



STATE OF MARYLAND
DEPARTMENT OF GENERAL SERVICES (DGS)
REQUEST FOR PROPOSALS (RFP)
AUDIT SERVICES FOR MARYLAND STATE AGENCIES
RFP NUMBER 001B0600234

ISSUE DATE: 2/10/2020

NOTICE

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

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

VENDOR FEEDBACK FORM

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

Title: Audit Services for Maryland State Agencies
Solicitation No: solicitationNumber

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

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

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

STATE OF MARYLAND
DEPARTMENT OF GENERAL SERVICES (DGS)
KEY INFORMATION SUMMARY SHEET

Request for Proposals	Services - AUDIT SERVICES FOR MARYLAND STATE AGENCIES
Solicitation Number:	001B0600234
RFP Issue Date:	2/10/2020
RFP Issuing Office:	Department of General Services (DGS or the "Department")
Procurement Officer: e-mail: Office Phone:	Gregory Dennis 45 Calvert Street 2 nd Floor Annapolis, Maryland 21401 gregory.dennis@maryland.gov 410-260-7430
Proposals are to be sent to:	Proposals will be accepted through the State's eMaryland Marketplace Advantage (eMMA) e-Procurement system. Instructions on how to submit proposals electronically can be found at: https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/08/5-eMMA-QRG-Responding-to-Solicitations-Double-Envelope-v2.pdf --
Pre-Proposal Conference:	February 27, 2020 10:00am Eastern Time 100 Community Place 1 st Floor Room B Crownsville, Maryland 21032
Questions Due Date and Time	March 12, 2020 3:00pm Eastern Time
Proposal Due (Closing) Date and Time:	2:00pm Eastern. Time April 06,2020 Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see page iv).
MBE Subcontracting Goal:	30%.
VSBE Subcontracting Goal:	5%
Contract Type:	Master Contract/Indefinite Quantity Task Order Agreements shall be Indefinite Quantity with Fixed Unit Prices.
Contract Duration:	Five (5) year base period with 1 Five (5) year Option

Primary Place of Performance:	Determined at task order level
SBR Designation:	Determined at task order level.
Federal Funding:	Determined at task order level.

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1 Minimum Qualifications

1.1 Offeror Minimum Qualifications

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

- 1.1.1 An Offeror that is a sole proprietorship with its principal place of business in Maryland must hold a current license to practice Certified Public Accountancy in accordance with Title 2 of the Annotated Code of Maryland, Business Occupations and Professions Article, Section 2-301.
- 1.1.2 An Offeror that is a business entity, e.g., partnership, corporation, LLC/LLP, with its principal place of business in Maryland must hold a current permit to practice Certified Public Accountancy in accordance with Title 2 of the Annotated Code of Maryland, Business Occupations and Professions Article, Section 2-401.
- 1.1.3 As proof of meeting Section 1.1.1 or 1.1.2, the Offeror shall provide a copy of its current license or permit to practice Certified Public Accountancy issued by the Maryland Board of Public Accountancy. If the Offeror is a licensed out-of-state accountant whose principal place of business is outside the State, it shall provide such information as required under Title 2 of the Annotated Code of Maryland, Business Occupations and Professions Article, Section 2-321.
- 1.1.4 Within the three (3) years preceding the date of its Proposal submission to this RFP, the Offeror must have been subject to a Quality Control Peer Review in accordance with Generally Accepted Government Auditing Standards and have received a written report documenting the review.
- 1.1.5 As proof of meeting Section 1.1.4, the Offeror shall provide a dated copy of the report or acceptance letter indicating a Peer Review Rate of "Pass." (A "Pass" rating does not include a rating of "Pass with Deficiencies.")

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2 Contractor Requirements: Scope of Work

2.1 Summary Statement

- 2.1.1 The Department of General Services (DGS or the "Department") is issuing this Request for Proposals (RFP) to solicit proposals from licensed Certified Public Accounting Firms and Sole Proprietors to perform Audit Services for State of Maryland agencies. Audits services may be for an entire agency, a specific program or other component of an agency, or a contract being performed for an agency or component program.
- 2.1.2 It is the State's intention to obtain goods and services, as specified in this RFP, from Master Contract(s) between the selected Offeror(s) and the State.
- 2.1.3 The Department intends to obtain Audit Services, as specified in this RFP, by awarding an unlimited number of Master Contracts to qualified Offerors that will compete on an as needed basis throughout the term of the Master Contract(s) on subsequently issued Task Orders to perform Audit Services for Maryland State agencies. Each required audit will be summarized in a Task Order Request for Proposals (TORFP).
- 2.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.5 A Contract award does not ensure a Contractor will receive all or any State business under the Contract.
- 2.1.6 Maryland State and local entities as defined in State Finance and Procurement Article 13-110(a)(5)(i) and not-for-profit entities within the State of Maryland may purchase from the Contractor goods or services covered by the Contract at the same prices chargeable to the State. All such purchases by non-executive branch entities, non-State governments, government agencies or not-for-profit entities:
- Shall constitute Contracts between the Contractor and that government, agency or not-for-profit entity;
 - Shall not constitute purchases by the State or State agencies under the Contract;
 - Shall not be binding or enforceable against the State; and
 - May be subject to other terms and conditions agreed to by the Contractor and the purchaser.
- 2.1.7 All Contract prices, terms, and conditions must be provided to any Maryland local government or not-for-profit entity requesting services under the Contract. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State entity.

2.2 Background and Purpose

- 2.2.1 Maryland State agencies currently procure Audit Services under an Audit Services Master Contract that is scheduled to expire in July, 2020. The Department is issuing this solicitation for proposals from Certified Public Accountants to perform Audit Services for Maryland State agencies under a new Audit Services Master Contract. The new Master Contract is anticipated to overlap the current contract to start around May 1, 2020.
- 2.2.2 State agencies requiring Audit Services will obtain those services through the issuance of a Task Order Request for Proposals (TORFP). All Offerors awarded a Master Contract as a result of

this RFP (Master Contractors) will be invited to compete for the work assignment or task detailed in the TORFP unless the TORFP is designated for a Small Business Reserve (SBR) (see RFP Section 4.37) or the Master Contractor is Suspended (see RFP Section 2.6). Under a Small Business Reserve TORFP, only Master Contractors that qualify as small businesses will be invited to submit Proposals. (See COMAR §21.05.07.06(A)(4) and §21.11.01.04).

- 2.2.3 A given Task Order may be a one-time audit or engagement, or a periodic recurring audit for an identified number of months or years, including possibly for the full duration of the Master Contract.

2.3 Task Order Process

- 2.3.1 To initiate the Task Order Process, a State agency or other entity requesting audit services must first notify the Contract Manager of its intent to procure these services via a TORFP. The requesting agency develops a Scope of Work (SOW) in collaboration with the Contract Manager and also performs a Minority Business Enterprise (MBE) TORFP Project Review (PR) Assessment to determine the MBE subcontractor participation goal for the project and a Veteran-Owned Small Business Enterprise (VSBE) TORFP PR Assessment to determine the VSBE subcontractor participation goal for the project.
- 2.3.2 TORFPs will be initiated by a State agency, , and will define the scope and requirements that meet the objectives of the requesting agency. The TORFP is released to the Master Contractors and the TORFP enters the Open Period. The Open Period is the time between the release date of the TORFP and the due date/time for Task Order Proposal (TOP) submissions. During the Open Period, the Contract Manager is the sole contact for the requesting agency and the Master Contractors.
- 2.3.3 Information contained in the TORFPs shall include, but not necessarily be limited to, the following:
- A. Key Information Summary Sheet;
 - B. Information required in any Executive Summary/Cover Letter;
 - C. Scope of Work requirements, Performance objectives, deliverables, and terms;
 - D. Experience and capabilities of Master Contractor and its subcontractors, and the proposed personnel;
 - E. Security and Invoicing requirements;
 - F. Project and contract management requirements;
 - G. Conflict of Interest, Confidentiality, and/or Non-Disclosure Affidavit requirements;
 - H. Living Wage requirements;
 - I. MBE goal, VSBE goal, SBR, as applicable.
 - J. Economic Benefits to Maryland;
 - K. Applicable labor categories and key personnel;
 - L. Labor Category Summary Sheet (see sample Appendix 3) to be completed and submitted with resumes for each person proposed; and
 - M. The criteria for making a Task Order Agreement (TOA) award determination and relative importance of each criterion and price.

- 2.3.4 All Master Contractors (or SBR Master Contractors if the TORFP is designated an SBR competition) that are not Suspended (See RFP Section 2.6) will be notified of the release of the TORFP, all amendments, pre-TOP conference notes, and other relevant materials until Task Order Proposals are due and received from the participating Master Contractors. Each Master Contractor receiving the TORFP must respond by providing a TOP in response to the requirements of the TORFP or a written notification to the Contract Manager that it does not intend to submit a TOP.
- 2.3.5 The Master Contractor's Financial TOP will be based on a single Evaluated Price. A Master Contractor will complete the Financial TOP Form based upon the Master Contract's labor classifications to support the Work Plan. The Fully Loaded Fixed Hourly Labor Category Rates contained in the Financial TOP may be less than but not exceed the Master Contractor's approved rates under the Master Contract for the particular Contract Year(s).
- 2.3.6 The Master Contractor is paid for services performed based on the Fully Loaded Fixed Hourly Labor Category proposed in the TOP plus Non-Routine Travel costs as may be identified and approved in a TOA, up to a specified cost ceiling. The Master Contractor's Financial TOP and the final Not-To-Exceed dollar amount approved for each TOA are determined by multiplying the estimated number of Labor Hours by the approved Fully-Loaded Fixed Hourly Labor Category Rates, plus Non-Routine Travel costs, if applicable.
- 2.3.7 Based on the Agency's evaluation of the TOPs received, the Agency will select a Master Contractor to perform the Work under the TORFP. The Agency and selected Master Contractor will enter into a specific TOA which will bind the Master Contractor to the TORFP and the contents of the TOP. If any portion of a TORFP, TOP, or TOA conflicts with the Master Contract, the language in the Master Contract takes precedence.
- 2.3.8 Audit services in response to a TOA shall be initiated only upon issuance of a fully executed TOA and an initial Notice to Proceed (NTP) issued in tandem or separately by the Contract Manager. Subsequent project Notices to Proceed may be utilized by the applicable TOM for management of project services and deliverables. An example would be a TOM dividing the Scope of Work into manageable phases in line with fiscal funding.
- 2.3.9 To ensure Contract compliance and good communication, all technical direction for a TOA will be through the TOM designated in the applicable TORFP. The Master Contractor will direct all deliverables under a TOA to the TOM designated in the applicable TORFP.
- 2.3.10 The Master Contractor shall provide, as requested, to the Contract Manager at no cost to the State, any information needed by the State as required for special inquiries, remedial action plans, etc. Examples of these include audits to a State agency and inquiries during the Maryland General Assembly Sessions.
- 2.3.11 There is no limit to the number of TOAs that may be awarded to any given Master Contractor as long as the Master Contractor is not Suspended as defined in Appendix 1 and described in RFP Section 2.6.

2.4 Task Order Agreement Not to Exceed Amounts

Each Task Order Agreement will establish a NTE dollar amount. The TOA Contractors must monitor invoiced amounts under each TOA. When a TOA is projected to reach 75% of the NTE dollar amount while performing a TOA, the TOA Contractor shall give notice to the TOM and the Contract Manager that the TOA is projected to reach the 75% level. Each notice will also include an analysis of the TOA Contractor's ability to complete the project within the NTE dollar amount. If the analysis concludes that the project cannot be completed within the NTE dollar amount, the rationale for this conclusion must be provided, along with a projection of the amount

that would be needed to complete the project. However, providing such a projection shall not obligate the Department or Agency to change the NTE dollar amount. If a TOA Contractor reaches the TOA's NTE dollar amount, the TOA Contractor must stop performing any services for which it would seek payment beyond the NTE dollar amount unless the Contract Manager authorizes in writing an increase to allow the continuation of the services.

2.5 Meetings, Reports, and Invoices

2.5.1 Meetings

2.5.1.1 Periodic Meetings with the Contract Manager. Each Master Contractor's Representative shall meet with and participate in discussions with the Contract Manager no more than quarterly to review contract activity and assist with any issues. These meetings are intended to keep both the Contract Manager and the Master Contractors up-to-date on Master Contract issues and activities. These meetings are in addition to any meetings as required and specified in any TOA, or as may be necessary concerning performance issues. (See RFP Section 2.6.) Master Contractors will not be compensated for these meetings.

