



**DEPARTMENT OF BUDGET &  
MANAGEMENT**

**REQUEST FOR PROPOSALS (RFP)**

**SOLICITATION NO. 050B7400008**

**Issue Date: March 1, 2017**

**Including Changes Made by Amendment 1, Issued March 9, 2017,  
Amendment 2, Issued March 23, 2017, and  
Amendment 3, Issued March 29, 2017**

**CUSTOMER SERVICE TRAINING CONTRACT**

**NOTICE**

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

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

**STATE OF MARYLAND  
NOTICE TO VENDORS**

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

**Title: Customer Service Training Contract**  
**Solicitation No: 050B7400008**

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

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not something we ordinarily provide.
- We are inexperienced in the work/commodities required.
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- The scope of work is beyond our present capacity.
- Doing business with the State of Maryland is simply too complicated. (Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the 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:

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

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

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

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

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

Request for Proposals: **SERVICES: CUSTOMER SERVICE  
TRAINING CONTRACT**

Solicitation Number: **050B7400008**

RFP Issue Date: **March 1, 2017**

RFP Issuing Office: **DEPARTMENT OF BUDGET & MANAGEMENT**

Procurement Officer: **Pam Malech  
45 Calvert Street, Room 138  
Annapolis, MD 21401  
Phone: 410.260.7338 Fax: 410.974.3274  
e-mail: pam.malech@maryland.gov**

Contract Manager: **Joy Epstein  
45 Calvert Street, Room 143  
Annapolis, MD 21401  
Phone: 410.260.7570 Fax: 410.974.3274  
e-mail: joy.epstein@maryland.gov**

Proposals are to be sent to: **DEPARTMENT OF BUDGET & MANAGEMENT  
45 Calvert Street, Room 138, Annapolis, MD 21401  
Attention: Pam Malech**

Pre-Proposal Conference: **March 15, 2017, ~~10 a.m.~~ 1 p.m. Local Time  
Governor's Office of Performance Improvement  
First Floor, Conference Room A  
100 Community Place, Crownsville, MD 21032**

Proposal Due (Closing) Date and Time: **Thursday, April 6 ~~March 30~~, 2017, 4 p.m. Local Time**

MBE Subcontracting Goal: **20 %**

VSBE Subcontracting Goal: **5 %**

Contract Type: **Indefinite quantity with fixed unit prices**

Contract Duration: **Five years**

SBR Designation: **No**

Federal Funding: **No**

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## SECTION 1 – MINIMUM QUALIFICATIONS

### **1 Offeror Minimum Qualifications**

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

#### 1.1 Experience

1.1.1 **For Functional Area 1, Functional Area 2, or both Functional Areas 1 and 2, t**~~he~~ Offeror shall have three years of experience within the past five years providing consultation and training in at least one of the following customer service, employee engagement, or process improvement specialties:

- a) Corporate culture: e.g., developing relationships; creating transparency and trust; changing idleness to engagement; and proactive and anticipative execution;
- b) Customer loyalty: e.g., creating empathy and generosity;
- c) Employee engagement: e.g., coaching, mentoring, supervisory support, and recognition;
- d) Etiquette and professionalism: e.g., presentations and public speaking and addressing challenging situations; and
- e) Process improvement: finding efficiencies and eliminating redundancies in work environments.

1.1.2 As proof of meeting this requirement, the Offeror shall provide with its Proposal two references that collectively can attest to the Offeror's three years of experience within the past five years in providing consultation and training in at least one of the specialty areas for customer service, employee engagement and process improvement listed in a) through e) above. For each reference, the Offeror shall provide the information listed in Section 5.4.2.9.

#### 1.2 Customer Service Training Curriculum

1.2.1. **For Functional Area 1, t**~~he~~ Offeror shall have **an established** customer service training curriculum capable of ~~both in-person and computer-based~~ deployment.

1.2.2 As proof of meeting this requirement, the Offeror shall provide with its Proposal a complete list of its course offerings and sample content from one or more courses. These may be provided in hardcopy or via access to a curriculum training demonstration website. ~~An offeror~~ **Offerors with a curriculum that is capable of computer-based deployment but that has who have never deployed its their training by computer must further provide a plan detailing how its their computer-based training would be deployed.**

**1.2.3 For Functional Area 2, the Offeror shall have an established customer service training curriculum capable of computer-based deployment.**

**1.2.4 As proof of meeting this requirements, the Offeror shall provide with its Proposal a complete list of its course offerings and sample content from one or more courses. These may be provided in hardcopy or via access to a curriculum training demonstration website. An offeror with a curriculum that is capable of computer-based deployment but that has never deployed its training by computer must**

**further provide a plan detailing how its computer-based training would be deployed.**

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## **SECTION 2 – CONTRACTOR REQUIREMENTS: SCOPE OF WORK**

### **2.1 Summary Statement**

- 2.1.1 The Department of Budget and Management is issuing this Request for Proposals (RFP) to secure a Master Contract with multiple Contractors to provide customer service and process improvement consultation to State agencies and related training to employees of those agencies through a variety of formats. **Functional Area 1 includes all classroom-based training and consulting. Functional Area 2 includes all computer-based training and consulting. Offerors may be awarded contracts for Functional Area 1, Functional Area 2, or both Functional Areas 1 and 2.**
- 2.1.2 State agencies requiring customer service training and consultation will obtain those services through the issuance of a Task Order Request for Proposals (TORFP). **State agency TORFPs will be issued on behalf of the requesting agency solely through DBM in accordance with the task order process outlined in Section 2.3.1.** 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 (see RFP Section 4.37) or the Master Contractor is Suspended (see RFP Section 2.3.5). Under a Small Business Reserve (SBR) TORFP, only Master Contractors that are certified as small businesses will be invited to submit Proposals. (See COMAR §21.05.07.06(A) (4) and §21.11.01.04).
- 2.1.3 **The scope of a given Task Order may include** be a request for one-time training for a specified number of employees or a consultation engagement over an identified number of months or years, resulting in recommendations to the requesting Agency, among other possible requests for customer service and performance improvement related consulting and training services.
- 2.1.4 A non-State of Maryland **county, municipal, or other Maryland government or government agency or not-for-profit entity** non-profit organization within Maryland may likewise procure customer service training and consultation from Master Contractors through the issuance of its own TORFP. (See RFP Section 2.1.8.)
- 2.1.5 It is the State's intention to obtain services, as specified in this RFP, from a Contract between **one or more** the selected Offeror(s)/Master Contractor(s) and the State. The anticipated duration of services to be provided under this Master Contract is approximately five years and is anticipated to run from approximately June 1, 2017, through May 31, 2022.
- 2.1.6 The Department intends to make multiple awards to Qualified Offerors as a result of this RFP. **Awards may be for Functional Area 1 only, Functional Area 2 only, or both Functional Areas 1 and 2, based on the Offerors' Proposals.** See RFP Section 4.9 for ~~more~~ Contract award information.
- 2.1.7 An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation **for the Functional Area(s) to which it is proposing** and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.8 Maryland State, County, municipal, and other Maryland governments or government agencies and not-for-profit entities within the State of Maryland may purchase from the Contractor goods or services covered by this Contract at the same prices chargeable to the State. All such purchases

by non-State of Maryland governments, government agencies or not-for-profit entities within Maryland:

- (1) Shall constitute Contracts between the Contractor and that government, agency or not-for-profit entity;
- (2) Shall not constitute purchases by the State or State agencies under this Contract;
- (3) Shall not be binding or enforceable against the State; and
- (4) May be subject to other terms and conditions agreed to by the Contractor and the purchaser. The Contractor bears the risk of determining whether or not a government, agency or not-for-profit entity with which the Contractor is dealing is a State of Maryland agency.

All Contract prices, terms, and conditions must be provided to any Maryland local government or not-for-profit entity within Maryland requesting services under this Contract.

## 2.2 Background and Purpose

Governor Hogan launched a statewide customer service initiative ~~in June 2015~~ **on June 9, 2016**. The initiative calls for: 1) a renewed focus on a strong service culture and employee engagement; 2) performance metrics that create accountability and drive results; and 3) training for all State employees that reinforces the principles and expectations found in the new “Customer Service Promise,” which pledges that the State of Maryland will provide constituents, businesses, customers and stakeholders with services that are friendly, courteous, timely, responsive, accurate, consistent, accessible, convenient, truthful and transparent.

While larger agencies may have internal training resources, many agencies will require support and assistance from external sources including consulting and training organizations. To that end, the Department of Budget and Management is issuing this solicitation to procure consulting, training, and process improvement through a Customer Service Training Master Contract to support Agencies’ efforts to realize the Governor’s customer service initiative. The Contract will provide Agencies with access to consultants and training organizations that can provide expertise in customer service, employee engagement, and process improvement.

## 2.3 Scope of Work - Requirements

### 2.3.1 Task Order Process

2.3.1.1 To initiate the Task Order Process, a State Agency or other entity requesting ~~customer~~ **consumer** service training ~~and~~ **or process improvement** consultation services must first notify the Contract Manager of its intent to procure these services via a TORFP, **including which Functional Area it desires**. The requesting Agency develops a Scope of Work (SOW) in collaboration with the Contract Manager and performs an MBE TORFP Project Review (PR) Assessment to determine the **appropriate** Minority Business Enterprise (MBE) subcontractor participation goal **and subgoals** for the project and a Veteran-Owned Small Business Enterprise (VSBE) TORFP PR Assessment to determine the subcontractor participation goal for the project.

2.3.1.2 TORFPs will be initiated by a State agency, issued solely by DBM, and will define the scope and requirements that meet the objectives of the requesting Agency. The Contract

Manager releases the TORFP to the Master Contractors in the applicable Functional Area 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 submissions. During the Open Period, the Contract Manager is the sole contact for the requesting agency and the Master Contractors.

2.3.1.3 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 (including applicable Functional Area), 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 (See sample in Attachment Q), and/or Non-disclosure Affidavit requirements;
- H. Living Wage requirements;
- I. Minority Business Enterprise goal, Veteran Small Business Enterprise goal, Small Business Reserve, as applicable;
- J. Economic Benefits to Maryland;
- K. Applicable Labor Categories and Key Personnel;
- L. Completed Labor Category Summary Sheet (see sample Attachment Q) with resumes for each person proposed; and
- M. The criteria for making a Task Order Agreement (TOA) award determination and the relative importance of each criterion and price.

