subcontractor is used for this contract, you must use separate D-4 forms for each subcontractor.

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

**Contract Monitor**  
**Employee Benefits Division**  
**Department of Budget and Management**  
**301 W. Preston Street, Room 510**  
**Baltimore, Maryland 21201**  
**Phone: 410-767-4787 Fax: 410-333-7122**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Required)

**ATTACHMENT D-5**

This form must be completed  
monthly by all MBE subcontractors.

**Minority Business Enterprise Participation  
Subcontractor Paid/Unpaid MBE Invoice Report**

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

MBE Subcontractor Name:																																
MDOT Certification #:																																
Contact Person:		E-mail:																														
Address:																																
City:	State:	ZIP:																														
Phone:	Fax:																															
<b>Subcontractor Services Provided:</b>																																
List all payments received from Prime Contractor during reporting period indicated above.  <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width:55%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3">Total Dollars Paid: \$ _____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Paid: \$ _____			List dates and amounts of any unpaid invoices over 30 days old.  <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width:55%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3">Total Dollars Unpaid: \$ _____</td> </tr> </tbody> </table>			<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Unpaid: \$ _____		
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1.																																
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3.																																
Total Dollars Unpaid: \$ _____																																
Prime Contractor:		Contact Person:																														

**\*\*Return one copy of this form to the following address (electronic copy with signature & date is preferred):**

<b>Contract Monitor</b> <b>Employee Benefits Division</b> <b>Department of Budget and Management</b> <b>301 W. Preston Street, Room 510</b> <b>Baltimore, Maryland 21201</b> <b>Phone: 410-767-4787 Phone: Fax: 410-333-7122</b>
---

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

**The Department of Budget and Management**  
**Code of Maryland Regulations (COMAR)**  
**Title 21, State Procurement Regulations**  
*(regarding a waiver to a Minority Business Enterprise subcontracting goal)*

**NOTE: Below is an excerpt only. Full text of COMAR Title 21 may be found at the website of the Secretary of State, Division of State Documents, at: <http://www.dsd.state.md.us/comar/>.**

**COMAR 21.11.03.11 - Waiver.**

A. If, for any reason, the apparent successful Bidder/Offeror is unable to achieve the contract goal for each certified MBE classification specified as having a subcontract goal or the overall MBE contract goal, the Bidder/Offeror may request, in writing, a waiver to include the following:

(1) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs, including the work to be performed by each MBE classification if an MBE subgoal has been specified, in order to increase the likelihood of achieving the stated goal;

(2) A detailed statement of the efforts made to contact and negotiate with certified MBEs, and if appropriate, by certified MBE classification, including:

(a) The names, addresses, dates, telephone numbers, and classification of certified MBEs contacted, and

(b) A description of the information provided to certified MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;

(3) As to each certified MBE that placed a subcontract quotation or offer that the apparent successful Bidder/Offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion;

(4) A list of certified MBEs including, if applicable, certified MBEs in each MBE classification, found to be unavailable, which shall be accompanied by the Minority Contractor Unavailability Certificate (Attachment D-6) signed by the certified MBE, or a statement from the apparent successful Bidder/Offeror that the certified MBE refused to give the written verification;

(5) The record of the apparent successful Bidder/Offeror's compliance with the outreach efforts required under Regulation .09C(2)(a)—(e) of this chapter; and

(6) If the request for a waiver is for a certain MBE classification within an overall MBE goal, the Bidder/Offeror shall demonstrate reasonable efforts to meet the overall MBE goal with other MBE classification or classifications.

B. A waiver of a certified MBE contract goal may be granted only upon a reasonable demonstration by the Bidder/Offeror that certified MBE subcontract participation was unable to be obtained, or was unable to be obtained at a reasonable price or in the appropriate MBE classifications, and if the agency head or designee determines that the public interest is served by a waiver. In making a determination under this section, the agency head or designee may consider engineering estimates, catalogue prices, general market availability, and availability of certified MBEs in the area in which the work is to be performed, other Bids/Proposals and subcontract Bids/Proposal substantiating significant variances between certified MBE and non-MBE cost of participation, and their impact on the overall cost of the contract to the State and any other relevant factor.