2.5.2 Reports

2.5.2.1 Special Status Reports to the Contract Manager. The Master Contractor shall provide Special Status Reports, as requested, to the Contract Manager at no cost to the State. Examples of these include but are not limited to audits to a State Agency and inquiries during the Maryland General Assembly Sessions.

2.5.2.2 Monthly Status Reports to the Task Order Manager. For any Task Order that exceeds one month in duration, the TOA Contractor shall provide to the TOM a monthly status report regarding its applicable Task Order Agreement. The report must contain the information noted below and be submitted by the TOA Contractor no later than the 10th of each month for the proceeding month's activities. Reports shall be provided in MS Word or MS Excel unless the TOM approved in writing another software format. The TOA Contractor shall deliver reports to the applicable TOM as directed. A sample status report may include the following information.

- A. Agency Name;
- B. TOA Project Number;
- C. TOA NTP Date;
- D. Target Completion Date;
- E. TOA Not to Exceed (NTE) Dollar Amount;
- F. TOA Payments Received to Date;
- G. Status of Project, including percentage complete and projected hours and dollars until completion. The percent and timing is governed by the TORFP requirements, and those pertaining to each TOA's NTE Dollar Amount;
- H. MBE and VSBE Monthly Reports from both the TOA Contractor and its MBE and VSBE Subcontractor(s); and
- I. Any other relevant information the TOM or Contract Manager requests due to the nature of a given TOA's scope of work.

2.6 Licensing and Peer Rating Required; Suspension Process

2.6.1 Licensing, Permits, and Peer Rating

- 2.6.1.1 At all times during the term of the Master Contract, a Master Contractor shall maintain:
- A. A current license or current permit to practice Certified Public Accountancy in accordance with Title 2 of the Annotated Code of Maryland, Business Occupations and Professions Article (the “Code”);
 - B. A current Peer Review “pass” rating (See RFP Section 2.6.1.2B); and
 - C. Current registrations with the Maryland Department of Assessments and Taxation and the Maryland Comptroller’s Office.
- 2.6.1.2 Within two weeks of each anniversary date of the Master Contract, the Master Contractor shall provide to the Contract Manager:
- A. Proof of its current license or current permit to practice Certified Public Accountancy in accordance with the Code; and
 - B. Proof of a Qualify Control Peer Review rating of “Pass” performed within the preceding three (3) years.
- 2.6.1.3 A Master Contractor that fails to submit to the Contract Manager the required proof of license or permit and/or its Peer Review “Pass” rating will be Suspended and will not be eligible to participate in the TORFP processes until such time as the Contract Manager receives satisfactory written confirmation that the Master Contractor is in compliance.

2.6.2 Suspension Process of a Master Contractor

- 2.6.2.1 **Failure to Conform.** If the Contract Manager determines that a Master Contractor has failed to comply with the terms and conditions of the Master Contract or any Task Order Agreement, the Contract Manager will notify the Master Contractor in writing by hard or electronic copy that the Master Contractor is Suspended from participating in the TORFP processes until such time as the specified issue(s) have been resolved to the Contract Manager’s satisfaction. Upon such resolution, the Contract Manager will notify the Master Contractor in writing by hard or electronic copy that it may again participate in the TORFP processes.
- 2.6.2.2 In addition to the circumstances described in RFP Section 2.6.2.1, examples of circumstances which may result in a finding that the Master Contractor is Suspended include but are not limited to:
- A. Failure to maintain good standing with the Maryland State Department of Assessments and Taxation (SDAT) and/or the State Comptroller’s Office;
 - B. Failure to comply with socioeconomic requirements such as Living Wage, Prompt Payment of Subcontractors, MBE and/or VSBE Commitments; or Commercial Non-Discrimination, as applicable;
 - C. Poor performance for one or more TOAs;
 - D. Not maintaining its License or Permit To Practice in Certified Public Accountancy (see RFP Section 2.6.1);

- E. Not maintaining a Quality Control Peer Review rating of “Pass” See RFP Section 2.6.1);
- F. Contractor’s Representative non-compliance (e.g. failure to attend meetings, response to requests for information, address performance issues identified by the Procurement Officer or Contract Manager or Agency personnel); or
- G. Failure to keep the Contract Manager apprised of any change in the Master Contractor’s contact information or key personnel

2.6.2.3 **Remediation Plan.** If the Contract Manager determines that a Master Contractor is Suspended or subject to being Suspended, the Contract Manager will request a written remediation plan from the Master Contractor. The remediation plan will address how the Master Contractor intends to remedy the Suspension-related issue(s). The Master Contractor shall provide a written remediation plan to the Contract Manager within five (5) Business Days of the Contract Manager’s request.

If a Master Contractor fails to submit a written remediation plan, fails to correct an unacceptable remediation plan, or fails to timely and properly implement its remediation plan, the Master Contractor will be Suspended, if not already Suspended.

2.7 Master Contractor’s Representative

2.7.1 Each Master Contractor shall assign a representative to act as its official liaison on the Master Contract. The Master Contractor’s Representative’s duties will include but not be limited to:

- 1. Act as the conduit to accept all TORFPs for the Master Contractor;
- 2. Provide the Master Contractor’s Technical and Financial Proposal responses (the TOPs);
- 3. Administer the Task Order processes (i.e. attend Oral Discussions along with key members of the team for each of its TOPs and address any issues as they arise during the term of a TOA);
- 4. Meet with the Contract Manager, Task Order Managers, and other agency staff as necessary and requested during the course of the Master Contract, and coordinate all issues brought to his/her attention;
- 5. Have the power and authority to commit and bind the Master Contractor and its resources during the course of the Master Contract;
- 6. Have an understanding of audits and their processes according to the standards set forth in this RFP in order to address and provide solutions to any issues that arise;
- 7. Communicate with its subcontractors and the requesting agencies;
- 8. Perform work under one or more of the labor categories; and
- 9. Manage the Master Contractor’s efforts on TOP responses/processes, its audit teams’ capabilities, contract management, project management, reporting requirements, any presentations, and issues.

2.7.2 Per RFP Section 3.11, the Master Contractor shall not change the Master Contractor’s Representative without first obtaining the Contract Manager’s prior written approval of the change.

2.8 TORFP Staffing

2.8.1 The Master Contractor shall propose staff in its TOP that is anticipated to be available for the time period specified in the applicable TORFP. The staff that is proposed by the Master Contractor shall be the same staff utilized if awarded the TOA. After the date that a TOA is awarded, any subsequent changes to personnel requested by the TOA Contractor must be done per the procedures outlined in Section 3.11, Substitution of Personnel.

If any changes are required to its staff prior to TOA award, the Master Contractor shall submit a revised TOP to the Contract Manager.

2.8.2 The Subject Matter Expert Labor Category and a rate up to and including, but not exceeding its Fully Loaded Fixed Hourly Labor Category Rate is to be used for a TORFP that defines specific areas of required expertise beyond those provided in the established Labor Categories. The Master Contractor shall certify in its TOP that the proposed Subject Matter Expert candidate meets the required qualifications identified in the TORFP.

2.8.3 At the option of the TOM, each of the TOA Contractor's personnel may be approved for performance in multiple skill categories for which they are qualified; however, each person may only be assigned and billed for expended time under one labor classification for each TOP.

2.8.4 **Substitution of Education for Experience.** A Master's Degree or higher may be substituted for the general and specialized experience for those labor categories requiring a Bachelor's Degree at the discretion of and within the written prior approval by the Agency's designated TOM. See RFP Section 2.9 and its Table for specific substitution allowance.

2.8.5 **Substitution of Experience for Education.** Substitution of experience for education may be permitted at the discretion of and with the written prior approval of the Agency's TOM. See RFP Section 2.9 and its Table for specific substitution allowances.

2.9 Labor Categories and Qualifications

The Labor Categories and requisite qualifications approved for the Master Contract are set forth in the Master Contract Summary of Approved Labor Categories and Minimum Requirements table, contained in this section. Master Contractors shall utilize only these specified labor categories when proposing to a TORFP and providing subsequent services under a TOA. **All required licenses and certifications must be in place at the time the Master Contractor submits its Task Order Proposal.**

The Master Contract's Summary of Approved Labor Categories and Minimum Requirements Labor Category Table			
Labor Category	PARTNER	MANAGER	COST ACCOUNTANT
Education	Bachelor's Degree from an accredited college or university in Accounting or other related discipline.	Bachelor's degree from an accredited college or university in Accounting or other related discipline. A Masters of Business Administration or a Masters of Public Administration is preferred but not required.	Bachelor's degree from an accredited college or university in Accounting or other related discipline. A Masters of Business Administration or a Masters of Public Administration is preferred but not required.
License/Permit Requirement	A Certified Public Accountant (CPA) licensed in accordance with Title 2 of the Business Opportunities and Professions Article of the Maryland Annotated Code is required.	A Certified Public Accountant (CPA) licensed in accordance with Title 2 of the Business Opportunities and Professions Article of the Maryland Annotated Code is required.	A Certified Public Accountant (CPA) licensed in accordance with Title 2 of the Business Opportunities and Professions Article of the Maryland Annotated Code is preferred but not required.
Experience: Specialized and General	Eight (8) years relevant experience in auditing. Four (4) of those years must be in audit supervision or oversight.	Six (6) years of relevant experience in auditing. Three (3) years of the required six (6) years must demonstrate a leadership role in not less than three (3) projects that were delivered on time and on budget and that delivered promised business value. A Master's degree may be substituted for 2 years' worth of required experience or 1 project.	Eight (8) years relevant experience as a cost analyst or involved in analysis in business-related subject areas such as accounting, finance, or economics. Not less than five (5) of the eight (8) years of experience shall be in financial cost accounting including analyzing entity accounting, budgeting, and auditing systems. A Master's degree may be substituted for 2 years' worth of required experience or 1 project.

The Master Contract's Summary of Approved Labor Categories and Minimum Requirements Labor Category Table			
Labor Category	PARTNER	MANAGER	COST ACCOUNTANT
Duties	<p>Overall responsibility for performance of the assigned audit to include: Schedule audit assignments; entrance and exit conferences; staff training and evaluation; research of audit and accounting literature; work paper review; report review; liaison with audit staff and the firm; and client relationships. Possesses proven superior technical competence and managerial abilities. Provides firm leadership and is ultimately responsible for the entire engagement, ensuring that the proper firm resources are provided. Monitors the engagement to help ensure that the approaches employed are best suited for the project objectives and that overall implementation and delivery of contracted services are of the highest possible quality. May review all underlying work papers, internal control surveys and evaluations, audit programs, permanent files, and engagement memoranda and will review and sign final auditors' reports. May periodically be engaged in management meetings to report the status of projects and address any additional needs of the client.</p>	<p>Responsible for overall supervision of staff, communication, and coordination of meetings with appropriate management members, and designing the project and audit approach. Will communicate and will update the audit partner as to the status of the audit and any technical issues that may surface during the course of the engagement. May review all underlying work papers, internal control surveys and evaluations, audit programs, permanent files, and engagement memoranda and prepare summary and specific issues memoranda for review by the Partner.</p>	<p>Conducts investment analyses or other complex operational analyses. Provides expertise and support in conducting a full range of investment analyses activities, including market surveys, cost analyses, benefits analyses, risk analyses, economic analyses, requirements definitions, schedule development, and tradeoff studies. Conducts analytical studies involving complex technical analyses, schedule constraints, and system benefits and system cost factors. Identifies cost accounting or financial problems and recommends solutions. Presents plans, analyses, and other advice within functional areas.</p>

The Master Contract's Summary of Approved Labor Categories and Minimum Requirements			
Labor Category Table			
Labor Category	FINANCIAL ANALYST	AUDIT SUPERVISOR	SENIOR AUDITOR
Education	Bachelor's degree from an accredited college or university in Economics, Business, Accounting, Finance, or other related discipline. A Masters of Business Administration or a Masters of Public Administration is preferred but not required.	Bachelor's degree from an accredited college or university in Accounting or other related discipline.	Bachelor's degree from an accredited college or university in Accounting, Finance, Business, or other related discipline.
License/Permit Requirement	A Certified Public Accountant (CPA) licensed in accordance with Title 2 of the Business Opportunities and Professions Article of the Maryland Annotated Code is preferred but required.	A Certified Public Accountant (CPA) licensed in accordance with Title 2 of the Business Opportunities and Professions Article of the Maryland Annotated Code is required.	A Certified Public Accountant (CPA) licensed in accordance with Title 2 of the Business Opportunities and Professions Article of the Maryland Annotated Code is preferred but not required.
Experience: Specialized and General	Eight (8) years progressive experience as an analyst or involved in analyst type functions in a business related subject area such as accounting, finance, or economics. Not less than five (5) of the eight (8) years of experience must be financial management experience with an emphasis on analyzing entity accounting, budgeting, and auditing systems. A Master's degree may be substituted for 2 years' worth of required experience.	Four (4) years' experience in auditing. At least two (2) of the required four (4) years with measurable technical proficiency and the ability to oversee engagements.	Three (3) years of auditing experience after a degree was earned. At least one (1) of those three (3) years must be in an audit supervisory capacity.