2.3.1.4 All Master Contractors in the applicable Functional Area (or SBR Master Contractors in the applicable Functional Area if the TORFP is designated a Small Business Reserve competition) that are not Suspended (see RFP Section 2.3.5) will be notified of the release of the TORFP, all amendments, pre-Task Order Proposal (TOP) conference notes, and other relevant materials until TOPs are due and received from the participating Master Contractors. Each Master Contractor receiving the TORFP must respond by providing a Task Order Proposal 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.

2.3.1.5 The Master Contractor's TOP Financial will be based on a single Evaluated Price. A Master Contractor will complete the TOP Financial Proposal 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 TOP Financial Proposal may be less than but not exceed the Master Contractor's approved rates under the Master Contract for the particular Contract Year(s).

2.3.1.6 The Master Contractor is paid for services performed based on the ~~Fully Loaded Fixed Hourly Labor Category Rates~~ proposed in the TOP plus Non-Routine Travel (see Appendix 1 for definition) 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.~~

- 2.3.1.7 Based on an evaluation of the TOPs received, the Agency will select a Master Contractor to perform the Scope of 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.
- 2.3.1.8 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 Task Order Manager (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.
- 2.3.1.9 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.
- 2.3.1.10 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 “Abbreviations and Definitions” and described in RFP Section 2.3.5.

### **2.3.2 Task Order Agreement Not to Exceed Amounts**

Each TOA will establish a Not to Exceed (NTE) dollar amount. The TOA Contractors must monitor invoiced amounts under each TOA. When services rendered under a TOA are projected to reach 75% of the NTE dollar amount, the TOA Contractor shall give **written** notice to the TOM and the Contract Manager that the TOA is projected to reach the 75% level. In the event that the Contractor’s hours rendered in completing the TOA exceed the estimated hours in its TOP on which the the TOA NTE amount was based, the Contractor must finish the project as specified in the TOA without additional payment.

### **2.3.3 Meetings**

#### **2.3.3.1 Kick-Off Meeting**

The Contract Manager will arrange and notify Master Contractors of a Kick-Off meeting at the outset of the Master Contract term. The purpose of the meeting is to establish 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 participate in the Kick-Off Meeting. No compensation will be paid to Master Contractors for attendance at the Kick-Off Meeting.

#### **2.3.3.2 Periodic Meetings with the Contract Manager**

Each Master Contractor’s Representative shall meet with and participate in discussions with the Contract Manager upon request, but 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 2.3.5.) Master Contractors will not be compensated for these meetings.

## **2.3.4 Reports**

### **2.3.4.1 Special Status Reports to the Contract Manager**

The Master Contractor shall provide Special Status Reports, as requested, to the Contract Manager at no additional cost to the State. Examples of these include but are not limited to inquiries regarding services provided by the Governor's Office and inquiries during the Maryland General Assembly Sessions.

### **2.3.4.2 Task Order Completion Report**

The TOA Contractor shall provide to the Contract Manager a report at the completion of each TOA summarizing the activities and outcomes of the TOA. The end-of-TOA report is due after all TOA activities are completed and by no later than the submission of the final invoice for each TOA. Reports shall be provided in MS Word or MS Excel unless the CM approves in writing another software format. A sample end of TOA report may include the following information:

- A. Agency Name;
- B. TOA Project Number;
- C. TOA NTP Date;
- D. Completion Date;
- E. TOA Not To Exceed (NTE) Dollar Amount;
- F. Project Scope, including number of persons trained, consulting hours, or other deliverables as specified in the TORFP;
- G. Any other relevant information the TOM or Contract Manager requests due to the nature of a given TOA's scope of work.

## **2.3.5 Suspension Process of a Master Contractor**

### **2.3.5.1 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 (see definition in Appendix) from participating in the TORFP processes until such time as the specified non-compliance 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.

2.3.5.2 In addition to the circumstances described in RFP Section 2.3.5.1, examples of circumstances which may result in a finding that the Master Contractor is Suspended include but are not limited to:

1. Failure to maintain good standing with the Maryland State Department of Assessments and Taxation (SDAT) and/or the State Comptroller's Office;

2. Failure to comply with socio-economic requirements such as Living Wage; Prompt Payment of Subcontractors; MBE good faith efforts; or Commercial Non-Discrimination, as applicable;
3. Poor performance for one or more TOAs;
4. Master Contractor's Representative non-compliance (e.g. failure to attend meetings, respond to requests for information, address performance issues identified by the Procurement Officer or Contract Manager or Agency personnel); or
5. Failure to keep the Contract Manager apprised of any change in the Master Contractor's contact information or key personnel.

#### 2.3.5.3 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.

#### **2.3.6 Master Contract Representative**

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. Acting as the conduit to accept all TORFPs for the Master Contractor;
2. Providing the Master Contractor's Technical and Financial Proposal responses (the TOPs);
3. Administering the Task Order processes (i.e., attending Oral Discussions along with key members of the team for each of its TOPs; and addressing any issues as they arise during the term of a TOA.);
4. Meeting with the Contract Manager, Task Order Managers, and other agency staff as necessary and requested during the course of the Master Contract, and coordinating all issues brought to his/her attention;
5. Exercising the power and authority to commit and bind the Master Contractor and its resources during the course of the Master Contract;
6. Understanding customer service, employee engagement, and process improvement with sufficient mastery to achieve the purposes set forth in this RFP in order to address, and provide solutions to any issues that arise;
7. Communicating with its subcontractors and the requesting agencies;
8. Performing work under one or more of the labor categories; and
9. Managing the Master Contractor's efforts on TOP responses/processes, its consultation and training teams' capabilities, contract management, project management, reporting requirements, any presentations, and issues.

Per RFP Section 3.10, the Master Contractor shall not change the Contractor's Representative without first obtaining the Contract Manager's prior written approval of the change.

### **2.3.7 General Staffing Requirements**

2.3.7.1 The Master Contractor in its TOP shall propose personnel who are anticipated to be available for the time period specified in the applicable TORFP. The personnel proposed by the Master Contractor in its TOP shall be the same personnel 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 3.10, Substitution of Personnel.

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

2.3.7.2 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.

2.3.7.3 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.

2.3.7.4 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 with the written prior approval by the Agency's designated TOM.

2.3.7.5 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.

### **2.3.8 Labor Categories**

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, the computer-based training rates **(Functional Area 2)** (see Section 2.3.9), and/or the classroom-based training rates **(Functional Area 1)** (see Section 2.3.10) when proposing to a TORFP and providing subsequent services under a TOA. Labor category rates may be used for consulting and customized curriculum development services as well as for training. Each TORFP will direct agencies to price their TOP according to a specified format using labor category rates, computer-based training rates **(Functional Area 2)**, classroom-based training rates **(Functional Area 1)**, or a combination of the above. However, in TORFPS requesting training, the Contractor shall bill for either the labor category rate for instructor or, as applicable, the classroom- or computer-based training **flat or per student** rates, not both. Furthermore, if hourly rates for instruction are requested, the Contractor may not invoice for instruction preparation time;

the Contractor may bill hourly rates for instruction in 15-minute increments from the time instruction to participants starts through the end of the instruction period, including lunch if applicable.



<b>The Master Contract's Summary of Approved Labor Categories and Minimum Requirements Labor Category Table</b>				
<b>Labor Category</b>	<b>Consultant</b>	<b>Instructor</b>	<b>Assistant Instructor/Analyst</b>	<b>Subject Matter Expert (SME)</b>
<b>Education</b>	Bachelor's degree from an accredited college or university in a Business-related field. Graduate degree preferred.	Bachelor's degree from an accredited college or university in Business, Education or a related field.	Bachelor's degree from an accredited college or university.	Bachelor's degree from an accredited college or university in Business related field or field required by the TORFP. Graduate degree preferred.
<b>Experience: Specialized and General</b>	Eight years' progressive experience working in a business related subject area. Four years' specialized experience in customer service, employee engagement, and/or process improvement consulting.	Four years' experience in delivering business-related trainings. At least two years of the required four years in delivering customer service training.	Six months experience following degree completion assisting in delivery of business-related trainings.	Five years of experience following degree completion and with progressively increasing responsibility working in subject matter area.
<b>Duties</b>	Provides business management planning and execution support in the areas of customer service, employee engagement and/or process improvement. Has proven knowledge of theories, principles and practices of customer service, employee engagement, and process improvement and conducts analyses of an organization's operations in these areas. Provides expertise and support in conducting a full range of analyses activities and studies. Classifies and summarizes data for the preparation and submission of reports on a recurring basis.	Provides instructor-led training on customer service for groups of three to 200 State employees, including course materials and handouts for each employee, in a variety of formats as specified by the TORFP. Instructor is responsible for completing instruction of material in time allotted for completion, as specified by the TORFP. Administers an evaluation tool to each State employee participant at conclusion of training to assess participants' comprehension. Provides assessment results and report on each training session provided to TOM.	Assists instructor in administrative preparation and delivery of customer service training. Assists consultant or SME in preparation of reports and agency-specific data collection.	Demonstrates a thorough understanding of customer service best practices, employee engagement strategies, and process improvement methods, or of other subject matter area specified by State. Performs the day-to-day, detailed work required to achieve and support the customer service, employee engagement, or process improvement objectives, including performing statistical sampling, interviewing management to gain an understanding of the client's business, testing for effectiveness, and performing analytical and substantive procedures as deemed necessary. Reports findings related to non-performance and weaknesses of existing practices and proposed recommendations for improving them.

### 2.3.9 Flat Rate Computer-Based Training Sessions

2.3.9.1 Master Contractors **in Functional Area 2** may be tasked with providing computer-based customer service trainings on general customer service best practices, specific customer service topics, or other subjects as specified in the TORFP for the specified number of employees ~~for specified numbers of employees~~. Computer-based training sessions shall consist of at least one hour of content as specified in the TORFP and interactive activities, a downloadable handout to accompany course content that participants may save and reference after the completion of the session, and an assessment tool that captures participant's comprehension of the material. Assessment results and a report on each training

session provided shall be submitted to the TOM within 30 days after end of scheduled deployment of computer-based training sessions. Participants shall have access to review each training session for at least one year following completion of session.