C. An agency head may waive any of the provisions of Regulations .09—.10 of this chapter for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures.

D. When a waiver is granted, except waivers under §C of this regulation, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE liaison officer with another copy forwarded to the Office of Minority Affairs.

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**ATTACHMENT D-6**

**MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE**

**Section I (to be completed by PRIME CONTRACTOR)**

I hereby certify that the firm of \_\_\_\_\_  
(Name of Prime Contractor)

located at \_\_\_\_\_,  
(Number) (Street) (City) (State) (Zip)

On \_\_\_\_\_ contacted certified minority business enterprise, \_\_\_\_\_  
(Date) (Name of Minority Business)

\_\_\_\_\_ located at \_\_\_\_\_,  
(Zip) (Number) (Street) (City) (State)

seeking to obtain a bid for work/service for project number \_\_\_\_\_, project name \_\_\_\_\_

List below the type of work/ service requested:

Indicate the type of bid sought, \_\_\_\_\_. The Minority Business Enterprise identified above is either unavailable for the work /service in relation to project number \_\_\_\_\_, or is unable to prepare a quote for the following reasons(s):

The statements contained above are, to the best of my knowledge and belief, true and accurate.

\_\_\_\_\_  
(Name) (Title)

\_\_\_\_\_  
(Number) (Street) (City) (State) (Zip)

\_\_\_\_\_  
(Signature) (Date)

**Note:** Certified Minority Business Enterprise must complete Section II below.

**ATTACHMENT D-6 (cont.)**

**Section II (to be completed by CERTIFIED MINORITY BUSINESS ENTERPRISE)**

I hereby certify that the firm of \_\_\_\_\_ MBE Cert.# \_\_\_\_\_  
(Name of MBE Firm)

located at \_\_\_\_\_  
(Number) (Street) (City) (State) (Zip)

was offered the opportunity to bid on project number \_\_\_\_\_, ON \_\_\_\_\_  
(Date)

by \_\_\_\_\_  
(Prime Contractor's Name) (Prime Contractor Official's Name) (Title)

The statements contained in Section I and Section II of this document are, to the best of my knowledge and belief, true and accurate.

\_\_\_\_\_  
(Name) (Title) (Phone)

\_\_\_\_\_  
(Signature) (Fax Number)

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

Solicitation Number **F10B4400011**

**SLEOLA Medical Plan Administration and Services (PPO, EPO, POS)**

A Pre-Proposal Conference will be held at **10:00AM, on April 9, 2014, at 45 Calvert Street, Conference Room 164 A/B, Annapolis, MD 21401**. Please return this form by April 7, 2014, advising whether or not you plan to attend.

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

**Joy Epstein**  
**Procurement Officer**  
**Department of Budget and Management**  
**45 Calvert Street, Room 143**  
**Annapolis, MD 21401**  
joy.epstein@maryland.gov  
410-260-7570  
**Fax: 410-974-3274**

Please indicate:

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

- 1.
- 2.
- 3.

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

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

---

Signature

Title

---

Name of Firm (please print)

## ATTACHMENT F – FINANCIAL PROPOSAL INSTRUCTIONS

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, Financial Proposal Instructions and Financial Proposal Forms have been prepared. Offerors shall submit their Financial Proposal on the Financial Proposal Form for the particular Functional Area(s) proposed in accordance with the instructions on the Financial Proposal Form and as specified herein (see RFP Section 4.5). Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Financial Proposal Form.

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

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Financial Proposal Form shall be filled in as instructed. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form be entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12, and may cause the Proposal to be rejected.
- H) If option years are included, Offerors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and will comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices entered are to be fully loaded prices that include all costs/expenses associated with the provision of those particular services proposed, as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

- K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

### ***FINANCIAL PROPOSAL FORMS***

Once the Non-Disclosure Forms are completed and returned (see RFP §1.37), the Financial Proposal Forms will be provided for completion. Complete the Financial Proposal Form for each Functional Area being proposed which will be use the following files in Microsoft Excel:

FA1 Attachment T\_PPO (Self-Funded) Financial Proposal.xlsx

FA2 Attachment T\_EPO (Self-Funded) Financial Proposal.xlsx

FA3 Attachment T\_POS (Self-Funded) Financial Proposal.xlsx

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**ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS**

Living Wage Requirements for Service Contracts

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

to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.