The Master Contract’s Summary of Approved Labor Categories and Minimum Requirements Labor Category Table			
Labor Category	FINANCIAL ANALYST	AUDIT SUPERVISOR	SENIOR AUDITOR
Duties	Provides financial management planning and execution support. Has proven knowledge of theories, principles, and practices of financial management, including time value analyses, cash flow analyses, and cost/benefit and return on investment analyses. Conducts investment analyses or other complex operational analyses. Provides expertise and support in conducting a full range of investment analyses activities, including market surveys, cost analyses, benefits analyses, risk analyses, economic analyses, requirements definitions, schedule development, and tradeoff studies. Classifies and summarizes financial data for the preparation and submission of reports on a recurring basis.	Responsibility for completion of all audit steps, audit programs, and preparation of financial statements. Understands governmental accounting principles and will be responsible for the day-to-day supervision of staff, interviewing management to gain an understanding of the client’s business, and performance of detail test work related to more critical areas of the engagement that may require industry-specific knowledge and experience. Responsible for reporting the progress of the engagement to the Manager and communicating any potential technical issues that are encountered during the course of the engagement, as well as any additional service opportunities that are identified and can be offered to the client to improve its business processes and functions.	Has proven a thorough understanding of generally accepted auditing standards and common audit practices and techniques. Performing the day-to-day, detailed test work required to achieve and support the audit objective, including performing statistical sampling, interviewing management to gain an understanding of the client’s business, testing internal controls for effectiveness, and performing analytical and substantive procedures as deemed necessary. Report findings related to non-performance and weaknesses in internal control to the Audit Supervisor or Manager.

The Master Contract's Summary of Approved Labor Categories and Minimum Requirements Labor Category Table			
Labor Category	STAFF AUDITOR	SUBJECT MATTER EXPERT (SME)	BUSINESS PROCESS CONSULTANT
Education	Bachelor's degree from an accredited college or university in Accounting, Finance, Business, or other related field.	Bachelor's degree from an accredited college or university in the specific discipline required by the State. A master's or doctoral degree is preferred but not required. The master's degree will be the equivalent of a Master of Business Administration or a Master of Public Administration.	Bachelor's degree from an accredited college or university in Business, Human Resources Management, or a related field.
License/Permit Requirement	N/A	All licenses or certification requirements of the applicable area(s) of expertise, as provided in the TORFP.	N/A
Experience: Specialized and General	Not less than a total of six (6) consecutive months of auditing experience after a degree was earned.	Eight (8) years of relevant industry experience in the discipline required by the State. A master's degree may be substituted for two (2) years' worth of required experience. A doctoral degree may be substituted for four (4) years' worth of required experience.	Not less than eight (8) years' experience in business process re-engineering. At least five (5) of the eight (8) years must be in re-engineering large scale business processes. A master's degree may be substituted for two (2) years' worth of required experience in either experience category.

The Master Contract’s Summary of Approved Labor Categories and Minimum Requirements Labor Category Table			
Labor Category	STAFF AUDITOR	SUBJECT MATTER EXPERT (SME)	BUSINESS PROCESS CONSULTANT
Duties	Provides general auditing services.	<p>Expertise related to a specific discipline required by the State Agency. Examples of what may be utilized are: Health care, education, public safety, social services, human resources, transportation, environment, telecommunications, Emergency System Number Boards, toll collection, accounting records reconciliation, lottery, collections, retirement, 3rd party billings, claims eligibility, registrant’s mileage records, contract assessments, SAS-70 Type 1 and Type 2, etc.</p> <p>A Subject Matter Expert (SME) is an individual who is an expert in a particular area. This category will require expertise in the designated area being audited. Expertise may be that the individual either has worked at a high level in the noted field or has experience auditing in the complex area and can help in the development of audit program; test procedures; and the analysis required to be conducted. A SME defines requirements, performs analyses, and develops plans and requirements such as for Business Process Re-engineering.</p>	<p>Develops business requirements and business processes re-engineering methodologies. Solves application and process related problems by creating detail process and system design specifications; and works with other areas across the business units to support a total solution approach. Communicates business requirements for reports and applications development. Facilitates collaboration within and across business units. Resolves problems and improves business units’ technical environments.</p>

2.10 Quality Assurance

The products that result from the audit services may be utilized by reference or reviewed by other State personnel and committees besides the requesting agency. Accordingly, the Master Contractor must maintain high ethical and quality assurance levels in its submissions, and during the performance of services under the Master Contract and TOAs including but not limited to personnel, the services performed, and resulting reports.

Deliverables under a TOA shall be provided to the State under this Contract generally free of typographical errors and other product quality issues. Non-compliant deliverables may be returned to the Contractor for compliance, which may delay acceptance of the deliverable and subsequent payment.

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3 Contractor Requirements: General

3.1 Contract Initiation Requirements

- 3.1.1 The Contract Manager will arrange and notify the Master Contractors of a Kick-Off Meeting at the outset of the Master Contract term. The purpose of the meeting is to establish good communication with the Master Contractors and relay the initial procedures and formats that will be utilized for the TORFP/TOA process. Master Contractors are required to attend and participant in the Kick-Off Meeting. No compensation will be paid to Master Contractors for attendance at the Kick-Off Meeting.

3.2 End of Contract Transition

THIS SECTION IS NOT APPLICABLE TO THIS PROCUREMENT.

3.3 Invoicing

3.3.1 General

- A. The Contractor shall e-mail the original of each invoice and signed authorization to invoice to the TOM at the email address in the TORFP.
- B. All invoices for services shall be verified by the Contractor as accurate at the time of submission.
- C. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:
- 1) TOA's applicable State Agency;
 - 2) TOA Contractor name and address;
 - 3) Remittance address;
 - 4) Federal taxpayer identification (FEIN) number or social security number, as appropriate;
 - 5) Invoice period (i.e. time period during which services covered by invoice were performed);
 - 6) Invoice date;
 - 7) Invoice number;
 - 8) Travel (see Section 3.3.4);
 - 9) Total amount due;
 - 10) ADPICS/ Purchase Order Number(s) for each TOA being billed; and
 - 11) Any additional documentation required by regulation or the Contract or TOA.
- D. The Total Amount Due for the current month for each TOA will be derived from the information detailed on the invoice. Invoices submitted without the required backup information will not be approved or processed for payment until the TOA Contractor provides the required information. The information required for each of the Master Contractor's employees and subcontractors includes:
- 1) The Labor Category(ies) being billed;

- 2) The individual's name being billed;
 - 3) The individual's total hours for the month; and
 - 4) The applicable Hourly Rate.
- E. For each invoice, the TOA Contractor shall provide documentation that all the direct hours invoiced for its employees and subcontractors have actually been expended as documented, totally and productively, in the performance of the TOA. The employee/subcontractor time sheets or electronic time keeping records shall be certified by the TOA Contractor to be the actual time worked by the employees and its subcontractors. The TOA Contractor shall provide the invoice and its applicable documentation to the TOM.
- F. The Agency reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Agency with all required deliverables within the time frame specified in the TOA or otherwise breaches the terms and conditions of the Contract or TOA until such time as the Master Contractor brings itself into full compliance with the Contract or TOA.
- G. Any action on the part of the Agency, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.
- H. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.
- I. Invoices for final payment shall be clearly marked as "FINAL" and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

3.3.2 Invoice Submission Schedule

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

- A. No later than the 10th of the calendar month for the proceeding month's TOA activity, the TOA Contractor shall submit Invoices with documentation to the applicable TOM, unless there is prior written approval by the TOM for another submission date for the specific month.

3.3.3 For the purposes of the Contract and resulting TOA, an amount will not be deemed due and payable if:

- A. The amount invoiced is inconsistent with the Contract or TOA;
- B. The proper invoice has not been received by the party or office specified in the Contract or TOA;
- C. The invoice or performance is in dispute or the TOA Contractor has failed to otherwise comply with the provisions of the Contract or TOA;
- D. The item or services have not been accepted;
- E. The quantity of items delivered is less than the quantity ordered;
- F. The items or services do not meet the quality requirements of the Contract or TOA;
- G. If the Contract or TOA provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;

- H. If the Contract or TOA provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or
- I. The TOA Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Task Order Manager or by the TOA concerning performance under the TOA and compliance with its provisions.

3.3.4 Travel Reimbursement

- A. The TORFP shall determine the applicability of Routine Travel versus Non-Routine Travel, as defined in Appendix 1. Any Non-Routine Travel that has prior written approval from the Task Order Manager and has actually been expended may be submitted to the TOM for approval. Appropriate documentation for the Non-Routine Travel must be enclosed with the invoice. Appropriate documentation would include the written confirmation from the applicable TOM showing prior approval for the Non-Routine Travel, and copies of all invoices and receipts. Any additional documentation required by the Contract Manager, the TOM, or the State's travel policies must be provided upon request in order for Non-Routine Travel to be approved and paid.
- B. The Non-Routine Travel, if approved in the TOA, must be billed by the TOA Contractor on a separate line item from the Labor Hours being invoiced. The TOA Contractor shall provide a separate invoice for any State Agency that requests separate invoices and receipts for invoiced travel due to its accounting policies.

3.4 Liquidated Damages

3.4.1 MBE Liquidated Damages

MBE liquidated damages are identified in the applicable TOA on a task order basis.

3.4.2 Liquidated Damages other than MBE

THIS SECTION IS INAPPLICABLE TO THIS RFP.

3.5 Disaster Recovery and Data

THIS SECTION IS INAPPLICABLE TO THIS RFP.

3.6 Insurance Requirements

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

- 3.6.1 The following type(s) of insurance and minimum amount(s) of coverage are required:
 - A. Commercial General Liability - of \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.
 - B. Errors and Omissions/Professional Liability - \$500,000 per combined single limit per claim and \$500,000 annual aggregate.
 - C. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and the Department should be added as a "loss payee."

- D. Worker's Compensation - The Master Contractor shall maintain such insurance as necessary or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act, to not be less than one million dollars (\$1,000,000) per occurrence (unless a state's law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.
- 3.6.2 The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance and professional liability.
- 3.6.3 All insurance policies shall be endorsed to include a clause requiring the insurance carrier provide the Contract Manager, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. The Master Contractor shall notify the Contract Manager in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Master Contractor shall provide evidence of replacement insurance coverage to the Contract Manager at least 15 days prior to the expiration of the insurance policy then in effect.
- 3.6.4 Any insurance furnished as a condition of the Master Contract shall be issued by a company authorized to do business in the State.
- 3.6.5 The Master Contract must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Manager.
- 3.6.6 TORFPs may contain requirements for higher levels of coverage and/or additional types and limits of insurance beyond what is required for a Master Contractor under this section. When a specific TORFP has additional insurance requirements the Master Contractor shall maintain the types and minimum limits of insurance specified above, in addition to those specified in the applicable TORFP.
- 3.6.7 Subcontractor Insurance
- The Master Contractor shall require any subcontractors to obtain and maintain comparable levels of coverage and shall provide the Contract Manager with the same documentation as is required of the Master Contractor.