2.3.9.2 The Contractor awarded the TOA shall provide computer-based training, charging no more than the maximum rates for either the computer-based flat training rate for the applicable tier of participants or the per student rate, for the applicable Contract year as proposed in its Financial Proposal Form, Attachment B, Functional Area C ~~Section C~~. A Contractor providing flat rate computer-based training under Section B in response to a TORFP may invoice for the price of the tier reflecting the total number of participants authorized to participate in the training as specified in the TORFP. A Contractor providing computer-based training on a per-student basis under Section C may invoice for the price equivalent to its proposed per student rate multiplied by the number of participants authorized to participate in the training as specified in the TORFP. The Master Contractor may charge its proposed computer-based training rate for either the single, appropriate tier of participants as a flat rate, the per student rate, or Labor Category rates exclusively; it may not ~~also~~ charge more than one rate type ~~Labor Category rates~~ for deployment of computer-based training.

### 2.3.10 Flat Rate Classroom-Based Training Sessions

2.3.10.1 Master Contractors in Functional Area 1 may be tasked with providing classroom-based customer service trainings on general customer service best practices, specific customer service topics, or other subjects as specified in the TORFP for the specified number of employees for specified numbers of employees. Each classroom-based training session shall consist of at least 4 hours of training on content as specified in the TORFP, reinforcement activities, a handout and any other relevant materials to accompany course content that participants may save and reference after the completion of the session, and an assessment tool that captures participant's comprehension of the material. Assessment results and a report on each training session provided shall be submitted to the TOM within 30 days after the delivery of the classroom-based training sessions under a TORFP.

2.3.10.2 The Contractor awarded the TOA shall charge no more than the maximum rates for either the classroom-based flat training rate for the applicable tier of participants or the per student rate, for the applicable Contract year as proposed in its Financial Proposal Form, Attachment B, Functional Area 1, Sections B and C, respectively ~~Section B~~. ~~If classroom-based training rates are specified as the basis of pricing in the TORFP, the TOA Contractor may charge its proposed classroom-based training rate for the single, appropriate tier of participants exclusively; it may not also charge Labor Category rates for delivery of classroom-based training.~~ The Master Contractor may charge its proposed classroom-based training rate for either the single, appropriate tier of participants as a flat rate, the per student rate, or Labor Category rates exclusively; it may not charge more than one rate type for deployment of classroom-based training.

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## SECTION 3 – CONTRACTOR REQUIREMENTS: GENERAL REQUIREMENTS

### **3.1 Insurance Requirements**

- 3.1.1 The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, with a minimum limit of \$500,000 per occurrence and \$1,000,000 aggregate.
- 3.1.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per claim and annual aggregate.
- 3.1.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- ~~3.1.4 The Contractor shall maintain Crime Insurance endorsed to cover employee theft and third party fidelity with a minimum single loss limit of \$1,000,000 per loss, and minimum a single loss retention not to exceed \$10,000. The State of Maryland and the Department shall be added as a loss payee to this policy.~~
- 3.1.4<sup>5</sup> Within five (5) Business Days of recommendation for Contract award, and before any work begins, the Contractor shall provide the Procurement Officer with current certificates of insurance, and update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Manager. Such copy of the Contractor’s current certificate of insurance shall contain at minimum the following:
- a. Workers’ Compensation – The Contractor shall maintain such insurance as necessary and/or required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act.
  - b. Commercial General Liability as required in Section 3.1.1.
  - c. Errors and Omissions/Professional Liability as required in Section 3.1.2.
  - d. Automobile and/or Commercial Truck Insurance as required in Section 3.1.3.
  - e. Crime Insurance as required in Section 3.1.4.
- 3.1.5<sup>6</sup> The State of Maryland shall be listed as an additional insured on any Commercial General Liability, Auto Liability, Professional/Cyber Liability, and excess liability or umbrella policies with the exception of Workers’ Compensation Insurance, which is currently handled by the Chesapeake Employer’s Insurance Company (formerly Injured Workers’ Insurance Fund). This means the faces of the certificates of insurance for these policies must state, “The State of Maryland is an Additional Insured.” All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Manager, by certified mail, not less than 30 days’ advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Manager receives a notice of non-renewal, the Contractor shall provide the Contract Manager with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and provide such policies.

- 3.1.67 The Contractor shall require that any subcontractors providing primary services (as opposed to non-critical, ancillary services) under this Contract obtain and maintain the same levels of insurance and shall provide the Contract Manager with the same documentation as is required of the Contractor.

## **3.2 Security Requirements**

### **3.2.1 Employee Identification**

3.2.1.1 Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.

3.2.1.2 At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visible location at all times.

### **3.2.2 Criminal Background Check**

The Contractor shall obtain from all Contractor and subcontractor personnel assigned to work on the Contract a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and provide the Contract Manager with completed checks on the above-listed personnel assigned to work under the Contract prior to assignment. At a minimum, these background checks must include all convictions and probation before judgment (PBJ) dispositions. The Contractor may not assign an individual whose background check reflects any criminal activity to work under this Contract unless prior written approval is obtained from the Contract Manager.

### **3.2.3 Information Technology**

For purposes of this solicitation and the resulting Contract:

- (1) "Sensitive Data" means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes 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; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of "personal information" under Md. Code Ann., General Provisions § 4-101(h); or (4) falls within the definition of "personal information" under Md. Code Ann., St. Govt. § 10-1301(c).
- (2) "Relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.

- (3) The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and 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 this solicitation and resulting Contract.
- (4) The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>. The State IT Security Policy may be revised from time to time. The Contractor and all subcontractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online on this website.

#### 3.2.3.1 Information Security Requirements

To ensure appropriate data protection safeguards are in place, the Contractor and any relevant subcontractor(s) shall at a minimum implement and maintain the following information technology controls at all times throughout the life of the Contract. The Contractor and any relevant subcontractor(s) may augment this list with additional information technology controls.

- (1) Establish separate production, test, and training environments for systems supporting the services provided under this Contract and ensure that production data is not replicated in the test and/or training environment unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements.
- (2) Apply hardware and software hardening procedures as recommended by the manufacturer to reduce the Contractor/subcontractor's systems' surface of vulnerability. The purpose of system hardening procedures is to eliminate as many security risks as possible. These procedures may include but are not limited to removal of unnecessary software, disabling or removing of unnecessary services, removal of unnecessary usernames or logins, and deactivation of unneeded features in the Contractor/subcontractor's system configuration files.
- (3) Establish policies and procedures to implement and maintain mechanisms for regular internal vulnerability testing of operating system, application, and network devices supporting the services provided under this Contract. Such testing is intended to identify outdated software versions; missing software patches; and device or software misconfigurations; and validate compliance with or deviations from the Contractor's and/or subcontractor's security policy. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.

- (4) Where website hosting or Internet access is the service provided or part of the service provided, the Contractor and any relevant subcontractor(s) shall conduct regular external vulnerability testing. External vulnerability testing is an assessment designed to examine the Contractor's and subcontractor's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- (5) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract, automatically updated, and configured to actively scan and detect threats to the system for remediation.
- (6) Enforce strong user authentication and password control measures over the Contractor/subcontractor's systems supporting the services provided under this Contract to minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- (7) Ensure State data under this service is not processed, transferred, or stored outside of the United States.
- (8) Ensure that State data is not comingled with the Contractor's and subcontractor's other clients' data through the proper application of data compartmentalization security measures. This includes but is not limited to classifying data elements and controlling access to those elements based on the classification and the user's access or security level.
- (9) Apply data encryption to protect State data, especially Sensitive Data, from improper disclosure or alteration. Data encryption should be applied to State data in transit over networks and, where possible, State data at rest within the system, as well as to State data when archived for backup purposes. Encryption algorithms which are utilized for this purpose must comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2: <http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>
- (10) Enable appropriate logging parameters on systems supporting services provided under this Contract to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information security standards including the current State of Maryland Department of Information Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
- (11) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform remediation, if required. The Department shall have the right

to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under this Contract.

- (12) Ensure system and network environments are separated by properly configured and updated firewalls to preserve the protection and isolation of Sensitive Data from unauthorized access as well as the separation of production and non-production environments.
- (13) Restrict network connections between trusted and untrusted networks by physically and/or logically isolating systems supporting the services being provided under the Contract from unsolicited and unauthenticated network traffic.
- (14) Review at regular intervals the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
- (15) Ensure that the Contractor's and any subcontractor's personnel shall not connect any of their own equipment to a State LAN/WAN without prior written approval by the State. The Contractor/subcontractor shall complete any necessary paperwork as directed and coordinated with the Contract Manager to obtain approval by the State to connect Contractor/subcontractor-owned equipment to a State LAN/WAN.

#### **3.2.3.2 Contingency / Disaster Recovery Plans**

- (1) The Contractor and any relevant subcontractor(s) shall have robust contingency and disaster recovery plans in place to ensure that the services provided under this Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
- (2) The contingency and disaster recovery plans must be designed to ensure that services under this Contract are restored after a disruption within two Business Days in order to avoid unacceptable consequences due to the unavailability of services.
- (3) The Contractor and any relevant subcontractor(s) shall test the contingency/disaster recovery plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one annual test shall include backup media restoration and failover / fallback operations.
- (4) Such contingency and disaster recovery plans shall be available for the Department to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

#### **3.2.3.3 Incident Response Requirement**

- (1) The Contractor shall notify the Contract Manager when any Contractor and/or subcontractor system that may access, process, or store State data or work product is subject to unintended access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential

- compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.
- (2) The Contractor shall notify the Contract Manager within two (2) Business Days of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Manager and Procurement Officer.
  - (3) The Contractor shall notify the Contract Manager within two (2) Business Days if there is a threat to the Contractor's and/or subcontractor's systems as it pertains to the use, disclosure, and security of the Department's Sensitive Data.
  - (4) If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Contract Manager within two (2) Business Days after the Contractor's discovery of such use or disclosure and, thereafter, all information the State requests concerning such unauthorized use or disclosure.
  - (5) The Contractor, within two (2) Business Days of discovery, shall report to the Contract Manager any improper or non-authorized use or disclosure of Sensitive Data. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. The Contractor's report shall identify:
    - a. The nature of the unauthorized use or disclosure;
    - b. The Sensitive Data used or disclosed;
    - c. Who made the unauthorized use or received the unauthorized disclosure;
    - d. What the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
    - e. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
  - (6) The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and indemnify, hold harmless, and defend the State and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.
  - (7) This Section 3.2.3.3 shall survive expiration or termination of the Contract.

### **3.3 Problem Escalation Procedure**

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



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

- 3.3.2 The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
- a. The process for establishing the existence of a problem;
  - b. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
  - c. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
  - d. Expedited escalation procedures and any circumstances that would trigger expedited 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, etc.) and on an emergency basis; and
  - g. A process for updating and notifying the Contract Manager of any changes to the PEP.