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

## Maryland Living Wage Requirements Affidavit of Agreement

(submit with Bid/Proposal)

Contract No. **F10B4400011**

Name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

### If the Contract Is Exempt from the Living Wage Law

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

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

### If the Contract Is a Living Wage Contract

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

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

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



**ATTACHMENT H - FEDERAL FUNDS ATTACHMENT**

This solicitation does not include a Federal Funds Attachment.

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

This solicitation does not require a Conflict of Interest Affidavit and Disclosure.

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**ATTACHMENT J – NON-DISCLOSURE AGREEMENT**

THIS NON-DISCLOSURE AGREEMENT (“the Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the State of Maryland (the “State”), acting by and through the Department of Budget and Management, Division of Procurement Policy and Administration, Employee Benefits Division (the “Department”), and \_\_\_\_\_ ( the “POTENTIAL Offeror”).

**RECITALS**

**WHEREAS**, the POTENTIAL OFFEROR warrants and represents that it intends to submit a Technical Proposal in response to **RFP # F10B4400011**, the Request for Proposals for **SLEOLA MEDICAL PLAN ADMINISTRATION AND SERVICES (PPO, EPO, POS)**. In order for the POTENTIAL OFFEROR to submit a Proposal, it will be necessary for the State to provide the POTENTIAL OFFEROR with access to certain confidential information and/or protected health information including, but not limited to, demographic and identifying information on SLEOLA employees and information concerning plan utilization. All such information provided by the State shall be considered Confidential Information and/or protected health information regardless of the form, format, or media upon which or in which such information is contained or provided, regardless of whether it is oral, written, electronic, or any other form, and regardless of whether the information is marked as “Confidential Information”; and

WHEREAS, under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as “HIPAA Rules”) a covered entity is required to obtain written assurances from its Business Associate that Business Associate will appropriately safeguard protected health information pursuant to 45 C.F.R. §164.502(e) and §164.504(e);

THEREFORE, as a condition for its receipt and access to the Confidential Information and/or protected health information described in Section 1.37 of the RFP, POTENTIAL OFFEROR agrees as follows:

Definitions

Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Business Associate, Covered Entity, Designated Record Set, Disclosure, Individual, Minimum Necessary, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

1. POTENTIAL OFFEROR will not copy, disclose, publish, release, transfer, disseminate or use for any purpose in any form any Confidential Information received under Section 1.37, except in connection with the preparation of its Proposal. All Confidential Information and/or protected health information and copies thereof, shall be protected from disclosure by commercially reasonable means, including without limitation encryption, password protection, and secure transmission where appropriate. All protected health information shall be protected pursuant to the requirements of the HIPAA Rules as described in Paragraphs 4(a) & (b) of this Agreement.

2. Each employee or agent (including without limitation subcontractors) of the POTENTIAL OFFEROR who receives or has access to the Confidential Information or protected health information shall be notified of the confidentiality and nondisclosure requirements of this Agreement and the confidential nature of the Confidential Information. Each employee or agent of the POTENTIAL OFFEROR who is provided access to or a copy of the Confidential Information shall be bound by confidentiality and nondisclosure obligations that are no less restrictive than the obligations set forth herein. The POTENTIAL OFFEROR shall be liable for any violations by any employees or agents who are provided or given access to Confidential Information. The POTENTIAL OFFEROR shall provide a list of all individuals, employees, and agents of the POTENTIAL OFFEROR who have or have had access to the Confidential Information, along with the certification required in section 3 of this Agreement. See also Paragraph 4(e) of this Agreement.
3. POTENTIAL OFFEROR shall return to the State the original and destroy (in a manner designed to prohibit reading of or reconstruction of the data) any copies of the Confidential Information remaining in its possession within five business days of the State's Notice of recommended award in connection with this procurement. **If the POTENTIAL OFFEROR does not submit a Proposal, the POTENTIAL OFFEROR shall return the Confidential Information and/or protected health information to the Procurement Officer identified in the RFP, Section 1.5 on or before the due date for Proposals.** The POTENTIAL OFFEROR shall certify, in writing and signed by an individual with authority to bind the POTENTIAL OFFEROR, to the Procurement Officer that any and all Confidential Information and protected health information (in whatever format or media) has been destroyed or returned to the Procurement Officer within five business days of the notice of recommended award or notice that the POTENTIAL OFFEROR will not submit a proposal, whichever is earlier. Such certification may be in the form provided below or in another form. See also Paragraph 6 of this Agreement.
4. Obligations and Activities of POTENTIAL OFFEROR.  
POTENTIAL OFFEROR agrees to:
  - (a) Not use or disclose protected health information other than as permitted or required by this Agreement or as Required by Law;
  - (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement;
  - (c) Implement and use appropriate and reasonable administrative, physical and technical safeguards to prevent use or disclosure of protected health information other than as permitted in this Agreement;
  - (d) Report to the State any use or disclosure of protected health information not provided for by Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware within five days;
  - (e) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors or agents that create, receive, maintain, or transmit protected health information on behalf of the POTENTIAL OFFEROR agree, through written agreement, to the same restrictions, conditions, and requirements that apply to the POTENTIAL OFFEROR with respect to such information;