3.7 Security Requirements

3.7.1 Employee Identification

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

- D. The State reserves the right to request that the Master Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

3.7.2 Security Clearance / Criminal Background Check

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

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

3.7.3 On-Site Security Requirement(s)

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

3.7.4 Information Technology

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

The Master Contractor shall:

- 1) Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security.
- 2) Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with

applicable data protection and privacy laws as well as the terms and conditions of the Master Contract; and

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

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

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

3.7.7 Provisions in **Sections 3.7.1 – 3.7.5** shall survive expiration or termination of the Master Contract. Additionally, the Master Contractor shall flow down the provisions of **Sections 3.7.4-3.7.5** (or the substance thereof) in all subcontracts.

3.8 Problem Escalation Procedure

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

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

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

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

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

3.9 SOC 2 Type 2 Audit Report

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

3.10 Experience and Personnel

3.10.1 Preferred Offeror Experience

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

- A. Within three (3) years preceding the date of its Proposal submission to this RFP, the Offeror should have performed at least five (5) audits of public or private entities with at least twenty-five (25) employees. As proof of meeting this requirement, the Offeror shall provide the following information for each audit:
 1. Name of the client organization audited;
 2. Name, title, email address, and telephone number of point of contact for the organization who can verify that the audits were performed; and
 3. Dollar value, type, timeframe, and duration of the contract(s) for audit services for the client organization.

3.10.2 Personnel Experience

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

- A. Demonstrated knowledge of audits and their processes according to the standards set forth in this RFP in order to address and provide solutions to any issues that arise.

3.10.3 Key Personnel Identified

For the Contract, the following positions to be identified in the Technical Proposal will be considered Key Personnel, and shall be required to meet the qualifications stated in **Section 3.10** and **Appendix 1**:

- Master Contractor's Representative.

3.10.4 Contractor Personnel Maintain Certifications

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

3.11 Substitution of Personnel

3.11.1 Master Contract: Continuous Performance of Contractor's Representative

Unless substitution is approved per Sections **3.11.1-3.11.5** of this section, the Contractor's Representative shall be the same individual named in the Master Contractor's Technical Proposal, which will be incorporated into the Master Contract by reference. The Contractor's Representative shall perform continuously for the duration of the Master Contract, or such lesser duration as specified in the Technical Proposal. The Contractor's Representative may not be removed by the Master Contractor from working under this Contract, as described in the RFP or the Contractor's Technical Proposal, without the prior written approval of the Contract Manager.

3.11.2 Task Order Agreement: Continuous Performance of Key Personnel

If the Contract is task order based (e.g. a Task Order Agreement), the provisions of this section apply to Key Personnel identified in each Task Order Proposal and Task Order Agreement. At the Task Order level, the Task Order Manager shall be notified of personnel substitutions rather than the Contract Manager.

3.11.3 Definitions

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

- A. **Extraordinary Personal Event** – means any of: leave under the Family Medical Leave Act; an Incapacitating injury or Incapacitating illness; or other circumstances that in the sole discretion of the State warrant an extended leave of absence, such as extended jury duty or extended military service that precludes the individual from performing his/her job duties under the Contract.
- A. **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/TORFP or the Contractor’s Technical Proposal/Task Order Proposal.

3.11.4 Contractor Personnel General Substitution Provisions

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

- A. The Master Contractor shall demonstrate to the Contract Manager’s/Task Order Manager’s satisfaction that the proposed substitute has qualifications at least equal to those of the Contractor Personnel proposed to be replaced.
- B. The Master Contractor shall provide the Contract Manager/TOM with a substitution request that shall include:
 - 1) A detailed explanation of the reason(s) for the substitution request;
 - 2) The resume of the proposed substitute, signed by the substituting individual and his/her formal supervisor;
 - 3) The official resume of the current personnel for comparison purposes; and
 - 4) Evidence of any required credentials.
- C. The Contract Manager/TOM may request additional information concerning the proposed substitution and may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
- D. The Contract Manager/TOM will notify the Master Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Manager/Task Order Manager will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

3.11.5 Replacement Circumstances

- A. **Directed Personnel Replacement**
 - 1) The Contract Manager/TOM may direct the Master Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Manager/TOM, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, Department policies, or Contract requirements. Normally, a

directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph **3.11.5.A.2**.

- 2) If deemed appropriate in the discretion of the Contract Manager/TOM, the Contract Manager/TOM may give written notice of any Contractor Personnel performance issues to the Master Contractor, describing the problem and delineating the remediation requirement(s). The Master Contractor shall provide a written response to the remediation requirements in a Remediation Plan within ten (10) days of the date of the notice and shall immediately implement the Remediation Plan upon written acceptance by the Contract Manager/Task Order Manager. If the Contract Manager/Task Order Manager rejects the Remediation Plan, the Master Contractor shall revise and resubmit the plan to the Contract Manager/Task Order Manager within five (5) days, or in the timeframe set forth by the Contract Manager/Task Order Manager in writing.
- 3) Should performance issues persist despite an approved Remediation Plan, the Contract Manager/TOM may give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.
- 4) Replacement or substitution of Contractor Personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.
- 5) If the Contract Manager/TOM determines to direct substitution under **3.11.5.A.1**, if at all possible, at least fifteen (15) days advance notice shall be given to the Master Contractor. However, if the Contract Manager/Task Order Manager deems it necessary and in the State's best interests to remove the Master Contractor Personnel with less than fifteen (15) days' notice, the Contract Manager/Task Order Manager may direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.
- 6) In circumstances of directed removal, the Master Contractor shall, in accordance with paragraph **3.11.5.A.1** of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

B. Key Personnel Replacement

- 1) To replace any Key Personnel in a circumstance other than as described in **3.11.5.B**, including transfers and promotions, the Master Contractor shall submit a substitution request as described in **Section 3.11.4.B** to the Contract Manager/TOM at least fifteen (15) days prior to the intended date of change. A substitution may not occur unless and until the Contract Manager/Task Order Manager approves the substitution in writing.
- 2) Key Personnel Replacement Due to Sudden Vacancy
 - a) The Master Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) days or more advance notice shall be treated as a replacement under **Section 3.11.5.B.1**.

- b) Under any of the circumstances set forth in this paragraph B, the Master Contractor shall identify a suitable replacement and provide the same information and items required under **Section 3.11.4** within fifteen (15) days of the actual vacancy occurrence or from when the Master Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.
- 3) Key Personnel Replacement Due to an Indeterminate Absence
 - a) If any Key Personnel has been absent from his/her job for a period of ten (10) days and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Master Contractor shall identify a suitable replacement and provide the same information and items to the Contract Manager/Task Order Manager as required under **Section 3.11.4**.
 - b) However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Manager/Task Order Manager, the Contract Manager/Task Order Manager may, at his/her sole discretion, authorize the original personnel to continue to work under the Master Contract, or authorize the replacement personnel to replace the original personnel, notwithstanding the original personnel's ability to return.

3.11.6 Substitution Prior to and Within 30 Days After Contract Execution

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

3.12 Minority Business Enterprise (MBE) Reports

If a TORFP includes an MBE Goal (see **Section 4.26**), the Master Contractor shall:

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

- 5) by the 10th of each month to the Contract Manager and the Department's MBE Liaison Officer that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
- C. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- D. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- E. Upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

3.13 Veteran Small Business Enterprise (VSBE) Reports

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

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

VSBE participation and make them available for State inspection for three years after final completion of the Contract.

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

3.14 No-Cost Extensions

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

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4 Procurement Instructions

4.1 Pre-Proposal Conference

- 4.1.1 A pre-Proposal conference (Conference) will be held at the date, time, and location indicated on the Key Information Summary Sheet.
- 4.1.2 Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals. If the solicitation includes an MBE goal, failure to attend the Conference will be taken into consideration as part of the evaluation of an offeror's good faith efforts if there is a waiver request.
- 4.1.3 It is highly recommended that ALL Prime Contractors bring their intended subcontractors to the Conference/Site Visit to ensure that all parties understand the requirements of the contract and the MBE Goal.
- 4.1.4 MBE subcontractors are encouraged to attend the Conference to market their participation to potential prime contractors.
- 4.1.5 Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see **Section 4.2.1 eMMA**).
- 4.1.6 Attendees should bring a copy of the solicitation and a business card to help facilitate the sign-in process.
- 4.1.7 In order to assure adequate seating and other accommodations at the Conference, please e-mail the Pre-Proposal Conference Response Form (**Attachment A**) no later than the time and date indicated on the form. In addition, if there is a need for sign language interpretation or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Conference date. The Department will make a reasonable effort to provide such special accommodation.

4.2 eMaryland Marketplace Advantage (eMMA)

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

4.3 Questions

- 4.3.1 All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title (001B0600234 - Audit Services for State of Maryland Agencies, and shall be submitted in writing via e-mail to the Procurement Officer at least five (5) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.
- 4.3.2 Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments, and posted on eMMA.

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

4.4 Procurement Method

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

4.5 Proposal Due (Closing) Date and Time

- 4.5.1 Proposals, in the number and form set forth in **Section 5 Proposal Format**, must be submitted electronically through eMMA and received by the Procurement Officer no later than the Proposal due date and time indicated on the Key Information Summary Sheet in order to be considered.
- 4.5.2 Requests for extension of this date or time shall not be granted.
- 4.5.3 Offerors submitting Proposals should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the Key Information Summary Sheet will not be considered.
- 4.5.4 Proposals will be accepted through the State's eMaryland Marketplace Advantage (eMMA) e-Procurement system. Instructions on how to submit proposals electronically can be found at: <https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/08/5-eMMA-QRG-Responding-to-Solicitations-Double-Envelope-v2.pdf>
- 4.5.5 Proposals may be modified or withdrawn through eMMA before the time and date set forth in the Key Information Summary Sheet for receipt of Proposals.
- 4.5.6 Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.
- 4.5.7 Potential Offerors not responding to this solicitation are requested to submit the "Notice to Vendors" form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

4.6 Multiple or Alternate Proposals

Multiple or alternate Proposals will not be accepted.

4.7 Economy of Preparation

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

4.8 Public Information Act Notice

- 4.8.1 The Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4 (See also RFP **Section 5.3.2.B** "Claim of Confidentiality"). This information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

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

4.9 Award Basis

Master Contracts shall be awarded to all qualified Offerors submitting Proposals that have been determined to be the most advantageous to the State, considering evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP **Section 6** for further award information.

4.10 Oral Presentation

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

4.11 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 120 days following the Proposal due date and time, best and final offers if requested (see **Section 6.5.2**), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

4.12 Revisions to the RFP

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

4.13 Cancellations

- 4.13.1 The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.

- 4.13.2 The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- 4.13.3 In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled and the award processed in accordance with COMAR 21.01.03.01.A(4).
- 4.13.4 If the services that are the subject of the RFP are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the RFP may be cancelled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

4.14 Incurred Expenses

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

4.15 Protest/Disputes

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

4.16 Offeror Responsibilities

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

4.17 Acceptance of Terms and Conditions

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

4.18 Proposal Affidavit

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

4.19 Contract Affidavit

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

4.20 Compliance with Laws/Arrearages

- 4.20.1 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.
- 4.20.2 By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

4.21 Verification of Registration and Tax Payment

- 4.21.1 Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://businessexpress.maryland.gov/>
- 4.21.2 It is strongly recommended that any potential Offeror complete registration prior to the Proposal due date and time. The Offeror's failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

4.22 False Statements

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

- 4.22.1 In connection with a procurement contract a person may not willfully:
- A. Falsify, conceal, or suppress a material fact by any scheme or device.
 - B. Make a false or fraudulent statement or representation of a material fact.

- C. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- 4.22.2 A person may not aid or conspire with another person to commit an act under **Section 4.22.1**.
- 4.22.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

4.23 Payments by Electronic Funds Transfer

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

- 4.23.1 Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.
- 4.23.2 Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:
http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GA_DX10Form20150615.pdf.

4.24 Prompt Payment Policy

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

4.25 Electronic Procurements Authorized

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

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

4.26 MBE Participation Goal

4.26.1 Establishment of Goal and Subgoals

4.26.1.1 Master Contract

An overall MBE subcontractor participation goal of thirty percent (30%) as identified in the Key Information Summary Sheet has been established for this procurement. While the overall objective is to collectively achieve 30% MBE participation for all TOAs issued under the RFP, the means to achieve this aggregated 30% participation will be through the establishment, where appropriate, of a discrete MBE subcontractors participation goal for each TORFP issued (including any TORFP designated as a Small Business Reserve). Accordingly, MBE compliance will be monitored on a TOA basis rather than at the Master Contract level.