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

## **3.4 Invoicing**

### **3.4.1 General**

3.4.1.1 All invoices for services shall be signed by the Contractor and submitted to the TOM for each TOA invoiced. All invoices shall include the following information:

- (1) TOA Contractor name and address;
- (2) Remittance address;
- (3) Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- (4) Invoice period (i.e. time period during which services covered by invoice were performed);
- (5) Invoice date;
- (6) Invoice number;
- (7) State assigned Contract number;
- (8) State assigned Blanket Purchase Order and Purchase Order numbers;
- (9) Name and address of the TOA's applicable State Agency;
- (10) Travel (see Section 2.3.1.6) and Total Amount Due and the ADPICS/Purchase Order Number(s) for each TOA being billed;
- (11) Goods or services provided, including the following:
  - The Labor Category(ies); Classroom-Based Training Sessions; or Computer-Based Training Sessions invoiced;

- The name of each individual providing hours within each Labor Category or each State employee authorized to participate in Computer-Based Training;
  - For Labor Categories, the individual’s total hours for the month, with date and times of the hours worked;
  - The applicable Hourly Rate or Flat Fee Training Rate; and
- (12) Amount due for each TOA.

Invoices submitted without the required information will not be processed for payment until the TOA Contractor provides the required information.

3.4.1.2 For each invoice, the TOA Contractor shall provide documentation that all the 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 time keeping documentation to the TOM.

3.4.1.3 The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Also see the “Living Wage” provision of the Contract, if applicable, which allows for withholding of payment under certain circumstances. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.

### 3.4.2 Invoice Submission Schedule

3.4.2.1 No later than the 15<sup>th</sup> of the calendar month for the preceding month’s Task Order Agreement activity, the TOA Contractor shall submit invoices with the information specified in Section 3.4.1 to the applicable TOM, unless there is prior written approval by the TOM for a different submission date for the specific month.

3.4.2.2 The TORFP shall determine the applicability of Routine Travel versus Non-Routine Travel, as defined in Appendix 1. Any Non-Routine Travel that has had 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 travel 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 the Non-Routine Travel to be approved and paid.

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.

### **3.5 SOC 2 Type 2 Audit Report**

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

### **3.6 MBE Reports**

If this solicitation includes an MBE Goal (see Section 4.26), the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports based upon the commitment to the goal:

- (1) **Attachment D-4A**, the MBE Participation Prime Contractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Manager and the MBE Liaison Officer;
- (2) **Attachment D-4B** (*if applicable*), the MBE Prime Contractor Report by the 10th of the month following the reporting period to the Contract Manager and the MBE Liaison Officer; and
- (3) **Attachment D-5**, the MBE Participation Subcontractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Manager and the MBE Liaison Officer.

### **3.7 VSBE Reports**

If this solicitation includes a VSBE Goal (see Section 4.27), the Contractor and its VSBE subcontractors shall provide the following VSBE Monthly Reports based upon the commitment to the goal:

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

### **3.8 Liquidated Damages**

This section is not applicable to this solicitation.

### **3.9 End of Contract Transition**

The Contractor shall cooperate in the orderly transition of services from the Contract awarded under this solicitation to any subsequent contract for similar services. The transition period shall begin ninety (90) days before the Contract end date, or the end date of any final exercised option or contract extension. The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions

of the Contract Manager. The Contract Manager may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of Contract.

### **3.10 Substitution of Personnel**

3.10.1 **Continuous Performance of Key Personnel.** Unless substitution is approved per paragraphs 3.10.2-3.10.4 of this section, Key Personnel shall be the same personnel proposed in the Contractor's Technical Proposal, which will be incorporated into the Contract by reference. Such identified Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the 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.

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

3.10.2 **Definitions.** For the purposes of this section, the following definitions apply:

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

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

**Sudden** – When the Contractor has less than thirty (30) days' prior notice of a circumstance beyond its control that will require the replacement of any Key Personnel working under the Contract.

3.10.3 **Key Personnel General Substitution Provisions.** The following provisions apply to all of the circumstances of staff substitution described in paragraph 3.10.4 of this section.

1. The Contractor shall demonstrate to the Contract Manager's satisfaction that the proposed substitute Key Personnel have qualifications at least equal to those of the Key Personnel for whom the replacement is requested.
2. The Contractor shall provide the Contract Manager with a substitution request that shall include:
  - A detailed explanation of the reason(s) for the substitution request;
  - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
  - The official resume of the current personnel for comparison purposes; and
  - Any evidence of any required credentials.

3. The Contract Manager may request additional information concerning the proposed substitution. In addition, the Contract Manager and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Manager will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Manager will not unreasonably withhold approval of a requested Key Personnel replacement.

### 3.10.4 Replacement Circumstances

**3.10.4.1 Voluntary Key Personnel Replacement.** To voluntarily replace any Key Personnel, the Contractor shall submit substitution request as described in paragraph 3.10.3 of this section to the Contract Manager at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph 3.10.4 (2) of this clause, a substitution may not occur unless and until the Contract Manager approves the substitution in writing.

**3.10.4.2 Key Personnel Replacement Due to Vacancy.** The Contractor shall replace Key Personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section 3.10.4.1 of this section.).

Under any of the circumstances set forth in this paragraph 3.10.4.2, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph 3.10.3 of this section within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.

**3.10.4.3 Key Personnel Replacement Due to an Indeterminate Absence.** If any Key Personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information or items to the Contract Manager as required under paragraph 3.10.3 of this section.

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

#### 3.10.4.4 Directed Personnel Replacement.

3.10.4.4.1 The Contract Manager may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due

to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 3.10.4.4.2. If after such remediation the Contract Manager determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Manager deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Manager can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with paragraph 3.10.3 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.

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

Should performance issues persist despite the approved Remediation Plan, the Contract Manager will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Key Personnel at issue.

Replacement or substitution of personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

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## **SECTION 4 – PROCUREMENT INSTRUCTIONS**

### **4.1 Pre-Proposal Conference**

A Pre-Proposal Conference (the Conference) will be held at the date, time, and location indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

The Conference will be summarized. As promptly as is feasible after the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace. See RFP Section 4.2.

In order to assure adequate seating and other accommodations at the Conference, please e-mail or fax the Pre-Proposal Conference Response Form (**Attachment A**) to the attention of the Procurement Officer at least five (5) Business Days prior to the Pre-Proposal Conference date. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Pre-Proposal Conference date. The Department will make a reasonable effort to provide such special accommodation.

### **4.2 eMaryland Marketplace**

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

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

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

### **4.3 Questions**

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the Procurement Officer's e-mail address indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

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

#### **4.4 Procurement Method**

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

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

Proposals, in the number and form set forth in RFP Section 5.2 “Proposals” must be received by the Procurement Officer at the Procurement Officer’s address no later than the Proposal Due date and time indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) in order to be considered.

Requests for extension of this time or date will not be granted. Offerors mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the RFP Key Information Summary Sheet will not be considered.

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

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

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

#### **4.6 Multiple or Alternate Proposals**

Multiple and/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**

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. (Also, see RFP Section 5.4.2.2 “Claim of Confidentiality”). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

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

## **4.9 Award Basis**

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

## **4.10 Oral Presentation**

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

## **4.11 Duration of Proposal**

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers (see Section 6.5.2.5) if requested. This period may be extended at the Procurement Officer’s request only with the Offeror’s written agreement.

## **4.12 Revisions to the RFP**

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

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

#### **4.13 Cancellations**

The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, 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. The State also reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

In the event, a government entity proposes and receives the recommendation for award for the Contract resulting from this RFP, the procurement may be cancelled and the award processed as a Memorandum of Understanding in accordance with COMAR 21.01.03.01.A(4).

#### **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, respectively, to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

#### **4.16 Offeror Responsibilities**

The selected Offeror shall be responsible for all applicable products and services (Functional Areas 1 or Functional Area 2 or both Functional Areas 1 and 2) required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see Section 4.26 "Minority Business Enterprise Goals" and Section 4.27 "Veteran-Owned Small Business Enterprise Goal").

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

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

#### **4.17 Mandatory Contractual Terms**

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 5.4.2.4).**

#### **4.18 Proposal Affidavit**

A Proposal submitted by an 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 which is included as **Attachment N** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. The Contractor must also submit a Contract Affidavit with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a "foreign" business.

#### **4.20 Compliance with Laws/Arrearages**

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

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

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

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West

Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress> .

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

#### **4.22 False Statements**

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

- (a) In connection with a procurement contract a person may not willfully:
  - (1) falsify, conceal, or suppress a material fact by any scheme or device;
  - (2) make a false or fraudulent statement or representation of a material fact; or
  - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- (c) 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 5 years or both.

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

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at: [http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/GADX10Form20150615.pdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf) .

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

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

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## 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.
- 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 facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), 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 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section 4.25.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
- 4.25.4.1 The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
- (a) The solicitation (e.g., the RFP);
  - (b) Any amendments;
  - (c) Pre-Proposal conference documents;
  - (d) Questions and responses;
  - (e) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
  - (f) Notices of award selection or non-selection; and
  - (g) The Procurement Officer’s decision on any Proposal protest or Contract claim.
- 4.25.4.2 An Offeror or potential Offeror may use e-mail or facsimile to:
- (a) Ask questions regarding the solicitation;
  - (b) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer; and
  - (c) Submit a "No Proposal Response" to the solicitation.
- 4.25.4.3 The Procurement Officer, the Contract Manager, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract 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 Proposal Protests;
- (c) Filing of Contract Claims;
- (d) Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications, etc.); 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 facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, Contract, or direction from the Procurement Officer or Contract Manager.

## 4.26 Minority Business Enterprise Goals

### 4.26.1 Establishment of Goal and Subgoals

#### 4.26.1.1 Master Contract

An overall aggregate MBE subcontractor participation goal of 20 percent has been established for this procurement. While the overall objective is to collectively achieve 20% MBE participation for all TOAs issued under the RFP, the means to achieve this aggregated 20% participation will be through the establishment, where appropriate, of a discrete MBE subcontractor 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 ~~TORFP~~ 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 percent (23%) or higher of the total contract dollar amount, 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 subgroup 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.

If the TOA Contractor for a TORFP is a certified MBE Prime Contractor, then the procuring agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE performs with its own workforce towards fulfilling up to fifty percent (50%) of the MBE participation goal and up to one-hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract, provided certain requirements are met, as discussed in Section 4.26.11.