(f) Make available protected health information in a designated record set to the covered entity as necessary to satisfy the State's obligations under 45 CFR 164.524;

(g) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the State pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy the State's obligations under 45 CFR 164.526;

(i) Maintain and make available the information required to provide an accounting of disclosures to the State as necessary to satisfy the State's obligations under 45 CFR 164.528;

(j) To the extent the POTENTIAL OFFEROR is to carry out one or more of the State's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the State in the performance of such obligation(s); and

(k) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

5. Permitted Uses and Disclosures by POTENTIAL OFFEROR

(a) POTENTIAL OFFEROR may only use or disclose protected health information as necessary in preparation of its Proposal as set forth in the RFP.

(b) POTENTIAL OFFEROR may use or disclose protected health information as Required by Law.

(c) POTENTIAL OFFEROR agrees to make uses and disclosures and requests for protected health information consistent with the State's minimum necessary policies and procedures, as set forth in this Agreement.

(d) POTENTIAL OFFEROR may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by the State.

6. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of the date signed, and shall terminate on within five business days of the State's Notice of Recommended Award in connection with this procurement, or on the date the State terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. The Agreement shall be terminated, if the State determines POTENTIAL OFFEROR has violated a material term of this Agreement.

(c) Obligations of POTENTIAL OFFEROR Upon Termination.

Upon termination of this Agreement for any reason, POTENTIAL OFFEROR shall return to the State or, if agreed to by the State, destroy all protected health information received from the State, or created, maintained, or received by POTENTIAL OFFEROR on behalf of the State, that the POTENTIAL OFFEROR still maintains in any form. POTENTIAL OFFEROR shall retain no copies of the protected health information. This provision shall apply as well to protected health information that is in the possession of agents of POTENTIAL OFFEROR. Destruction must be by means or methods that render the protected health information unreadable, undecipherable, and unusable. The POTENTIAL OFFEROR shall provide to the Procurement Officer written notification confirming the return and/or describing the destruction of the protected health information.

(d) Survival. The obligations of POTENTIAL OFFEROR under this section shall survive the termination of this Non-Disclosure Agreement.

7. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(c) POTENTIAL OFFEROR acknowledges that the disclosure of the Confidential Information may cause irreparable harm to the State and agrees that the State may obtain an injunction to prevent the disclosure, copying, or other impermissible use of the Confidential Information. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages for the POTENTIAL OFFEROR'S failure to comply with the requirements of this Agreement. The POTENTIAL OFFEROR consents to personal jurisdiction in the Maryland State Courts.

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

(e) This Agreement shall be governed by the laws of the State of Maryland.

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

8. The individual signing below warrants and represents that they are fully authorized to bind the POTENTIAL OFFEROR to the terms and conditions specified in this Agreement.