4.26.1.2 Task Order Agreement

When a Task Order procurement has a TOA value expected to exceed \$200,000 in value, and an expected overall MBE subcontractor participation goal of twenty-three (23%) or higher of the total contract dollar value, MBE subcontractor subgoals will be included in the TORFP if appropriate based upon the particular type of work involved in the TORFP and the number of certified MBEs per recommended minority subgoal classification available to perform the work.

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

Each Offeror shall complete, sign, and submit without edits, **Attachment D-1 Master** (Offeror's Acknowledgement of TORFP MBE Requirements) at the time it submits its Technical Proposal to this RFP, acknowledging the overall MBE goal established in this RFP and that the MBE goal for each subsequent TORFP will be set at the TORFP level.

4.26.2 TORFP MBE Attachments

As noted above, a discrete MBE subcontractor participation goal will be established for each TORFP issued including any TORFP designated as a Small Business Reserve. The following Minority Business Enterprise participation instructions and forms only apply to TORFPs and are provided to assist Master Contractors responding to TORFPs:

1. TORFP Attachment D-1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**must be submitted with Task Order Proposal (TOP)**)
2. TORFP Attachment D-1B Waiver Guidance (**should be submitted with TOP**)
3. TORFP Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request (**should be submitted with TOP**)
4. TORFP Attachment D-2 Outreach Efforts Compliance Statement (**should be submitted with TOP**)
5. TORFP Attachment D-3A MBE Subcontractor Project Participation Certification (**should be submitted with TOP**)

6. TORFP Attachment D-3B MBE Prime Project Participation Certification (**should be submitted with TOP**)
7. TORFP Attachment D-4A Prime Contractor Paid/Unpaid MBE Invoice Report
8. TORFP Attachment D-4B MBE Prime Contractor Report
9. TORFP Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report

A Master Contractor shall include with its TOP a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:

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

If a Master Contractor fails to submit a completed Attachment D-1A with the TOP as required, the Procurement Officer shall determine that the TOP is not reasonably susceptible of being selected for award.

- 4.26.3 Master Contractors are responsible for verifying that each MBE (including any MBE prime and MBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.
- 4.26.4 If not included with its TOP, within ten (10) Business Days from notification that it is the recommended Task Order awardee (TOA Contractor) or from the date of the actual award, whichever is earlier, the Master Contractor must provide the following documentation to the Contract Manager.
 - A. Outreach Efforts Compliance Statement (**TORFP Attachment D-2**);
 - B. MBE Subcontractor/Prime Project Participation Certification (**TORFP Attachment D-3A/3B**); and
 - C. Any other documentation required by the Contract Manager to ascertain the Master Contractor's responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

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

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

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

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

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

4.27 VSBE Goal

4.27.1 Purpose

- A. The Master Contractor shall structure its procedures for the performance of the work required in the Contract to attempt to achieve the VSBE participation goal stated in this solicitation. VSBE performance must be in accordance with this section and **Attachment E**, as authorized by COMAR 21.11.13. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and **Attachment E**.
- B. Veteran-Owned Small Business Enterprises must be verified by the Office of Small and Disadvantaged Business Utilization (OSDBU) of the United States Department of Veterans Affairs. The listing of verified VSBEs may be found at <http://www.va.gov/osdbu>.

4.27.2 VSBE Goal

- A. An overall aggregate VSBE participation goal of 5% of the total Contract dollar amount has been established for this procurement as identified in the Key Information Summary Sheet. While the overall objective is to collectively achieve five percent (5%) VSBE participation for all TOAs issued under the RFP, the means to achieve this aggregated 5% participation will be through the establishment, where appropriate, of a discrete VSBE subcontractor participation goal for each TORFP issued (including any TORFP designated as a Small Business Reserve). Accordingly, VSBE compliance will be monitored on a TOA basis rather than at the Master Contract level.
- B. Each Offeror shall complete, sign, and submit without edits **Attachment E-1 – MASTER**, Offeror's Acknowledgement of TORFP VSBE Requirements at the time it submits its Technical Proposal to this RFP.

If an Offeror fails to submit Attachment E-1 – Master with the Proposal as required, the Procurement Officer may determine that the Proposal is not reasonably susceptible of being selected for award.

- C. A Master Contractor responding to a TORFP must submit a completed VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule (TORFP **Attachment E-1**) with its TOP whereby the Master Contractor:
 - 1) Acknowledges it: a) intends to meet the VSBE participation goal; or b) requests a full or partial waiver of the VSBE participation goal. If the Master Contractor commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal; and
 - 2) Responds to the expected degree of VSBE participation as stated in the TORFP, by identifying the specific commitment of VSBEs at the time of TOP submission. The Master Contractor shall specify the percentage of contract value associated with each VSBE prime/subcontractor identified on the VSBE Participation Schedule.
- D. As set forth in COMAR 21.11.13.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the VSBE Prime Contractor performs with its own work force towards meeting up to one hundred percent (100%) of the VSBE goal.
- E. In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (**Attachment E-1**) and include information regarding the work it will self-perform. For any remaining portion of the VSBE goal that is not to be performed by the VSBE Prime, the VSBE Prime must also identify verified VSBE subcontractors used to meet the remainder of the goal.

- F. If not included with its TOP, within 10 Business Days from notification that it is the apparent task order awardee, the Master Contractor must provide the following documentation to the Contract Manager:
- 1) VSBE Project Participation Statement (**TORFP Attachment E-2**);
 - 2) If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.13.07; and
 - 3) Any other documentation required by the Contract Manager to ascertain Master Contractor responsibility in connection with the VSBE participation goal.

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

4.28 Living Wage Requirements

- A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
- B. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.
- C. The Living Wage Law applies to each Task Order Agreement (TOA) over \$100,000 issued under a TORFP. Each Task Order stands alone. Master Contractors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Task Order Proposals. If a Master Contractor fails to complete and submit the required documentation with its TOP, the State may determine the Master Contractor to not be responsible under State law.
- D. Master Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.
- 1) The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located. If the

- Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located.
- 2) The Task Order Agreement resulting from a TORFP will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Master Contractor provides 50% or more of the services. The Master Contractor must identify in its Task Order Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
 - 3) If the Master Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
 - 4) If the Master Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- E. If the Master Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.
- F. The Master Contractor shall identify in the Task Order Proposal the location from which services will be provided.
- G. **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change.

4.29 Federal Funding Acknowledgement

This Master Contract does not contain federal funds. Future Task Order Agreements may include federal funds. If so, the following provisions may apply at the task order level:

- 4.29.1 There are programmatic conditions that apply to the TOAs due to federal funding (see **Attachment G**).
- 4.29.2 The total amount of federal funds allocated for the Agency is \$(to be entered by requested agency in the TORFP) in Maryland State fiscal year (to be entered by the requesting agency in the TORFP). This represents (to be entered by requesting agency in the TOFP) % of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 4.29.3 The Contract contains federal funds. The source of these federal funds is: (to be entered by requesting agency). The CFDA number is: (to be entered by requesting agency). The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment G**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment G** and Master Contractors are to complete and submit these Attachments with their Task Order Proposals as instructed in the Attachments. Acceptance of this agreement indicates the Master Contractor's intent to comply with all conditions, which are part of the Contract.

4.30 Conflict of Interest Affidavit and Disclosure

- 4.30.1 A Master Contractor responding to a TORFP shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Task Order Proposal.

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

4.31 Non-Disclosure Agreement

4.31.1 Non-Disclosure Agreement (Offeror)

A Non-Disclosure Agreement (Offeror) is not required for this Master Contract but may be required for a Task Order Agreement.

4.31.2 Non-Disclosure Agreement (Contractor)

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

4.32 HIPAA - Business Associate Agreement

A HIPAA Business Associate Agreement is not required for this Master Contract but may be required for a Task Order Agreement. A sample HIPAA Business Associate Agreement is provided for informational purposes in **Attachment J**.

4.33 Nonvisual Access

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

4.34 Mercury and Products That Contain Mercury

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

4.35 Location of the Performance of Services Disclosure

This solicitation does not require a Location of the Performance of Services Disclosure. However, for any TOA that is anticipated to have an estimated value of \$2,000,000 or more, a

Location of Services Disclosure is required. A copy of this Disclosure is included as **Attachment L**.

4.36 Department of Human Services (DHS) Hiring Agreement

This solicitation does not require a DHS Hiring Agreement. Future TOAs may include a DHS Hiring Agreement. All Master Contractors are advised that if a TOA is awarded and the TOA includes the DHS Hiring Agreement, the successful Master Contractor will be required to complete the agreement. A copy of this Agreement is included as **Attachment O**. This Agreement must be provided within five (5) Business Days of notification of recommended award.

4.37 Small Business Reserve (SBR) Procurement

- 4.37.1 An agency may designate any qualifying TORFP issued pursuant to this RFP as a Small Business Reserve (SBR) TORFP. The resulting TOA may only be awarded to a Master Contractor that is a certified small business that meets the statutory qualifications of a small business as defined in §14-501(c) State Finance and Procurement Article, Annotated Code of Maryland, and is registered with the Department of General Services (DGS) SBR Program at the time of Task Order award.
- 4.37.2 Throughout the term of the Master Contract, Master Contractors registered under SBR guidelines shall promptly notify the Contract Manager of any change in their SBR status. Should a Master Contractor become SBR certified after award of a Master Contract, the Master Contractor shall notify and provide the Contract Manager with its DGS-assigned SBR registration number.
- 4.37.3 For the purposes of a Small Business Reserve Procurement, a small business is a for-profit business, other than a broker, that meets the following criteria:
- A. It is independently owned and operated;
 - B. It is not a subsidiary of another business;
 - C. It is not dominant in its field of operation; and
 - 1) With respect to employees, in its most recently completed three (3) fiscal years:
 - a) Its wholesale operations did not employ more than 50 persons;
 - b) Its retail operations did not employ more than 25 persons;
 - c) Its manufacturing operations did not employ more than 100 persons;
 - d) Its service operations did not employ more than 100 persons;
 - e) Its construction operations did not employ more than 50 persons; and
 - f) The architectural and engineering services of the business did not employ more than 100 persons; and
 - 2) With respect to gross sales, in its most recently completed three (3) fiscal years:
 - a) The gross sales of its wholesale operations did not exceed an average of \$4,000,000;
 - b) The gross sales of its retail operations did not exceed an average of \$3,000,000;
 - c) The gross sales of its manufacturing operations did not exceed an average of \$2,000,000;

- d) The gross sales of its service operations did not exceed an average of \$10,000,000;
- e) The gross sales of its construction operations did not exceed an average of \$7,000,000; and
- f) The gross sales of its architectural and engineering operations did not exceed an average of \$4,500,000.

D. Note: If a business has not existed for three (3) years, the employment and gross sales average or averages shall be the average for each year or part of a year during which the business has been in existence.

E. Further information on the certification process is available at eMaryland Marketplace Advantage.

4.37.4 **Ineligible Proposals.** Under a small business reserve procurement, a business that is not a certified small business is ineligible for award of a contract.

4.37.5 Before awarding a contract under a procurement designated as a small business reserve procurement, the Procurement Officer shall verify that the apparent awardee is certified by the Governor's Office of Small, Minority & Women Business Affairs as a small business. A procurement contract award under a small business reserve may not be made to a business that has not been SBR certified.

4.38 Maryland Healthy Working Families Act Requirements

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

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5 Proposal Format

5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes via eMMA (see sections 5.3 and 5.4):

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

5.2 Proposal Delivery and Packaging

Proposals will be accepted through the State's eMaryland Marketplace Advantage (eMMA) e-Procurement system. Instructions on how to submit proposals electronically can be found at: <https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/08/5-eMMA-QRG-Responding-to-Solicitations-Double-Envelope-v2.pdf>.

5.2.1 Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.,

5.2.2 Offerors may submit Proposals by electronic means as described.

Electronic means Proposals will be accepted through the State's eMaryland Marketplace Advantage (eMMA) e-Procurement system. Instructions on how to submit proposals electronically can be found at: <https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/08/5-eMMA-QRG-Responding-to-Solicitations-Double-Envelope-v2.pdf>

- A. Any Offeror wishing to deliver a hard copy (paper) Proposal shall contact the Procurement Officer for instructions.
- B. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.
- C. The Procurement Officer will only contact those Offerors with Proposals that are reasonably susceptible for award.