**Each TOA for a task order that has an MBE goal will include liquidated damages provision in the form of Section 36 of the Contract, Attachment M.**

4.26.2 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 for this RFP and that the MBE goal for each subsequent TORFP will be set at the TORFP level.

#### 4.26.3 **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:

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

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

- a. The Master Contractor acknowledges the TORFP's certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
- b. The 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.
- c. A Master Contractor requesting a waiver should review **TORFP Attachment D-1B** (Waiver Guidance) and **TORFP Attachment D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

***If a Master Contractor fails to submit a completed TORFP Attachment D-1A with its TOP as required, its TOP will be deemed not reasonably susceptible of being selected for award and will be rejected by the State.***

Master Contractors are responsible for verifying that each of the MBE(s) selected to meet the subcontracting goal and subsequently identified in **TORFP Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

- 4.26.5 If not included with its TOP, within five (5) Business Days from notification that it is the recommended Task Order awardee (~~Master~~ ~~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**).
  - c. If the ~~Master Contractor~~ recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the ~~Master Contractor~~ recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.
  - d. 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.

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

- 4.26.6 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.state.md.us/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.**
- 4.26.7 The Master Contractor, once awarded a TOA, will be responsible for submitting or requiring its subcontractor(s) to submit to the Task Order Manager (TOM) the following forms to provide the State with ongoing monitoring of MBE Participation:
- (a) **TORFP Attachment D-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report).
  - (b) **TORFP Attachment D-4B** (MBE Prime Contractor Report, *if applicable*).
  - c. **TORFP Attachment D-5** (MBE Subcontractor/Contractor Unpaid MBE Invoice Report).
- 4.26.8 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 five (5) 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.

4.26.9 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 resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the TOP for order of precedence purposes (see Contract – **Attachment M**, Section 2.1).

4.26.10 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. (See Contract - **Attachment M**, Section 32).

4.26.11 COMAR 21.11.03.12-1(D) provides that when a certified MBE participates on a contract (i.e. task order agreement) 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 performs with its own work force towards fulfilling up to fifty-percent (50%) of the overall MBE participation goal.

In order to receive credit for self-performance, an MBE Prime is required to 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 and the percentage of the contract value attributed to that work. (COMAR 21.11.03.12-1 D (2) (a)). For the remaining portion of the overall goal and the sub-goals, the MBE Prime must also identify 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 sub-goal classifications but can self-perform up to 100% of the stated sub-goal.

As set forth in COMAR 21.11.03.12-1B, 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 TOA.

4.26.12 With respect to Contract administration, the TOA **Master** Contractor shall:

(1) Submit to the TOM by the 10th of the month following the reporting period:

1. A Prime Contractor Paid/Unpaid MBE Invoice Report (TORFP 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 (TORFP Attachment D-4B) identifying an MBE Prime's self-performing work to be counted towards the MBE participation goals.

(2) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit to the TOM by the 10th of the month following the reporting period an MBE Subcontractor Paid/Unpaid Invoice Report (**TORFP Attachment D-5**) that identifies the **TOA Contract** and lists all payments to the MBE subcontractor received from the **Master Contractor** in the preceding reporting period month, as well as any outstanding invoices, and

the amounts of those invoices.

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

#### **4.27 Veteran-Owned Small Business Enterprise Goal**

4.27.1 An overall aggregate 5% Master Contract goal for VSBE subcontractor participation has been established for this procurement. While the overall objective is to collectively achieve 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.

4.27.2 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.*

4.27.3 A Master Contractor responding to a TORFP must submit a completed Veteran-Owned Small Business Enterprise Utilization Affidavit and Subcontractor Participation Schedule (**TORFP Attachment E-1**) with its Task Order Proposal (TOP) whereby:

- a. The Master Contractor acknowledges it:
  1. Intends to meet the VSBE participation goal; or
  2. Requests a full or partial waiver of the VSBE participation goal. If the Master Contractor ~~Bidder/Offeror~~ commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal.
- b. The Master Contractor responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBEs at the time of TOP

~~Bid/Proposal~~ submission. The **Master Contractor** ~~Bidder/Offeree~~ shall specify the percentage of **TOA** ~~contract~~ value associated with each VSBE subcontractor identified on the VSBE Participation Schedule.

*If a Master Contractor fails to submit TORFP Attachment E-1 with the Task Order Proposal as required, its TOP may be rejected for award by the State as not being reasonably susceptible of being selected for award.*

- 4.27.4 If not included with its TOP, within five (5) Business Days from notification that it is apparent task order awardee, the Master Contractor must provide the following documentation to the Contract Manager:
- a. VSBE Project Participation Statement (**TORFP Attachment E-2**);
  - b. 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
  - c. Any other documentation required by the Contract Manager to ascertain Master Contractor responsibility in connection with the VSBE subcontractor participation goal.

*If the **Master Contractor** ~~recommended awardee~~ fails to return each completed document within the required time, the Contract Manager may determine that the **Master Contractor** ~~recommended awardee~~ is not responsible and therefore not eligible for Task Order Award agreement.*

#### 4.27.5 CONTRACT ADMINISTRATION REQUIREMENTS

The Master Contractor, once awarded the Task Order Agreement shall:

- a. Submit monthly to the TOM a report listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice, and the reason payment has not been made. (**TORFP Attachment E-3**).
- b. Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly to the TOM a report that identifies the prime contract and lists all payments received from TOA Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. (**TORFP 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 Master Contractor and furnished to the TOM 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 Master Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the TOA.

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

4.27.6 Questions or concerns regarding the Veteran-Owned Small Business Enterprise (VSBE) subcontractor participation goal of a TORFP must be raised before the due date for submission of TOPs.

4.27.7 Veteran-Owned Small Business Enterprises, or VSBEs, must be verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs. The listing of verified VSBEs may be found at <http://www.va.gov/osdbu>.

## **4.28 Living Wage Requirements**

4.28.1 Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 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.

4.28.2 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 submit and complete the Living Wage Affidavit of Agreement with its TOP, the State may determine the Master Contractor to be not responsible under State law.

If subject to the Living Wage law, Master 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. See the “Living Wage” clause in the Contract (**Attachment M**).

4.28.3 Additional information regarding the State’s living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If an Offeror fails to complete and submit the required documentation, the State may determine the Offeror to be not responsible under State law.

4.28.4 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 Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George’s, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of

the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.

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

- (1) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- (2) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- (3) 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.

4.28.6 Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website:  
<http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

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

## **4.29 Federal Funding Acknowledgement**

This Contract does not contain federal funds.

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

Master Contractors responding to a TORFP shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment I**) and submit it with the Task Order Proposal. Master Contractors are advised that if a Task Order Agreement is awarded as a result of the TORFP, the successful Contractor's personnel who perform or control work under this TOA and each of the participating subcontractor personnel who perform or control work under this TOA shall be required to complete agreements substantially similar to **Attachment I** Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

## **4.31 Non-Disclosure Agreement**

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 J**. This Agreement must be provided within five (5) Business Days of notification of proposed Task Order award; however, to expedite processing, it is suggested that this document be completed and submitted with the Proposal to this RFP.

#### **4.32 HIPAA - Business Associate Agreement**

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

#### **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.

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

This solicitation does not require a DHR Hiring Agreement.

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

4.37.1 Agency may designate TORFPs as a Small Business Reserve TORFPs for which award will be limited to certified small business vendors. In instances where a TORP is designated as a Small Business Reserve TORFP, only businesses that meet the statutory requirements set forth in State Finance and Procurement Article, §§14-501—14-505, Annotated Code of Maryland, and that are certified by the [Governor's Office of Minority Affairs](#) ~~Department of General Services~~ Small Business Reserve Program are eligible for award of a TORFP.

4.37.2 For the purposes of a Small Business Reserve TORFP, a small business is a for-profit business, other than a broker, that meets the following criteria:

- (1) It is independently owned and operated;
- (2) It is not a subsidiary of another business;
- (3) It is not dominant in its field of operation; and
- (4) Either:
  - a. With respect to employees:
    - i. Its wholesale operations did not employ more than 50 persons in its most recently completed three (3) fiscal years;
    - ii. Its retail operations did not employ more than 25 persons in its most recently completed completed three (3) fiscal years ;
    - iii. Its manufacturing operations did not employ more than 100 persons in its most recently completed completed three (3) fiscal years ;
    - iv. Its service operations did not employ more than 100 persons in its most recently completed completed three (3) fiscal years ;

- v. Its construction operations did not employ more than 50 persons in its most recently completed completed three (3) fiscal years ; and
  - vi. The architectural and engineering services of the business did not employ more than 100 persons in its most recently completed completed three (3) fiscal years ; or
- b. With respect to gross sales:
- i. The gross sales of its wholesale operations did not exceed an average of \$4,000,000 in its most recently completed completed three (3) fiscal years ;
  - ii. The gross sales of its retail operations did not exceed an average of \$3,000,000 in its most recently completed completed three (3) fiscal years ;
  - iii. The gross sales of its manufacturing operations did not exceed an average of \$2,000,000 in its most recently completed completed three (3) fiscal years ;
  - iv. The gross sales of its service operations did not exceed an average of \$10,000,000 in its most recently completed completed three (3) fiscal years ;
  - v. The gross sales of its construction operations did not exceed an average of \$7,000,000 in its most recently completed completed three (3) fiscal years ; and
  - vi. The gross sales of its architectural and engineering operations did not exceed an average of \$4,500,000 in its most recently completed completed three (3) fiscal years.

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.

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

4.37.3 **Ineligible Proposals.** Under a small business reserve TORFP, a business that is not a certified small business is ineligible for award of an SBR TOA.

4.37.4 Before awarding a TOA under a TORFP designated as a small business reserve procurement, the Procurement Officer shall verify that the apparent awardee is certified by the Governor's Office of Minority 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.

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## **SECTION 5 – PROPOSAL FORMAT**

### **5.1 Two Part Submission**

Offerors shall submit Proposals in separate volumes:

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

### **5.2 Proposals**

5.2.1 Volume I – Technical Proposal, and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, email address, and telephone number of a contact person for the Offeror be included on the outside of the packaging for each volume. Each Volume shall contain an unbound original, so identified, and four (4) copies. Unless the resulting package will be too unwieldy, the Department’s preference is for the two (2) sealed Volumes to be submitted together in a single package including a label bearing:

- (1) RFP title and number,
- (2) Name and address of the Offeror, and
- (3) Closing date and time for receipt of Proposals

to the Procurement Officer (see RFP Key Information Summary Sheet) prior to the date and time for receipt of Proposals (see RFP Section 4.5 “Proposals Due (Closing) Date and Time”).