**POTENTIAL OFFEROR:** \_\_\_\_\_

**BY:** \_\_\_\_\_ **[signature]**

**NAME:** \_\_\_\_\_ **[print name]**

**TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

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

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

_____	_____
_____	_____
_____	_____

**ATTACHMENT J-2 NON-DISCLOSURE AGREEMENT (Potential Offeror)**

**CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION**

**CERTIFICATION**

I CERTIFY, on behalf of \_\_\_\_\_ (“POTENTIAL OFFEROR”) that the original and any and all copies of the Confidential Information and/or protected health information provided by the State in connection with RFP # F10B4400011 have been returned to the Procurement Officer or destroyed in a manner designed to prevent reconstruction of or reading of the data and consistent with the requirements of the HIPAA Rules. Below is a list of the individuals, employees and/or agents to whom copies of or access to the Confidential Information and/or protected health information have been provided.

I warrant and represent that I am fully authorized to bind the POTENTIAL OFFEROR to the terms and conditions specified in this Agreement.

POTENTIAL OFFEROR: \_\_\_\_\_

BY: \_\_\_\_\_ [signature]

NAME: \_\_\_\_\_ [print name]

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

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

WITNESS: \_\_\_\_\_

**POTENTIAL OFFEROR'S EMPLOYEES AND AGENTS  
WHO WERE GIVEN ACCESS TO THE CONFIDENTIAL INFORMATION**

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

_____	_____
_____	_____
_____	_____
_____	_____

**ATTACHMENT K – HIPAA BUSINESS ASSOCIATE AGREEMENT**

The HIPAA Business Associate Agreement for this solicitation is included in the **Compliance Checklist** for the particular Functional Area(s).

**ATTACHMENT L – MERCURY AFFIDAVIT**

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

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**ATTACHMENT M-1  
VSBE Utilization Affidavit and Subcontractor Participation Schedule  
(submit with Proposal for each Functional Area)**

This document **MUST BE** included with the Bid/Proposal. If the Bidder/Offeror fails to complete and submit this form with the Bid/Proposal, the procurement officer may determine that the Bid is non-responsive or that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Bid/Proposal submitted in response to Solicitation No. F10B3400022, I affirm the following:

1.  I acknowledge and intend to meet the overall verified VSBE participation goal of .05% of the Total admin. fees for each Functional Area proposed.  
Therefore, I will not be seeking a waiver.

**OR**

- I conclude that I am unable to achieve the VSBE participation goal. I hereby request a waiver, in whole or in part, of the overall goal. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.13.07. If this request is for a partial waiver, I have identified the portion of the VSBE goal that I intend to meet.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 days of receiving notice of the apparent award or from the date of conditional award (per COMAR 21.11.13.06), whichever is earlier.
  - (a) Subcontractor Project Participation Statement (**Attachment M-2**); and
  - (b) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the VSBE participation goal.

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

3. In the solicitation of subcontract quotations or offers, VSBE subcontractors were provided not less than the same information and amount of time to respond as were non-VSBE subcontractors.
4. Set forth below are the (i) verified VSBEs I intend to use and (ii) the percentage of the total contract amount allocated to each VSBE for this project. I hereby affirm that the VSBE firms are only providing those products and services for which they are verified.

**ATTACHMENT M-1  
VSBE Subcontractor Participation Schedule**

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: - <b>F10B4400011</b>	

List Information For Each Verified VSBE Subcontractor On This Project

Name of Veteran-Owned Firm:  Percentage of Total admin. fees:	DUNS Number:
	Description of work to be performed:
Name of Veteran-Owned Firm:  Percentage of Total admin. fees:	DUNS Number:
	Description of work to be performed:
Name of Veteran-Owned Firm:  Percentage of Total admin. fees:	DUNS Number:
	Description of work to be performed:
Name of Veteran-Owned Firm:  Percentage of Total admin. fees:	DUNS Number:
	Description of work to be performed:

Continue on a separate page, if needed.

**SUMMARY**

**TOTAL VSBE Participation:** \_\_\_\_\_ %

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

\_\_\_\_\_  
Bidder/Offeror Name  
(PLEASE PRINT OR TYPE)

\_\_\_\_\_  
Signature of Affiant

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT M-2  
VSBE Subcontractor Participation Statement**

*Please complete and submit one form for each verified VSBE listed on Attachment M-1  
within 10 working days of notification of apparent award*

\_\_\_\_\_ (prime contractor) has entered into a contract with  
\_\_\_\_\_ (subcontractor) to provide services in connection with the Solicitation  
described below.