5.2.3 Two Part Submission:

- A. Technical Proposal consisting of:
 - 1) Technical Proposal and all supporting material in Microsoft Word format, version 2007 or greater,
 - 2) Technical Proposal in searchable Adobe PDF format,
 - 3) a second searchable Adobe copy of the Technical Proposal, with confidential and proprietary information redacted (see **Section 4.8**), and

Financial Proposal consisting of:

- 1) Financial Proposal and all supporting material in Excel format,
- 2) Financial Proposal in searchable Adobe PDF format,
- 3) a second searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see **Section 4.8**).

5.3 Volume I - Technical Proposal

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

- 5.3.1 In addition to the instructions below, responses in the Offeror's Technical Proposal shall reference the organization and numbering of Sections in the RFP (e.g., "Section 2.2.1 Response . . ."; "Section 2.2.2 Response . . ."). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").
- 5.3.2 The Technical Proposal shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:
- A. Title Page and Table of Contents (Submit under TAB A)
- The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.
- B. Claim of Confidentiality (If applicable, submit under TAB A-1)
- Any information which is claimed to be confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal, and if applicable, separately in the Financial Proposal. An explanation for each claim of confidentiality shall be included (see **Section 4.8 "Public Information Act Notice"**). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included.
- C. Offeror Information Sheet and Transmittal Letter (Submit under TAB B)
- The Offeror Information Sheet (see **Appendix 2**) and a Transmittal Letter shall accompany the Technical Proposal. The purpose of the Transmittal Letter is to transmit the Proposal and acknowledge the receipt of any addenda to this RFP issued before the Proposal due date and time. Transmittal Letter should be brief, be signed by an individual who is authorized to commit the Offeror to its Proposal and the requirements as stated in this RFP.
- D. Executive Summary (Submit under TAB C)
- The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary."
- In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see **Section 4.16 "Offeror Responsibilities"**).
- The Executive Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (**Attachment M**), or any other exhibits or attachments. Acceptance or rejection of exceptions is within the sole discretion of the State. **Exceptions to terms and conditions, including requirements, may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.**
- E. Master Contractor Minimum Qualifications Documentation (If applicable, Submit under TAB D)
- The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP **Section 1**. If references are required in **RFP Section 1**, those references

shall be submitted in this section and shall contain the information described in both **Section 1** and **Section 5.3.2.I**.

- F. Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E)
- 1) The Offeror shall address each RFP requirement (RFP **Section 2** and **Section 3**) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in **Section 2** and **Section 3** in order, and shall contain a cross reference to the requirement.
 - 2) The Offeror shall provide a general description of its capabilities, an outline of its overall management concepts, and a project management plan, including project control mechanisms.
 - 3) 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.
 - 4) The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Manager should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in **Section 3.8**.
- G. Experience and Qualifications of Master Contractor's Representative (Submit under TAB F)
- The Offeror shall identify the qualifications of the Master Contractor's Representative proposed to be utilized under the Contract including information in support of the Personnel Experience criteria in **Section 3.10.2**. Specifically, the Offeror shall:
- 1) Describe in detail how the proposed Master Contractor's Representative's experience and qualifications relate to its specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan.
 - 2) Include individual resumes for Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation.
 - 3) Include letters of intended commitment to work on the project, including letters from any proposed subcontractor(s). Offerors should be aware of restrictions on substitution of Key Personnel prior to RFP award (see Substitution Prior to and Within 30 Days After Contract Execution in Section 3.11.5).
 - 4) Provide an Organizational Chart outlining Personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.
 - 5) If proposing differing personnel work hours than identified in the RFP, describe how and why it proposes differing personnel work hours.

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

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

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

I. References (Submit under TAB H)

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

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

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

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

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

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

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

K. Financial Capability (Submit under TAB J)

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

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

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

L. Certificate of Insurance (Submit under TAB K)

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

M. Subcontractors (Submit under TAB L)

The Offeror shall provide a complete list of all subcontractors that ~~will work on~~ **are included in** the Master Contract **proposal**, ~~if the Offeror receives an award, including those utilized in meeting the MBE and VSBE subcontracting goal(s), if applicable.~~ This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. **At the TORFP level additional subcontractors not listed in the Master Contract proposal may be utilized.**

N. Legal Action Summary (Submit under TAB M)

This summary shall include:

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

O. Economic Benefit Factors (Submit under TAB N)

Offerors are not required to provide a Proposal narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of this Master

Contract. However, future TORFPs may require a narrative of economic benefit factors. See RFP Section 2.3.3J. Task Order Proposals will be evaluated to access the benefit to Maryland's economy specifically offered. See COMAR 21.05.03.03A(3) and RFP Section 2.3.3J.

- P. Technical Proposal - Required Forms and Certifications (Submit under TAB O)
- 1) All forms required for the Technical Proposal are identified in Table 1 of **Section 7** – RFP Attachments and Appendices. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the Technical Proposal, under TAB O.
 - 2) Offerors shall furnish any and all agreements and terms and conditions the Offeror expects the State to sign or to be subject to in connection with or in order to use the Offeror's services under this Contract. This includes physical copies of all agreements referenced and incorporated in primary documents, including but not limited to any software licensing agreement for any software proposed to be licensed to the State under this Contract (e.g., EULA, Enterprise License Agreements, Professional Service agreement, Master Agreement) and any AUP. The State does not agree to terms and conditions not provided in an Offeror's Technical Proposal and no action of the State, including but not limited to the use of any such software, shall be deemed to constitute acceptance of any such terms and conditions. Failure to comply with this section renders any such agreement unenforceable against the State.
 - 3) For each service, hardware or software proposed as furnished by a third-party entity, Offeror must identify the third-party provider and provide a letter of authorization or such other documentation demonstrating the authorization for such services. In the case of an open source license, authorization for the open source shall demonstrate compliance with the open source license.
 - 4) A Letter of Authorization shall be on letterhead or through the provider's e-mail. Further, each Letter of Authorization shall be less than twelve (12) months old and must provide the following information:
 - i) Third-party POC name and alternate for verification
 - ii) Third-party POC mailing address
 - iii) Third-party POC telephone number
 - iv) Third-party POC email address
 - v) If available, a Re-Seller Identifier

5.4 Volume II – Financial Proposal

The Financial Proposal shall contain all price information in the format specified in **Attachment B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself. Offerors shall provide prices for Contract **Base** years one through five for all nine (9) categories **and Offerors shall provide prices for Contract Option years one through five for all nine (9) categories.** These are the maximum prices the State will pay under any TORFP or TOA for all proposed labor categories throughout the Contract term

Do not amend, alter, or leave blank any items on the Financial Proposal Form or include additional clarifying or contingent language on or attached to the Financial Proposal Form.

Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by the Department.

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6 Evaluation and Selection Process

6.1 Evaluation Committee

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

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

6.2 Technical Proposal Evaluation Criteria

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

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

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

6.2.2 Experience and Qualifications of Proposed Contractor's Representative and Other Staff (See RFP § 5.3.2.G)

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

6.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (see **Section 6.5.2.D**) will be evaluated based on the labor category rates within the stated guidelines set forth in this RFP and as submitted on **Attachment B** - Financial Proposal Form. Offerors shall have provided prices for Contract years one through five for all nine (9) labor categories. These are the maximum rates the State will pay under any TORFP or TOA for all proposed labor categories throughout the Contract term.

6.4 Reciprocal Preference

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

- A. The Maryland resident business is a responsible Offeror;
- B. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;
- C. The other state gives a preference to its resident businesses through law, policy, or practice; and
- D. The preference does not conflict with a federal law or grant affecting the procurement Contract.

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

6.5 Selection Procedures

6.5.1 General

- A. Master Contracts will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The CSP method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.
- B. With or without discussions, the State may determine the Offeror to be not responsible or the Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award.

6.5.2 Selection Process Sequence

- A. A determination is made that the Offeror's Acknowledgement of TORFP MBE Participation Requirements (**Attachment D-1 – Master**) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the Offeror's Acknowledgement of TORFP Participation Requirements (**Attachment E-1 – Master**) is included and is properly completed, if there is a VSBE goal.
- B. Technical Proposals are evaluated for technical merit. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.
- C. Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.
- D. The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.
- E. When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO. **Offerors may only perform limited substitutions of proposed personnel as allowed in Section 3.11 (Substitution of Personnel).**

6.5.3 Award Determination

Upon completion of the Technical Proposal and Financial Proposal evaluations, the Procurement Officer will recommend award of Master Contract(s) to all responsible technically qualified Offeror(s) that are reasonably susceptible of being selected for award.

6.6 Documents Required upon Notice of Recommendation for Contract Award

As stated in RFP Section 4.9, Master Contracts shall be awarded to all qualified Offerors submitting Proposals that have been determined to be the most advantageous to the State, considering the evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing audit services.

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

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7 RFP ATTACHMENTS AND APPENDICES

Instructions Page

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

For documents required as part of the Proposal:

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

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

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

Table 1: RFP ATTACHMENTS AND APPENDICES

Applies?	When to Submit	Label	Attachment Name
Y	Before Proposal	A	Pre-Proposal Conference Response Form
Y	With Proposal	B	Financial Proposal Instructions and Form
Y	With Proposal	C	Bid/Proposal Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf)
Y	With Proposal	D	MBE Form D-1-Master
Y	When responding to TORFP with MBE goals	D	MBE Forms D-1A, D-1B, D-1C, D-2, D-3A, D-3B (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) Important: Attachment D-1C, if a waiver has been requested, is also required when responding to a TORFP with MBE goals.
Y	When responding to TORFP with MBE goals as directed in forms	D	MBE Forms D-4A, D-4B, D-5 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf)

Applies?	When to Submit	Label	Attachment Name
Y	With Proposal	E	VSBE Form E-1-Master
Y	When responding to TORFP with VSBE goal	E	VSBE Forms E-1, E-1B, E-2, E-3 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf) Important: Attachment E-1B, if a waiver has been requested, is also required when responding to a TORFP with a VSBE goal
Y	When responding to TORFP with Living Wage Requirement	F	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf)
Y	When responding to TORFP using federal funds	G	Federal Funds Attachments (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf)
Y	With Proposal and in response to TORFPs	H	Conflict of Interest Affidavit and Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf)
Y	5 Business Days after recommended award – However, suggested with Proposal	I	Non-Disclosure Agreement (Contractor) (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf)
Y	When responding to TORFP subject to HIPAA	J	HIPAA Business Associate Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPABusinessAssociateAgreement.pdf)
Y	When responding to TORFP estimated to be \$2,000,000 or more	L	Location of the Performance of Services Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf)
Y	5 Business Days after recommended award	M	Sample Contract (included in this RFP)
Y	5 Business Days after recommended award	N	Contract Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf)

Applies?	When to Submit	Label	Attachment Name
Y	When responding to TORFP that has DHS Hiring Agreement	O	DHS Hiring Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf)
Appendices			
Applies?	When to Submit	Label	Attachment Name
Y	n/a	1	Abbreviations and Definitions (included in this RFP)
Y	With Proposal	2	Offeror Information Sheet (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf)
Y	n/a	3	Sample Labor Category Summary Sheet
Y	n/a	4	Sample Audit Services Task Order Agreement
Additional Submissions			
Applies?	When to Submit	Label	Document Name
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see Section 3.6); 1 copy
Y	10 Business Days after recommended award		PEP; 1 copy

Attachment A. Pre-Proposal Conference Response Form

Solicitation Number 001B0600234

Audit Services for Maryland State Agencies

A Pre-Proposal conference will be held on February 27, 2020 at 100 Community Place, 1st Floor Room B, Crownsville, Maryland 21032

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

Gregory Dennis, DGS
E-mail: gregory.dennis@maryland.gov

Please indicate:

- _____ Yes, the following representatives will be in attendance.
Attendees (Check the RFP for limits to the number of attendees allowed):
1.
2.
3.
_____ No, we will not be in attendance.

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

Offeror: _____
Offeror Name (please print or type)

By: _____
Signature/Seal

Printed Name: _____
Printed Name

Title: _____
Title

Date: _____
Date

Attachment B. Financial Proposal Instructions & Form

B-1 Financial Proposal Instructions

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

Follow these instructions carefully when completing your Financial Proposal Form:

A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.

B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.