5.2.2 An electronic version (on Compact Disk/CD, Digital Versatile Disc/DVD, or Universal Serial Bus/USB Flash/Thumb Drive) of Volume I - Technical Proposal in Microsoft Word format must be enclosed with the original Volume I - Technical Proposal submission. An electronic version (on CD, DVD, or USB Flash Drive) of Volume II - Financial Proposal in Microsoft Word or Microsoft Excel format must be enclosed with the original Volume II - Financial Proposal submission. Each CD/DVD/USB Flash Drive must be labeled on the outside with the RFP title and number, name of the Offeror, and volume number. Each CD/DVD/USB Flash Drive must be packaged with the original copy of the appropriate Proposal (Technical or Financial). In the event of any discrepancy between the hard copy and electronic versions of an Offeror’s Proposal, the State shall determine the controlling version in accordance with the State’s interests.

5.2.3 A second electronic version of Volume I and Volume II in searchable Adobe .pdf format shall be submitted on CD, DVD, or USB Flash Drive for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see RFP Section 4.8 “Public Information Act Notice”).

5.2.4 Beginning with Tab B (see RFP Section 5.4.2.3), all pages of both Proposal volumes shall be consecutively-numbered from beginning (Page 1) to end (Page “x”). The Title Page, Table of Contents, and any Claim of Confidentiality (Tabs A and A-1; see RFP Sections 5.4.2.1 and 5.4.2.2), should be numbered using romanettes (ex. i, ii, iii, iv, v, etc.).

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



### 5.3 Delivery

Offerors may either mail or hand-deliver Proposals.

- 5.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. It could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit and an Offeror using first class mail will not be able to prove a timely delivery at the mailroom.
- 5.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, an Offeror is advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 5.3.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

### 5.4 Volume I – Technical Proposal

**Note: No pricing information is to be included in the Technical Proposal (Volume 1). Pricing information is to be included only in the Financial Proposal (Volume II).**

- 5.4.1 **Format of Technical Proposal.** Inside a sealed package described in Section 5.2 “Proposals,” the unbound original, four (4) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 5.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 5.4.2.1 “Title and Table of Contents,” Section 5.4.2.2 “Claim of Confidentiality,” Section 5.4.2.3 “Transmittal Letter,” Section 5.4.2.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 2.2.1 Response . . . ; “Section 2.2.2 Response . . .,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 6.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.
- 5.4.2 **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:
  - 5.4.2.1 **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.

5.4.2.2 **Claim of Confidentiality (If applicable, submit under TAB A-1).** Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror's Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 4.8 "Public Information Act Notice"). The entire Proposal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

5.4.2.3 **Transmittal Letter (Submit under TAB B).** A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. The Transmittal Letter should include the following:

- (1) Name and address of the Offeror;
- (2) Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- (3) Solicitation Title and Solicitation Number that the Proposal is in response to;
- (4) Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- (5) Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- (6) Offeror's eMM number;
- (7) Offeror's MBE certification number (if applicable);
- (8) Acceptance of all State RFP and Contract terms and conditions (see Section 4.17); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 5.4.2.4); and
- (9) Acknowledgement of all addenda to this RFP.

5.4.2.4 **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." The Summary shall identify the Service Category(ies) and Region(s) for which the Offeror is proposing to provide services (if applicable). **It shall also identify whether the Offeror is proposing to provide services for Functional Area 1 or Functional Area 2 or both Functional Areas 1 and 2.** 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.

The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment M), or any other attachments. Exceptions to terms and conditions may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

If the Offeror has taken no exceptions to the requirements of this RFP, the Contract (Attachment M), or any other attachments, the Executive Summary shall so state.

5.4.2.5 **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, "Minimum Qualifications."

5.4.2.6 **Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E).**

5.4.2.6.1 The Offeror shall address each Scope of Work requirement (RFP Section 2) for the Functional Area(s) for which it is proposing to provide services in its Technical Proposal and describe how its proposed services, including the services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work requirement shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

5.4.2.6.2 The Offeror shall give a definitive **section-by-section** description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required services as outlined in RFP Section 2, Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.

5.4.2.6.3 The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.

5.4.2.6.4 The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department's 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 RFP Section 3.3.

5.4.2.7 **Experience and Qualifications of Proposed Staff (Submit under TAB F).** The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract. For the Master Contract, the only staff that must be proposed is the Master Contractor's Representative (RFP § 2.3.6). All other proposed staff must be identified in response to a TORFP.

The Offeror shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan. The Offeror shall include individual resumes for the Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.

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

**5.4.2.8 Offeror Qualifications and Capabilities (Submit under TAB G).** The Offeror shall include information on past experience with similar projects and/or services. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

- (1) The number of years the Offeror has provided the similar 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 this 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.

**5.4.2.9 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 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 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 services provided.

The Department reserves the right to request additional references or utilize references not provided by an Offeror.

**5.4.2.10 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 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 services/goods 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.

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

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

- (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.

**5.4.2.12 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 3.1. See Section 3.1 for the required insurance certificate submission for the recommended Offeror.

**5.4.2.13 Subcontractors (Submit under TAB L).** The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, 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.

**5.4.2.14 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 case name, court case docket number, and what the final ruling or determination was from the court; and
- (4) In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, the name of the judge and location of the court.

**5.4.2.15 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. Task Order Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. See COMAR 21.05.03.03A (3) and RFP Section 2.3.1.3 J.

### 5.4.3 Additional Required Technical Submissions (Submit under TAB O).

5.4.3.1 The following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 5.4.2.

- a. Completed Proposal Affidavit (**Attachment C**).
- ~~b. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**).~~
- b.** Offeror's Acknowledgment of TORFP MBE Participation Requirements (**Attachment D-1 MASTER**). **See Section 4.26.**
- c.** Offeror's Acknowledgment of TORFP VSBE Participation Requirements (**Attachment E-1 MASTER**). **See Section 4.27.**

5.4.3.2 **\*If Required**, the following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 5.4.2. \*See appropriate RFP Section to determine whether the particular document is required for this procurement:

- (1) A Signed Statement from the Offeror's Parent Organization Guaranteeing Performance of the Offeror. **See Section 4.16;**
- (2) Completed Federal Funds Attachment (**Attachment G**). **See Section 4.29;**
- (3) Completed Conflict of Interest Affidavit and Disclosure (**Attachment H**). **See Section 4.30;**
- (4) Completed Mercury Affidavit (**Attachment K**). **See Section 4.34;**
- (5) Completed Location of the Performance of Services Disclosure (**Attachment L**). **See Section 4.35.**

## 5.5 Volume II – Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 5.2 "Proposals," the Offeror shall submit an original unbound copy, four (4) copies, and an electronic version in ~~Microsoft Word or Microsoft Excel~~ of the Financial Proposal **for Functional Area 1, Functional Area 2 or both Functional Areas 1 and 2.** The Financial Proposal shall contain all price information in the format specified in **Attachment B. Financial Proposals will be evaluated separately.** 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 years one through five for Functional Area 1 or Functional Area 2 or both Functional Areas 1 and 2. These are the maximum prices the State will pay under any TORFP or TOA for all proposed labor category, per student, and flat rates throughout the Contract term.**

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## **SECTION 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.

### **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 subcriteria within each criterion have equal weight.

- 6.2.1 Offeror’s Technical Response to RFP Requirements and Work Plan (See RFP § 5.4.2.6). The State prefers an Offeror’s response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done. Proposals which include 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 Staff (See RFP § 5.4.2.7)
- 6.2.3 Offeror Qualifications and Capabilities, including proposed Subcontractors (See RFP § 5.4.2.8 – 5.4.2.14)
- ~~6.2.4 Economic Benefit to State of Maryland (See RFP § 5.4.2.15)~~

### **6.3 Financial Proposal Evaluation Criteria**

All Qualified Offerors **(see RFP § 6.5.2.4) will be evaluated based on the labor category rates, per student rates and flat rates** will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment B** - Financial Proposal Form. **Financial Proposals will be evaluated separately. Offerors shall provide prices for Contract Years one through five in Functional Area 1 or Functional Area 2 or both Functional Areas 1 and 2. These are the maximum prices the State will pay under any TOA for all proposed labor category, per student and flat rates throughout the Contract term.**

### **6.4 Reciprocal Preference**

Although Maryland law does not generally authorize procuring units to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over

Maryland contractors. Therefore, COMAR 21.05.01.04 permits procuring units to apply a reciprocal preference in favor of a Maryland resident business under the following conditions:

- (1) The Maryland resident business is a responsible Offeror;
- (2) The most advantageous offer is from a responsible Offeror whose principal office or principal operations through which it would provide the services required under this RFP is in another state;
- (3) The other state gives a preference to its resident businesses through law, policy, or practice; and
- (4) The Maryland resident preference does not conflict with a federal law or grant affecting the procurement Contract.

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

## **6.5 Selection Procedures**

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

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

### **6.5.2 Selection Process Sequence**

6.5.2.1 A determination is made that the Offeror's Acknowledgment of TORFP MBE Participation Requirements (**Attachment D-1 MASTER**) is included and properly completed. In addition, a determination is made that the Offeror's Acknowledgment of the TORFP VSBE Participation Requirements (**Attachment E-1 MASTER**) is included and is properly completed. Finally, a determination is made that all Minimum Qualifications have been satisfied. (See RFP Section 1.)

6.5.2.2 Technical Proposals are evaluated for technical merit ~~and ranked~~. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and Offeror's ability to perform the services, as well as 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.

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



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

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

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

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

Upon receipt of a Notification of Recommendation for Contract Award, the following documents shall be completed, signed if applicable with original signatures, and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each of the following documents:

- (1) Contract (**Attachment M**),
- (2) Contract Affidavit (**Attachment N**),
- (3) Non-Disclosure Agreement (**Attachment I**), if applicable; \*see **Section 4.31**,
- (4) Copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.1 "Insurance Requirements," listing the State as an additional insured, if applicable; \*see **Section 3.1**.

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## **RFP ATTACHMENTS**

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

It is requested that this form be completed and submitted as described in RFP Section 4.1 by those potential Offerors that plan on attending the Pre-Proposal Conference.

### **ATTACHMENT B – Financial Proposal Instructions and Form**

The Financial Proposal Form must be completed and submitted in the Financial Proposal package.