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: <b>F10B4400011</b>	Total Contract Amount: \$
Name of Veteran-Owned Firm:	DUNS Number:
Address:	FEIN:
Work to Be Performed:	
Percentage of Total Contract:	Total Subcontract Amount: \$

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Veteran-Owned Small Business Enterprise law, State Finance and Procurement Article, Title 14, Subtitle 6, Annotated Code of Maryland.

**PRIME CONTRACTOR SIGNATURE**

**SUBCONTRACTOR SIGNATURE**

By: \_\_\_\_\_  
Name, Title

By: \_\_\_\_\_  
Name, Title

Date \_\_\_\_\_

Date \_\_\_\_\_

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

**ATTACHMENT M-3**

**Department of Budget and Management  
Veterans Small Business Enterprise (VSBE) Participation  
Prime Contractor Paid/Unpaid VSBE Invoice Report**

Report #: _____	Contract #: <b>F10B4400011</b>
Reporting Period (Month/Year): _____	Contracting Unit: _____
<b>Report is due to the Contract Monitor by the 10<sup>th</sup> of the month following the month the services were provided. Note: Please number reports in sequence</b>	Contract Amount: _____
	VSBE Subcontract Amt: _____
	Project Begin Date: _____
	Project End Date: _____
	Services Provided: _____

Prime Contractor:		Contact Person:																															
Address:																																	
City:		State:	ZIP:																														
Phone:	Fax:	E-mail:																															
Subcontractor Name:		Contact Person:																															
Phone:	Fax:																																
Subcontractor Services Provided:																																	
<b>List all payments made to VSBE subcontractor named above during this reporting period:</b> <table border="1"> <thead> <tr> <th></th> <th><u>Invoice#</u></th> <th><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3"><b>Total Dollars Paid: \$ _____</b></td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			<b>Total Dollars Paid: \$ _____</b>			<b>List dates and amounts of any outstanding invoices:</b> <table border="1"> <thead> <tr> <th></th> <th><u>Invoice #</u></th> <th><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3"><b>Total Dollars Unpaid: \$ _____</b></td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			<b>Total Dollars Unpaid: \$ _____</b>		
	<u>Invoice#</u>	<u>Amount</u>																															
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1.																																	
2.																																	
3.																																	
<b>Total Dollars Unpaid: \$ _____</b>																																	

\*\*If more than one VSBE subcontractor is used for this contract, you must use separate M-3 forms for each subcontractor.

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

<b>Contract Monitor Employee Benefits Division Department of Budget and Management 301 W. Preston Street, Room 510 Baltimore, Maryland 21201 Phone: 410-767-4787 Fax: 410-333-7122</b>
--

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

**ATTACHMENT M-4**

This form must be completed monthly by all VSBE subcontractors.

**Veterans Small Business Enterprise Participation  
Subcontractor Paid/Unpaid VSBE Invoice Report**

Report#: _____  Reporting Period (Month/Year): _____  <b>Report is due by the 10<sup>th</sup> of the month following the month the services were performed.</b>	Contract # <b>F10B4400011</b> Contracting Unit: VSBE Subcontract Amount: Project Begin Date: Project End Date: Services Provided:
---	--

VSBE Subcontractor Name:																															
Department of Veterans Affairs Certification #:																															
Contact Person:	E-mail:																														
Address:																															
City:	State:	ZIP:																													
Phone:	Fax:																														
<b>Subcontractor Services Provided:</b>																															
List all payments received from Prime Contractor during reporting period indicated above.  <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:60%;"></th> <th style="width:20%; text-align: center;"><u>Invoice Amt</u></th> <th style="width:20%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td><b>Total Dollars Paid: \$</b></td> <td colspan="2">_____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Paid: \$</b>	_____		List dates and amounts of any unpaid invoices over 30 days old.  <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:60%;"></th> <th style="width:20%; text-align: center;"><u>Invoice Amt</u></th> <th style="width:20%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td><b>Total Dollars Unpaid: \$</b></td> <td colspan="2">_____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Unpaid: \$</b>	_____	
	<u>Invoice Amt</u>	<u>Date</u>																													
1.																															
2.																															
3.																															
<b>Total Dollars Paid: \$</b>	_____																														
	<u>Invoice Amt</u>	<u>Date</u>																													
1.																															
2.																															
3.																															
<b>Total Dollars Unpaid: \$</b>	_____																														
Prime Contractor:	Contact Person:																														