C) All calculations shall be rounded to the nearest cent, e.g., .344 shall be .34 and .345 shall be .35.

D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.

E) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.

F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.

G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03.F, and may cause the Proposal to be rejected.

H) If option years are included, Offerors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.

I) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.

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

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

B-1 Financial Proposal Form

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

See separate Excel Financial Proposal Form labeled:

Audit Services Master Contract Price From RFP # 001B0600234.xls.

Attachment C. Proposal Affidavit

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf.

Attachment D. Minority Business Enterprise (MBE) Forms

**ATTACHMENT D-1 – MASTER
OFFEROR’S ACKNOWLEDGEMENT OF TORFP MBE PARTICIPATION REQUIREMENTS**

Each Offeror shall complete, sign and submit without edits, this form, Offeror’s Acknowledgement of Task Order Request for Proposals MBE Participation Requirements with its Technical Proposal to this RFP.

I acknowledge that the overall MBE goal established for this **RFP No. 001B0600234**, Audit Services Contract is **thirty percent (30%)** and that the MBE goal for each subsequent Task Order Request for Proposals (TORFP) will be set at the TORFP level.

In conjunction with the technical response that I submit in response to this **RFP No. 001B0600234**. Audit Services Contract, I affirm that if I am awarded a Master Contract under this RFP, and I respond to any TORFP that contains an MBE Participation commitment, I commit to make a good faith effort to achieve the MBE goal established is the TORFP.

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

Offeror’s Company Name

Signature of Offeror and Date

Offeror’s Printed Name and Title

Offeror’s Telephone Number

Offeror’s Email Address: _____

Offeror’s FEIN: _____

Offeror’s Address: _____

See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf> for MBE forms, Attachments D-1A through D-5, provided for information purposes only relative to this Audit Services Contract RFP. They are not to be completed or submitted with the Offeror’s response to this RFP. These MBE forms are required to be completed and submitted after Master Contract award with the Master Contractor’s Task Order Proposal responses pursuant to any future TORFPs issued under this RFP.

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

**ATTACHMENT E-1 – MASTER
OFFEROR’S ACKNOWLEDGEMENT OF TORFP VSBE PARTICIPATION REQUIREMENTS**

Each Offeror shall complete, sign and submit without edits, this form, Offeror’s Acknowledgement of Task Order Request for Proposals VSBE Participation Requirements with its Technical Proposal to this RFP.

I acknowledge that the overall VSBE goal established for this **RFP No. 001B0600234**, Audit Services Contract is **five percent (5%)** and that the VSBE goal for each subsequent Task Order Request for Proposals (TORFP) will be set at the TORFP level.

In conjunction with the technical response that I submit in response to this **RFP No. 001B0600234**. Audit Services Contract, I affirm that if I am awarded a Master Contract under this RFP, and I respond to any TORFP that contains a VSE Participation commitment, I commit to make a good faith effort to achieve the VSBE goal established is the TORFP.

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

Offeror’s Company Name

Signature of Offeror and Date

Offeror’s Printed Name and Title

Offeror’s Telephone Number

Offeror’s Email Address: _____

Offeror’s FEIN: _____

Offeror’s Address: _____

See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf> for VSBE forms, Attachments E-1 through E-4, provided for information purposes only relative to this Audit Services Contract RFP. They are not to be completed or submitted with the Offeror’s response to this RFP. These VSBE forms are required to be completed and submitted after Master Contract award with the Master Contractor’s Task Order Proposal responses pursuant to any future TORFPs issued under this RFP.

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

TO BE SUBMITTED UNDER THE TORFP PROCESS AND NOT WITH THE OFFEROR'S TECHNICAL PROPOSAL IN RESPONSE TO THIS TORFP.

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

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

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

Attachment G. Federal Funds Attachments

This solicitation does not require a Federal Funds Attachment but a TORFP might. For any future TORFP that require a Federal Funds Attachment, see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf>.

Attachment H. Conflict of Interest Affidavit and Disclosure

This solicitation does not require a Conflict of Interest Affidavit and Disclosure but a TORFP might. For any future TORFP that require a Conflict of Interest Affidavit and Disclosure, see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentH-ConflictofInterestAffidavit.pdf>.

Attachment I. Non-Disclosure Agreement (Contractor)

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

Attachment J. HIPAA Business Associate Agreement

This solicitation does not require a HIPAA Business Associate Agreement but a TORFP might. For any future TORFP that require a HIPAA Business Associate Agreement, see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf>.

Attachment K. Mercury Affidavit

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

Attachment L. Location of the Performance of Services Disclosure

This solicitation does not require a Location of the Performance of Services Disclosure but a TORFP might. For any future TORFP that require a Location of the Performance of Services Disclosure, see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf>.

Attachment M. Contract

DEPARTMENT OF GENERAL SERVICES (DGS)

Audit Services for Maryland State Agencies

001B0600234

THIS CONTRACT (the “Contract”) is made this ____ day of _____, 20__ by and between _____ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND DEPARTMENT OF GENERAL SERVICES (“DGS” or the “Department”).

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

1. Definitions

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract Manager” means the State individual designated by the State on the Master Contract or a successor designated by the Department.
- 1.3 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace Advantage vendor ID number is (eMMA Number).
- 1.4 “Financial Proposal” means the Contractor’s [pick one: Financial Proposal or Best and Final Offer (BAFO)] dated _____ (Financial Proposal date or BAFO date).
- 1.5 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.6 “RFP” means the Request for Proposals for Audit Services for Maryland State Agencies, Solicitation # solicitationNumber, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.7 “State” means the State of Maryland.
- 1.8 “Task Order Agreement” (TOA or TO Agreement) means a signed agreement between the Department and the Master Contractor selected via a TORFP to perform a TO Agreement.
- 1.9 “Task Order Proposal” (TOP or TO Proposal) means the technical and financial response by a Master Contractor to a TORFP.
- 1.10 “Task Order Request for Proposals” (TORFP) means a solicitation document containing a description by the State of the individual project for which proposals will be solicited.
- 1.11 “Technical Proposal” means the Contractor’s Technical Proposal dated. _____ (Technical Proposal date), as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.12 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.13 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

2. Scope of Contract

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

Exhibit A – The RFP

Exhibit B – Task Order Agreement (when executed)

Exhibit C – TORFP (when released)

Exhibit D – The Contract Affidavit, executed by the Contractor and dated (date of Attachment N)

Exhibit E – Contractor’s Response to the TORFP (when submitted)

Exhibit F – The Technical Proposal

Exhibit G – The Financial Proposal

2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance

3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the “Effective Date”) and shall continue until _____ (“Initial Term”).

3.2 In its sole discretion, the Department shall have the unilateral right to extend the Contract for 1 (one), successive 5 (five) year renewal option at the prices established in the Contract. “Term means the Initial Term and any Renewal Term(s).

3.3 The Contractor’s performance under the Contract shall commence as of the date provided in a written NTP.

3.4 The Contractor’s obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.
- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor as required by RFP section 3.3.
- (a) The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:
 - (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
 - (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.
 - (b) The State is not liable for interest:
 - (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
 - (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.
 - (c) Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.
 - (d) Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

5. Rights to Records

5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State, and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that

specifically provided by this Contract. The Contractor's (audit firm) work papers are the property of the Contractor and are excluded from the documents mentioned above and shall be available to the State at any time. The State shall have the right to access and use the work papers without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.
- 6. Exclusive Use**
- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.
- 7. Patents, Copyrights, and Intellectual Property**
- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the Department or licensed by the Department from third parties, including all information provided by the Department to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the

- Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Department will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State’s rights or interests, without the State’s prior written consent.
- 7.4 Without limiting Contractor’s obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetic>) (each an “Open Source License”). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled

by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.

- 7.7 The Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without the Department's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

8. Confidential or Proprietary Information and Documentation

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

9. Loss of Data

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

10. Indemnification and Notification of Legal Requests

- 10.1 At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities,

losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.

- 10.2 The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 10.3 Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request.

11. Non-Hiring of Employees

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

12. Disputes

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

13. Maryland Law Prevails

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.

13.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

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

15. Contingent Fee Prohibition

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

16. Non-Availability of Funding

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

17. Termination for Default

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

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated

with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

19. Delays and Extensions of Time

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

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

20. Suspension of Work

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

21. Pre-Existing Regulations

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

22. Financial Disclosure

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

23. Political Contribution Disclosure

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

April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

24. Retention of Records

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

25. Right to Audit

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

26. Compliance with Laws

The Contractor hereby represents and warrants that:

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

27. Cost and Price Certification

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

28. Subcontracting; Assignment

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

29. Limitations of Liability

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 7 "Patents, Copyrights, Intellectual Property"** of this Contract;
 - (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
 - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited.
 - (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.
- 29.2 Contractor's indemnification obligations for Third party claims arising under Section 6 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.
- 29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

30. Commercial Nondiscrimination

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

- to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.
- 30.3 The Contractor shall include the language from 30.1, or similar clause approved in writing by the Department, in all subcontracts.
- 31. Prompt Pay Requirements**
- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
 - (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
 - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
 - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:

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

32. Living Wage

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

33. Use of Estimated Quantities

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

34. Risk of Loss; Transfer of Title

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

35. Effect of Contractor Bankruptcy

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

36. Miscellaneous

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

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

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

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

37. Contract Manager and Procurement Officer

37.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Manager may authorize in writing one or more State representatives to act on behalf of the Contract

Manager in the performance of the Contract Manager’s responsibilities. The Department may change the Contract Manager at any time by written notice to the Contractor.

- 37.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.

38. Notices

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

If to the State:

contractManager Name

contractManagerAddress

Phone Number: contractManagerPhoneNumber

E-Mail: contractManagere-mail

With a copy to:

procurementOfficerName

Department of General Services (DGS)

procurementOfficerAddress

Phone Number: procurementOfficerPhoneNumber

E-Mail: procurementOfficerE-mail

If to the Contractor:

(Contractor’s Name)

(Contractor’s primary address)

Attn: _____

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

Parent Company Guarantor

Contact: _____

Attn: _____

39. Liquidated Damages for MBE

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

- 39.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against

liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$(to be determined by requesting agency and entered into the TORFP/TOA) per day until the monthly report is submitted as required.
- (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$(to be determined by requesting agency and entered into the TORFP/TOA) per MBE subcontractor.
- (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- (e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$(to be determined by requesting agency and entered into the TORFP/TOA) per day until the undisputed amount due to the MBE subcontractor is paid.

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

40. Parent Company Guarantee (If applicable)

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

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

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

HIPAA clauses do not apply to this Master Contract but may apply to TORFP issued under this Master Contract.

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

Contractor

State of Maryland
DEPARTMENT OF GENERAL SERVICES
(DGS)

By:

By: agencyContractSigner,
agencyContractSignerTitle

Date

PARENT COMPANY (GUARANTOR) (if applicable)

By:

By:

Date

Date

Approved for form and legal sufficiency
this ____ day of _____, 20__.

Assistant Attorney General

APPROVED BY BPW: _____

(Date)

(BPW Item #)

Attachment N. Contract Affidavit

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

Attachment O. DHS Hiring Agreement

This solicitation does not require a DHS Hiring Agreement, but a TORFP might. For any future TORFP that require a DHS Hiring Agreement, see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf>.

Appendix 1. – Abbreviations and Definitions

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

- A. ADPICS – Advanced Purchasing and Inventory Control System.
- B. Agency/Agencies – All State of Maryland government entities, including the University System of Maryland.
- C. Audit Services (AS) – The systematic and independent examination of data, statements, records, operations, and/or performance (financial or otherwise) of an agency, program, fund, program, or activity for a stated purpose; may include but is not limited to financial audits, agreed upon procedures, compliance, operational audits, and reconciliations.
- D. Awardee – One of the selected Offerors for the services required in this RFP.
- E. Business Day(s) – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
- F. Certified Public Accountant (CPA) – The statutory title of a qualified accountant in the United States who has passed the Uniform Certified Public Accountant Examination and has met additional State education and experience requirements for membership in the respective professional accounting bodies and certified as a CPA.
- G. Certified Public Accounting Firm – A firm consisting of one or more Certified Public Accountants that serves clients such as businesses (retailers, manufacturers, service companies, etc.), individuals, nonprofits, and governments.
- H. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
- I. Contract(s) or Master Contract(s) – The Contract(s) awarded to the successful Offeror(s) pursuant to this RFP. The Contract will be in the form of **Attachment M**.
- J. Contract Manager (CM) – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring the daily activities of the Master Contract and providing guidance to Master Contractors and user State Agencies to ensure compliance with the terms and conditions of the Contracts, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Manager may authorize in writing one or more State representatives to act on behalf of the Contract Manager in the performance of the Contract Manager’s responsibilities. The Department may change the CM at any time by written notice to the Contractors.
- K. Contractor or Master Contractor – Each Offeror awarded a Master Contract as a result of this RFP.
- L. Contractor Personnel – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this RFP.
- M. Contractor’s Representative (CR) – Person designated as the Master Contractor’s single point-of-contact with the authority and knowledge to act on behalf of the Master Contractor for TORFP notifications, Task Orders, and Master Contract matters. This is considered to be a Key Personnel position.
- N. Department of General Services or (DGS or the “Department”).