### **ATTACHMENT C – Proposal Affidavit**

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

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

Attachment D-1-Master (Offeror's Acknowledgement of TORFP MBE Participation Requirements) must be completed, signed and submitted with the Offeror's Technical Proposal to this RFP. Failure to do so shall result in the State's rejection of the Offeror's proposal (Technical and Financial) to this RFP. TORFP Attachments D-1A, D-1B, D-1C, D-2, D-3A, D-3B, D-4A, D-4B and D-5 are to be submitted by Master Contractors responding to future TORFPs.

### **ATTACHMENTS E – Veteran-Owned Small Business Enterprise Forms**

Attachment E-1-Master (Offeror's Acknowledgement of TORFP MBE Participation Requirements) must be completed, signed and submitted with the Offeror's Technical Proposal to this RFP. Failure to do so shall result in the State's rejection of the Offeror's proposal (Technical and Financial) to this RFP. TORFP Attachments E-1, E-2, E-3, and E-4 are to be submitted by Master Contractors responding to future TORFPs.

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

Attachment F-1 Living Wage Requirements Affidavit of Agreement is to be submitted under the TORFP process, not with the Offeror's Technical Proposal to this RFP.

### **ATTACHMENT G – Federal Funds Attachment**

If required (see RFP Section 4.29), these Attachments must be completed and submitted with the Technical Proposal as instructed in the Attachments.

### **ATTACHMENT H – Conflict of Interest Affidavit and Disclosure**

If required (see RFP Section 4.30), this Attachment must be completed and submitted with the Technical Proposal.

### **ATTACHMENT I – Non-Disclosure Agreement**

This Affidavit is not due with the Offeror's proposals submissions to this RFP. However, it shall be completed, signed and returned by each Offeror recommended for award to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award. To expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal. (See RFP Section 4.31.)

### **ATTACHMENT J – HIPAA Business Associate Agreement**

If required (see RFP Section 4.32), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

**ATTACHMENT K – Mercury Affidavit**

If required (see RFP Section 4.34), this Attachment must be completed and submitted with the Technical Proposal.

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

If required (see RFP Section 4.35), this Attachment must be completed and submitted with the Technical Proposal.

**ATTACHMENT M – Contract (applies to Master Contract RFP)**

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

**ATTACHMENT N – Contract Affidavit (applies to Master Contract RFP)**

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

**ATTACHMENT O – DHR Hiring Agreement (applies to TOREPs)**

**If required (see RFP Section 4.36), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for task order award.**

**ATTACHMENT P – Sample Task Order Agreement (TOA) (applies to TOREPs)**

**This is a sample TOA for informational purposes only.**

**ATTACHMENT Q – Sample Labor Category Summary Sheet (applies to TOREPS)**

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

**Solicitation Number (solicitation number)  
CUSTOMER SERVICE TRAINING MASTER CONTRACT**

A Pre-Proposal Conference will be held at the date, time, and location indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

Please return this form at least five (5) Business Days prior to the Pre-Proposal Conference date, advising whether or not you plan to attend. The completed form should be returned via e-mail or fax to the Procurement Officer. The Procurement Officer’s contact information is provided in the RFP Key Information Summary Sheet.

Please indicate:

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

- 1.
- 2.
- 3.

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

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

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<hr/> Signature	<hr/> Title
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\_\_\_\_\_  
Name of Firm (please print)

## **B-1: FINANCIAL PROPOSAL INSTRUCTIONS**

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

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

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Financial Proposal Form shall be filled in. 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, 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 this Contract.

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

L) **The separately attached Revised Attachment B-2: Financial Proposal Form Excel spreadsheet has two worksheets (tabs): Functional Area 1 – Classroom-based Training; and Functional Area 2 – Computer-Based Training. On both worksheets, i** ~~In Section A of the separately attached Excel spreadsheet, Offerors are to price the Fully Loaded Fixed Hourly Labor Category Rates that represent the maximum rates chargeable during each Contract year for the labor categories delineated and defined in Section 2.3.8 of the RFP; and i~~ ~~In Section B of the separately attached Excel spreadsheet, Offerors are to price the Fully Loaded Flat Rates for classroom-based training that represent the maximum rates chargeable during each Contract year for the indicated tiers of employees, in accordance with Section 2.3.10 of the RFP. In Section C of the separately attached Excel spreadsheet, Offerors are to price the Fully Loaded Flat Rates for computer-based training that represent the maximum rates chargeable during each Contract year for the indicated tiers of employees, in accordance with Section 2.3.9 of the RFP. In Section D, Offerors are to choose a response from the dropdown box.~~

**For Functional Area 1, in Section B, Offerors are to price the Fully Loaded Flat Rates for each four-hour block of classroom-based training that represent the maximum rates chargeable during each Contract year for the indicated tiers of participants, in accordance with Section 2.3.10 of the RFP; and in Section C, Offerors are to include Fully Loaded per student rate for four hours of classroom-based training, regardless of how many students are in the training class.**

**For Functional Area 2, in Section B, Offerors are to price the Fully Loaded Flat Rates for each hour of computer-based training that represent the maximum rates chargeable during each Contract year for the indicated tiers of participants, in accordance with Section 2.3.9 of the RFP; and in Section C, Offerors are to include Fully Loaded per student rate for each hour of computer-based training, regardless of the number of students who take the training.**

**Offerors may provide prices for Functional Area 1 or Functional Area 2 or both Functional Areas 1 and 2, but will only be considered for task orders in the Functional Area(s) for which they submitted prices.**

## **B-2: 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 separately attached Excel Spreadsheet: “Attachment B Financial Proposal Form.”**



## ATTACHMENT C – PROPOSAL AFFIDAVIT

### A. AUTHORITY

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

### B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

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

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

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

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

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

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

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

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

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
  - (a) §7201, Attempt to Evade or Defeat Tax;
  - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
  - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
  - (d) §7206, Fraud and False Statements, or
  - (e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
  - (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
    - (ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

- (a) A court:
  - (i) Made the finding; and
  - (ii) Decision became final; or
- (b) The finding was:
  - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
  - (ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

- (a) A court:
  - (i) Made the finding; and
  - (ii) Decision became final; or
- (b) The finding was:
  - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
  - (ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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**E. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

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**G. SUBCONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

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

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

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

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Proposal that is being submitted; or

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Proposal price of the Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Proposal is submitted.

**I. CERTIFICATION OF TAX PAYMENT**

I FURTHER AFFIRM THAT:

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

**J. CONTINGENT FEES**

I FURTHER AFFIRM THAT:

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

**K. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

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

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

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

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

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

I FURTHER AFFIRM THAT:

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

**M. I FURTHER AFFIRM THAT:**

Any claims of environmental attributes made relating to a product or service included in the Proposal are consistent with the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims as provided in 16 C.F.R. §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

**N. ACKNOWLEDGEMENT**

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

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

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

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

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

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

**ATTACHMENTS D – MINORITY BUSINESS ENTERPRISE FORMS**

**ATTACHMENT D-1- MASTER  
OFFEROR’S ACKNOWLEDGMENT 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. 050B7400008, Customer Service Training Contract, is **20%** 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. 050B7400008, Customer Service Training 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 in 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 Name

\_\_\_\_\_  
Signature of Offeror’s Authorized Representative and Date

\_\_\_\_\_  
Printed Name and Title of Offeror’s Authorized Representative

\_\_\_\_\_  
Telephone Number

Email Address of Offeror’s Authorized Representative: \_\_\_\_\_

Offeror’s FEIN: \_\_\_\_\_

Offeror’s Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



*The following MBE forms, Attachments D-1A through D-5, are provided for information purposes only relative to this Customer Service Training Contract RFP, and 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.*

**TORFP- ATTACHMENT D-1A**  
**MBE Utilization and Fair Solicitation Affidavit**  
**& MBE Participation Schedule - INSTRUCTIONS**

1. Master Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the Minority Business Enterprise (MBE) subcontractor participation goal stated in the Task Order Request for Proposals. Master Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the TORFP for information regarding its MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Master 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.
3. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Task Order Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
4. MBE Goals and Subgoals: Please review the TORFP for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
5. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including an MBE Prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule.
6. Please refer to the MDOT MBE Directory at [www.mdot.state.md.us](http://www.mdot.state.md.us) to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit [www.naics.com](http://www.naics.com). Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **WARNING:** If the firm's NAICS Code is in **graduated status**, such services/products **may not be counted** for

purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term “Graduated” follows the Code in the MDOT MBE Directory.

7. **Guidelines Regarding MBE Prime Self-Performance:** Please note that when a certified MBE firm participates as a Prime contractor on a Contract, 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 workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the MBE participation goal (overall), including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the TORFP.
  - ✓ In order to receive credit for self-performance, an MBE Prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE Prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE Prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
  - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime’s ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the Contract has subgoals, regardless of MBE Prime’s ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to other MBEs for each of any remaining subgoals or request a waiver. As set forth in **Attachment D1-B** Waiver Guidance, the MBE Prime’s ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to GOMA’s website ([www.goma.maryland.gov](http://www.goma.maryland.gov)) for the MBE Prime Regulations Q&A for illustrative examples.
8. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own workforce towards fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
9. As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
10. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT’s Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.

11. Worksheet: The percentage of MBE participation, calculated using the percentage amounts for all of the MBE firms listed on the Participation Schedule MUST at least equal the MBE participation goal **and** subgoals (if applicable) set forth in the solicitation. If a Offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the Offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) or the Proposal will be determined to be not susceptible of being selected for award. You may wish to use the subgoal summary below to assist in calculating the percentages and confirm that you have met the applicable MBE participation goal and subgoals, if any.

**SUBGOALS (IF APPLICABLE)**

<b>TOTAL AFRICAN AMERICAN MBE PARTICIPATION:</b>	_____	%
<b>TOTAL ASIAN AMERICAN MBE PARTICIPATION:</b>	_____	%
<b>TOTAL HISPANIC AMERICAN MBE PARTICIPATION:</b>	_____	%
<b>TOTAL WOMEN-OWNED MBE PARTICIPATION:</b>	_____	%

**OVERALL GOAL**

<b>TOTAL MBE PARTICIPATION (INCLUDE ALL CATEGORIES):</b>	_____	%
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**MBE TORFP ATTACHMENT D-1A**  
**MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**  
**& MBE PARTICIPATION SCHEDULE**

**This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the Proposal. If the Master Contractor fails to accurately complete and submit this Affidavit and Schedule with the Proposal as required, the Procurement Officer shall determine that the Task Order Proposal is not reasonably susceptible of being selected for award.**

In connection with the Task Order Proposal submitted in response to Solicitation No. (solicitation number), I affirm the following:

**1. MBE Participation (PLEASE CHECK ONLY ONE)**

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of \_\_\_\_\_ percent and all of the following subgoals:

\_\_\_\_\_ percent for African American-owned MBE firms

\_\_\_\_\_ percent for Hispanic American-owned MBE firms

\_\_\_\_\_ percent for Asian American-owned MBE firms

\_\_\_\_\_ percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I must complete the MBE Participation Schedule (Item 4 below) in order to be considered for award.