**\*\*Return one copy of this form to the following address (electronic copy with signature & date is preferred):**

Contract Monitor Employee Benefits Division Department of Budget and Management 301 W. Preston Street, Room 510 Baltimore, Maryland 21201 Phone: 410-767-4787 Fax: 410-333-7122
--

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

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

**(submit with Bid/Proposal)**

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Bid/Proposal submitted in response to Solicitation No. **F10B4400011**, the following disclosures are hereby made:

1. At the time of Bid/Proposal submission, the Bidder/Offeror and/or its proposed subcontractors:

- have plans
- have **no** plans

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

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

a. Location(s) services will be performed:

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

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

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

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

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

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

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

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

**ATTACHMENT O – DHR HIRING AGREEMENT**

This solicitation does not require a DHR Hiring Agreement.

**ATTACHMENT P – NAIC MODEL COORDINATION OF BENEFITS CONTRACT PROVISIONS**

NAIC model coordination of benefits contract provisions may be found at the following web address:

<http://www.naic.org/store/free/MDL-120.pdf>

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

**ATTACHMENT Q – 100 CHARACTER FILE LAYOUT**

For Eligibility Claims Verification

Position	Size	Class	Description	Data
1 - 15	15	A/N	Document No.	
16 - 24	9	A/N	MD State Enrollee SSN	
25	2	A/N	Relationship Code	0 = Self, 1 = Spouse 2 = Child 3 = Grandchild 4 = Stepchild 5 = Legal Ward
26 - 34	9	A/N	Patient SSN	
35 - 42	8	N	Patient DOB	MMDDCCYY
43 - 50	8	N	Incur From Date	MMDDCCYY
51 - 58	8	N	Incur Thru Date	MMDDCCYY
59 - 68	10	A/N	Group No.	
69 - 77	9	N	Amount Paid	9(7)v99
78 - 100	23	A/N	Filler	Spaces

**ATTACHMENT R – PROPOSAL SUBMISSION CHECKLIST**

<b>RFP</b>	<b>Requirement</b>	<b>Y/N Remarks</b>		
4.2.1	For each Functional Area proposed, was Volume I sealed separately from Volume II but submitted simultaneously?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.2.1	Were an unbound original and six (6) bound copies of the Volume I - Technical Proposal and an unbound original and six (6) bound copies of the Volume II – Financial Proposal submitted for each proposed functional area?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.2.1	Were the electronic media labeled with the RFP title/number, Functional Area identified, name and address of the Offeror, and appropriate Volume Number (I or II)?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.2.1	Did each sealed package include the RFP title & number, name/address of Offeror, appropriate Functional Area, and closing date/time on the outside of the package?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.2.2	Were two (2) electronic versions of Volume I, (submitted in Microsoft Word format), enclosed with the original copy of the Technical Proposal for each proposed functional area?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.2.2	Were two (2) electronic versions of Volume II, (submitted in Microsoft Excel format), enclosed with the original copy of the Financial Proposal for each proposed functional area?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.4.3.1	Did the Technical Proposal begin with a title page bearing the name and address of the Offeror and the name and number of the RFP, followed by a table of contents for the Technical Proposal?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.4.3.2	Was any confidential information within the Proposal identified as such, after the title page of the Technical Proposal, before the Table of Contents?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>