- O. eMMA – eMaryland Marketplace Advantage (see RFP **Section 4.2**).
- P. Fixed Hourly Labor Category Rates – The Fully Loaded hourly rates as established in the Master Contract to be utilized by the Master Contractor upon proposing and executing services under the Master Contract and Task Order Agreements (TOAs). The rates quoted in a Master Contractor’s Financial Task Order Proposal (TOP) in response to a Task Order Request for Proposals (TORFP) may not exceed the Fully Loaded Hourly Labor Category Rates approved in the Master Contract for the applicable Labor Category and Contract Year. Master Contractors may propose lower rates in response to TORFPs.
- Q. Fully Loaded – The inclusion in Labor Category billing rates of all profit and direct and indirect costs associated with performing a Task Order Agreement. The indirect costs shall include all costs that would normally be considered general and administrative, and/or Routine Travel costs, or which in any way are allocated by the Master Contractor against direct labor hours as a means of calculating profit or recouping costs which cannot be directly attributable to a Task Order Agreement. Non-Routine Travel costs will be identified in a TORFP, when appropriate.
- R. Key Personnel – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See RFP **Section 3.10**. The personnel identified and proposed in the Offeror’s Technical Proposal for the position of Contractor’s Representative, which is incorporated into the Master Contract by reference upon award to the Offeror. Such identified Key Personnel perform continuously for the duration of the Master Contract and cannot be substituted without the prior written approval of the Contract Manager. Any personnel proffered in response to a TORFP are Key Personnel and may include the Contractor’s Representative and staff identified in a Master Contractor’s TOP.
- S. Labor Categories – See RFP Section 2.9 and the **Master Contractor’s Summary of Approved Labor Categories and Minimum Requirements Table**.
- T. 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.
- U. Master Contract(s) or Contract(s) – The Contract(s) awarded to the successful Offeror(s) pursuant to this RFP. The Contract(s) will be in the form of Attachment M.
- V. Master Contractor or Contractor – Each Offeror awarded a Master Contract as a result of this RFP.
- W. Master Contractor’s Representative – Same as Contractor’s Representative.
- X. 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.
- Y. Normal State Business Hours - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
- Z. Not-To-Exceed (NTE) – The dollar amount at which the TOA Contractor must stop performing any services for which it would seek payment beyond. See RFP Section 2.4 for more information.
- AA. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Manager

- regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- BB. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
- CC. Offeror – An entity that submits a Proposal in response to this RFP.
- DD. Personally Identifiable Information (PII) – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- EE. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**), and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
- FF. Proposal – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
- GG. Protected Health Information (PHI) – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- HH. Qualified Offeror – An Offeror that is determined to be responsible and whose Technical Proposal is determined to be reasonably susceptible of being selected for award as a Master Contractor.
- II. Request for Proposals (RFP) – This Request for Proposals issued by the Department of General Services (DGS), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
- JJ. Sensitive Data - Means PII; PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- KK. State – The State of Maryland.
- LL. Source Code – Executable instructions for Software in its high level, human readable form which are in turn interpreted, parsed and/or compiled to be executed as part of a computing system.
- MM. Suspended – The status of a Master Contractor that is no longer able to participate in the TORFP process as per RFP Section 2.6.
- NN. Task Order Agreement (TOA) – An executed agreement between DGS and the Master Contractor(s) selected to perform an audit on the behalf of a particular State agency in response to a Task Order Request for Proposals. All general terms and conditions in the Master Contract apply to TOAs. A TOA may not conflict with or supersede the Master Contract’s term (period of performance), or terms and conditions. See Appendix 4 as an example.

- OO. Task Order Manager (TOM) – The specific State employee identified in a TORFP or its TOA, who will perform the management functions for the State for that respective TOA.
- PP. Task Order Proposal (TOP) – The specific technical and financial response by a Master Contractor to a TORFP.
- QQ. Task Order Request for Proposals (TORFP) – Describes the scope of work and performance requirements of the audit services as required by an Agency. A TORFP is subject to the labor categories defined in this RFP and its terms and conditions may not conflict with or supersede any provision of the Master Contract.
- RR. TOA Contractor – A Master Contractor awarded a Task Order Agreement under a TORFP.
- SS. Total Proposal Price - The Offeror's total price for goods and services in response to this solicitation, included in Financial Proposal **Attachment B** – Financial Proposal Form.
- TT. Travel – An expense incurred by the Master Contractor for travelling while providing audit services under a TOA, the reimbursement of which depends on whether the travel is Routine or Non-Routine:
1. Routine Travel – For travel within a 50 mile radius of the requesting agency's base location, as identified in the TORFP, or the Master Contractor's facility, whichever is closer to the applicable audit site, there is no payment for labor hours for travel time or reimbursement for any travel expenses for work performed within these radiuses or at the Master Contractor's facility.
 2. Non-Routine Travel – Travel which is beyond the 50 mile radius of agency's base location, as identified in the TORFP, or the Master Contractor's facility, whichever is closer to the audit site. Allowable Non-routine travel will be identified within a TORFP or TOA, if appropriate, and will be reimbursed according to the State's current travel regulations and reimbursement rates, which can be found at www.dbm.maryland.gov – search: Fleet Management.
- UU. Veteran-owned Small Business Enterprise (VSBE) – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

Appendix 2. – Offeror Information Sheet

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

Appendix 4. – Sample Task Order Agreement

**MASTER CONTRACT No.
TASK ORDER AGREEMENT
AUDIT TORFP NO. ASC-202X-XX-XXX(Agency)
PURCHASE ORDER NO.: _____**

This Task Order Agreement (“TOA”) is made this ____ day of _____, 202X by and between _____ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND DEPARTMENT OF GENERAL SERVICES (“DGS” or the “Department”).

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

1. Definitions. In this Agreement, the following words have the meanings indicated:
 - a. “Agency” – A State agency identified in a TORFP.
 - b. “AUDIT TORFP” means the Department of General Services, Task Order Request for **ASC-202X-XX-XXX(Agency)**, dated _____.
 - c. “Contract Manager” means the State individual designated by the State on the Master Contract or a successor designated by the Department.
 - d. “DGS Procurement Officer” means the State individual designated by the State on the Master Contract or a successor designated by the Department.
 - e. “State” means the State of Maryland.
 - f. “TOA” means this Task Order Agreement.
 - g. “TOA Contractor” means the Master Contractor selected to perform the work identified in AUDIT TORFP No. **ASC-202X-XX-XXX(Agency)**.
 - h. “TOA Contractor’s Certificate of Confidentiality” means TORFP’s completed form for the TOA Contractor’s Certificate of Confidentiality, dated _____, that becomes Exhibit D to the TOA.
 - i. “TOA Contractor’s Non-Disclosure Agreement” means the TOFRP’s completed form for the TOA Contractor’s Non-Disclosure Agreement, dated _____, that becomes Exhibit E to the TOA.
 - h. “TOM” means the agency Task Order Manager or a successor assigned by the Agency.
 - i. “TOP-Financial Proposal” means TOA Contractor’s financial response or Best and Final Offer (BAFO) dated _____ to the Audit TORFP.
 - j. “TOP-Technical Proposal” means TOA Contractor’s technical response dated _____ to the Audit TORFP, as modified and supplemented by the TOA Contractor’s response to requests for clarifications and requests for cure, and by any BAFO.
2. Scope of Work.
 - 2.1 The TOA Contractor shall, in full satisfaction of the specific requirements of this TOA, provide the services set forth in the Master Contract and the TORFP’s Section 6.0, General TOP Requirements, and Attachment A, Scope of Work of AUDIT TORFP No. **ASC-202X-XX-XXX(Agency)**.

- 2.2 These services shall be provided in accordance with the Master Contract, this TOA, and the following exhibits, which are listed below and incorporated herein by reference. If there is any conflict among the Master Contract, this TOA, and these Exhibits, the terms of the Master Contract shall govern. If there is any conflict among this TOA and these Exhibits, the following order of precedence shall determine the prevailing provision:
- A) This TOA, dated _____;
 - B) Exhibit A, AUDIT TORFP, ASC-202X-XX-XXX(Agency), dated _____;
 - C) Exhibit B, TOA Contractor's TOP-BAFO, dated _____;
 - D) Exhibit C, Master Contractor's TOP-Technical, dated _____;
 - E) Exhibit D, TOA Contractor's Certificate of Confidentiality; and
 - F) Exhibit E, TOA Contractor's Non-Disclosure Agreement.
- 2.3 The DGS Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the TOA. No other order, statement, or conduct of the DGS Procurement Officer or any other person shall be treated as a change or entitle the TOA Contractor to an equitable adjustment under this section. Except as otherwise provided in this TOA, if any change under this section causes an increase or decrease in the TOA 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 TOA price shall be made and the TOA modified in writing accordingly. The TOA Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the TOA Contractor shall be allowed if asserted after final payment under this TOA. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause of the Master Contract. Nothing in this section shall excuse the TOA Contractor from proceeding with the TOA as changed.
3. Time for Performance.
- 3.1 Unless terminated earlier as provided in the Master Contract, the TOA Contractor shall provide the services described in its TOP and in accordance with the Audit TORFP. The term of this TOA is for a period that commences on the date of the initial Notice to Proceed and terminates _____. The TOA Contractor shall provide services upon receipt of a Notice to Proceed from the Contract Manager.
4. Consideration and Payment
- 4.1 The consideration to be paid to the TOA shall be a Not-To-Exceed of \$ _____. **For labor, only time actually worked per the TORFP's proposed and approved labor classifications and labor rates may be invoiced. The fixed Fully-Loaded Labor Category Hourly Rates shall be no greater than what was proposed in the TOA Contractor's Master Contract or applicable TOP for the applicable TORFP.** Any work performed by the TOA Contractor in excess of the Not-To-Exceed ceiling amount of TOA without the prior written approval of the Contract Manager is at the TOA Contractor's risk of non-payment. All invoices must be presented with appropriate Time Card backup as noted in the TORFP's Section 2.
- 4.2 Each invoice for services rendered must include the TOA Contractor's Federal Tax Identification Number which is **XX-XXXXXXX**. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time-to-time amended, are prohibited. Invoices must be submitted to the Agency TOM unless otherwise specified herein.

- 4.3 In addition to any other available remedies, if, in the opinion of the DGS Procurement Officer, the TOA Contractor fails to perform in a satisfactory and timely manner, the DGS Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the TOA Contractor to be reduced or withheld until such time as the TOA Contractor meets performance standards as established by the DGS Procurement Officer.
5. Liquidated Damages
- 5.1 The TOA requires the TOA Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the TOA Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the TOA Contractor does not comply in good faith with the requirements of the MBE Program and MBE TOA provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.
- 5.2 Therefore, upon issuance of a written determination by the State that the TOA Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE TOA provisions, the TOA Contractor shall pay liquidated damages to the State at the rates set forth below. The TOA Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The TOA Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$(_____) per day until the monthly report is submitted as required.
 - (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$(_____) per MBE subcontractor.
 - (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a TOA with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the TOA.
 - (d) Failure to meet the TOA Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
 - (e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Master Contract: \$(_____) per day until the undisputed amount due to the MBE subcontractor is paid.
- 5.3 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Master Contract or this TOA and exercise any and all other rights or remedies which may be available under the Master Contract or Law.

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

(Master Contractor)

Maryland Department of General Services

Signature:

Signature:

By:

By: _____, Contract Manager

Date:

Date:

Witness: _____

Witness: _____