RFP	Requirement	Y/N Remarks		
4.4.3.3	<p>Was a Transmittal Letter included with the Technical Proposal, along with the following?:</p> <ul style="list-style-type: none"> <li>• Name and address of Offeror;</li> <li>• Name, title, e-mail address, and telephone number of primary contact for Offeror;</li> <li>• Solicitation Title, Solicitation Number, and Functional Area that Proposal is in response to;</li> <li>• Signature, typed name, and title of an individual authorized to commit Offeror to its Proposal;</li> <li>• Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, their Social Security Number (SSN);</li> <li>• Offeror’s eMM number;</li> <li>• Offeror’s MDOT MBE Certification Number (if applicable);</li> <li>• Acceptance of all State RFP and Contract terms and conditions (see Section 1.24); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.4.3.4); and</li> <li>• Acknowledgement of all addenda to this RFP.</li> </ul>	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.4.3.4	Was an executive summary included, which condenses and highlights the contents of the Technical Proposal? Does the executive summary identify the legal entity(s) responsible for submitting the proposal?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.4.3.4	Does the executive summary identify any exceptions the Offeror has taken to the requirements of the RFP, the Contract (Attachment A), or any other attachments? If there are no exceptions, does the executive summary so state? <b>(Warning - Exceptions may result in proposal being rejected)</b>	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.4.3.4	Does the executive summary identify any additional/optional services being offered at no additional charge? Any additional Performance Guarantees being offered?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>

<b>RFP</b>	<b>Requirement</b>	<b>Y/N Remarks</b>		
4.4.3.6(a)	(A) Did the Offeror address each applicable criterion in the Technical Response to the RFP Requirements (Section 3); and  (B) complete the appropriate Attachment files for each proposed Functional area?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>
4.4.3.6(b)	Did the Offeror provide a Proposed Work Plan?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>
4.4.3.6(c)	Did the Offeror identify the location(s) from which services will be provided (see Section 1.42)?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>
4.4.3.6.2(d)	Did the Offeror provide a written draft problem escalation procedure to include names, titles, telephone numbers and email addresses?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>
4.4.3.6(e)	Did the Offeror provide the Additional Required Technical Submissions for each respective Functional Area?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>
4.4.3.7	Did the Offeror provide the Experience and Qualifications of its proposed staff?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>
4.4.3.8	Did the Offeror provide its Corporate Qualifications and Capabilities?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>
4.4.3.9	Did the Offeror provide references as requested?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>
4.4.3.10	Did the Offeror provide a List of Current or Prior State Contracts?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>
4.4.3.11	Did the Offeror submit evidence that the Offeror has the financial capacity to provide the services encompassed within this RFP (financial statements, P&L statements, balance sheets from the past two years)?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>
4.4.3.12	Did the Offeror provide its current Certificate(s) of Insurance?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>

RFP	Requirement	Y/N Remarks		
4.4.3.13	Did the Offeror identify subcontractors, including MBEs and VSBEs, and the roles these subcontractors will have in the performance of the contract?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.4.3.14	Did the Offeror provide a Legal Action Summary?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.4.3.15	Did the Offeror address economic benefit factors?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.4.2.1	<p>Did the Offeror provide the additional required documents in the original Technical Proposal for each respective Functional Area, following the material submitted in response to Section 4.4.3?</p> <ul style="list-style-type: none"> <li>a. Completed Bid/Proposal Affidavit (<b>Attachment B</b>).</li> <li>b. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (<b>Attachment D1</b>) *see Section 1.33.</li> <li>c. Completed Maryland Living Wage Requirements Affidavit of Agreement (<b>Attachment G-1</b>).</li> <li>d. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule. (<b>Attachment M-1</b>) *see Section 1.41</li> <li>e. Completed Location of the Performance of Services Disclosure (<b>Attachment N</b>) *see Section 1.42.</li> </ul>	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>
4.5.1	Was a Transmittal Letter included, accompanying the Financial Proposal, acknowledging the receipt of any addenda? Was the letter signed by an individual authorized to commit the Offeror to all the services identified in the Offeror's Technical Proposal at the prices of the services identified in the Offeror's Financial Proposal for all requirements as stated in the RFP?	<u>FA1</u>	<u>FA2</u>	<u>FA3</u>

<b>RFP</b>	<b>Requirement</b>	<b>Y/N Remarks</b>		
4.5.2	For each proposed Functional Area, did the Financial Proposal contain all cost information in the format specified the respective Attachments, as appropriate?	<u><b>FA1</b></u>	<u><b>FA2</b></u>	<u><b>FA3</b></u>