**OR**

I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I must complete the MBE Participation Schedule (Item 4 below) for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. (See TORFP Attachment D-1B, Waiver Guidance, for more information.)

**2. Additional MBE Documentation**

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 Business Days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (b) Good Faith Efforts Documentation to Support Waiver Request (**TORFP Attachment D-1C**)
- (c) Outreach Efforts Compliance Statement (**TORFP Attachment D-2**);
- (d) MBE Subcontractor/MBE Prime Project Participation Statement (**TORFP Attachments D-3A/B**);

- (e) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer in connection with the certified MBE participation goal and subgoals, if any.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that my proposal is not is not susceptible of being selected for TOA award. If the TOA has already been awarded, the award is voidable.

**3. Information Provided to MBE firms**

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

**4. MBE Participation Schedule**

Set forth below are the (i) certified MBEs I intend to use, (ii) percentage of the total TOA amount allocated to each MBE for this project and (iii) items of work each MBE will provide under the Contract. I have confirmed with the MDOT database that the MBE firms identified below (including any self-performing MBE prime firms) are performing work activities for which they are MDOT-certified.

Prime Contractor	Project Description	PROJECT/CONTRACT NUMBER

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. **MBE PRIMES:** PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

**SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)**

MBE Prime Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of total TOA Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____%  Percentage of total TOA Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%  Description of the Work to be performed with MBE prime's own workforce: _____ _____
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**SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)**

MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of Total TOA to be provided by this MBE: _____%  Description of the Work to be Performed: _____ _____ _____
--	---

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned    <input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned    <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total TOA to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned    <input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned    <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total TOA to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned    <input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned    <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total TOA to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned    <input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned    <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total TOA to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>

(Continue on separate page if needed)

**I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.**

\_\_\_\_\_  
Master Contractor Name  
*(PLEASE PRINT OR TYPE)*

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH TASK ORDER PROPOSAL**

**MBE TORFP ATTACHMENT D-1B**  
**WAIVER GUIDANCE**

**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS**

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a Task Order Agreement, the Master Contractor must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

**I. Definitions**

**MBE Goal(s)** – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

**Good Faith Efforts** – The “Good Faith Efforts” requirement means that when requesting a waiver, the Master Contractor must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether a Master Contractor that requests a waiver has made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the Master Contractor has made. The efforts employed by the Master Contractor should be those that one could reasonably expect a Master Contractor to take if the Master Contractor were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the Master Contractor’s good faith efforts is a judgment call; meeting quantitative formulas is not required.

**Identified Firms** – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the TORFP as available to perform the Identified Items of Work. It also may include additional MBEs identified by the Master Contractor as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the TORFP procurement was issued. If the TORFP procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the Master Contractor identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

**Identified Items of Work** – “Identified Items of Work” means the TORFP items identified by the procuring agency during the goal setting process and listed in the TORFP as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the Master Contractor identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the TORFP procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Master Contractor identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

**MBE Firms** – “MBE Firms” refers to firms certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State’s MBE Program.



## II. Types of Actions Agency will Consider

The Master Contractor is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the Master Contractor's Good Faith Efforts when the Master Contractor fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

### A. Identify Proposal Items as Work for MBE Firms

1. Identified Items of Work in Procurements
  - (a) Certain TORFPs will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the TORFP provides a list of Identified Items of Work, the Master Contractor shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
  - (b) Master Contractors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.
2. Identified Items of Work by Master Contractors
  - (a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Master Contractors should reasonably identify sufficient items of work to be performed by MBE Firms.
  - (b) Where appropriate, Master Contractors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a Prime contractor to perform the work of a contract with its own organization does not relieve the Master Contractor of the responsibility to make Good Faith Efforts.

### B. Identify MBE Firms to Solicit

1. MBE Firms Identified in TORFPs
  - (a) Certain TORFPs will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the TORFP provides a list of Identified MBE Firms, the Master Contractor shall make all reasonable efforts to solicit those MBE firms.
  - (b) Master Contractors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.
2. MBE Firms Identified by Master Contractors
  - (a) When the TORFP does not include a list of Identified MBE Firms, Master Contractors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
  - (b) Any MBE Firms identified as available by the Master Contractor should be certified to perform the Identified Items of Work.

### C. Solicit MBEs

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Master Contractor should:
  - (a) provide the written solicitation at least 10 days prior to TOP opening to allow sufficient time for the MBE Firms to respond;

- (b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the Master Contractor has a valid basis for using different contact information; and
  - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)
2. “All” Identified Firms includes the MBEs listed in the TORFP and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Master Contractor provides written solicitations.
  3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the TORFP. If an interested MBE cannot access the information provided by electronic means, the Master Contractor must make the information available in a manner that is accessible to the interested MBE.
  4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:
    - (a) by telephone using the contact information in the MBE Directory, unless the Master Contractor has a valid basis for using different contact information; or
    - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
  5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the TOA. Examples of other means include:
    - (a) attending any pre-proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
    - (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors’ groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

**D. Negotiate With Interested MBE Firms**

Master Contractors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
  - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
  - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
  - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. A Master Contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a Master Contractor’s failure to meet the contract MBE goal(s), as

long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:

- (a) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Master Contractor;
  - (b) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Master Contractor;
  - (c) percentage that the MBE subcontractor's quote represents of the overall TOA amount;
  - (d) number of MBE firms that the Master Contractor solicited for that portion of the work;
  - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
  - (f) number of quotes received by the Master Contractor for that portion of the work.
4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
  5. The Master Contractor may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
  6. The "average of the other subcontractors' quotes received" by the Master Contractor refers to the average of the quotes received from all subcontractors. Master Contractors should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.
  7. A Master Contractor shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Master Contractor concludes is not acceptable, the Master Contractor must provide a written detailed statement listing the reasons for this conclusion. The Master Contractor also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
    - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable TOA requirements.
    - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

#### **E. Assisting Interested MBE Firms**

When appropriate under the circumstances, the decision-maker will consider whether the Master Contractor made reasonable efforts to assist interested MBR Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Master Contractor; and
2. Necessary equipment, supplies, materials, or related assistance or services.

### **III. Other Considerations**

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant

variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether a Master Contractor decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the TORFP. The decision-maker also may take into account the performance of other Master Contractors in meeting the contract. For example, when the apparent successful Master Contractor fails to meet the TORFP goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful Master Contractor could have met the goal. If the apparent successful Master Contractor fails to meet the goal, but meets or exceeds the average MBE participation obtained by other Master Contractors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Master Contractor having made Good Faith Efforts.

#### **IV. Documenting Good Faith Efforts**

At a minimum, a Master Contractor seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 Business Days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

##### **A. Items of Work (Complete TORFP Good Faith Efforts Documentation Attachment D-1C, Part 1)**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

##### **B. Outreach/Solicitation/Negotiation**

1. The record of the Master Contractor's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(TORFP Complete Outreach Efforts Compliance Statement – Attachment D-2)**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
  - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete TORFP Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations)**; and
  - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

##### **C. Rejected MBE Firms (Complete TORFP Good Faith Efforts Attachment D-1C, Part 3)**

1. For each MBE Firm that the Master Contractor concludes is not acceptable or qualified, a detailed statement of the reasons for the Master Contractor's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the Master Contractor concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Master Contractor's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **TORFP D-1B - Exhibit A** to this Part 1) signed by the MBE

contractor or a statement from the Master Contractor that the MBE contractor refused to sign the MBE Unavailability Certificate.

**D. Other Documentation**

1. Submit any other documentation requested by the Procurement Officer to ascertain the Master Contractor's Good Faith Efforts.
2. Submit any other documentation the Master Contractor believes will help the Procurement Officer ascertain its Good Faith Efforts.

**MBE TORFP ATTACHMENT D-1B - Exhibit A**  
**MBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
 \_\_\_\_\_ (Name of Minority firm)  
 located at \_\_\_\_\_  
 \_\_\_\_\_ (Number) \_\_\_\_\_ (Street)  
 \_\_\_\_\_  
 \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_  
 in \_\_\_\_\_ County by \_\_\_\_\_  
 \_\_\_\_\_ (Name of Prime Contractor's Firm)

\*\*\*\*\*  
 \*\*\*\*\*

2. \_\_\_\_\_ (Minority Firm), is either unavailable for the  
 work/service or unable to prepare a bid for this project for the following reason(s):

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

\_\_\_\_\_  
**Signature of Minority Firm's MBE Representative**      **Title**      **Date**

\_\_\_\_\_  
 MDOT CERTIFICATION #      TELEPHONE #



3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

\_\_\_\_\_  
 Signature of Prime Contractor      Title      Date



**MBE TORFP ATTACHMENT D-1C**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER**  
**REQUEST**

PAGE \_\_ OF \_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>SOLICITATION NUMBER</b>

**PARTS 1, 2, AND 3 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS**  
**SUPPORTING YOUR WAIVER REQUEST.**

I affirm that I have reviewed **Attachment D-1B**, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this **Attachment D-1C** Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
 Company Name

\_\_\_\_\_  
 Signature of Representative

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Printed Name and Title

\_\_\_\_\_  
 City, State and Zip Code

\_\_\_\_\_  
 Date



**TORFP GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST**

**PART 1 – IDENTIFIED ITEMS OF WORK MASTER CONTRACTOR MADE  
AVAILABLE TO MBE FIRMS**

PAGE \_\_ OF \_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>SOLICITATION NUMBER</b>

Identify those items of work that the Master Contractor made available to MBE Firms. This includes, where appropriate, those items the Master Contractor identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total TOA amount. It is the Master Contractor’s responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the TORFP. Note: If the TORFP includes a list of Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Master Contractor should make all of those items of work available to MBE Firms or explain why that item was not made available. If the Master Contractor selects additional items of work to make available to MBE Firms, those additional items should also be included below.

<b>Identified Items of Work</b>	<b>Was this work listed in the TORFP?</b>	<b>Does Master Contractor normally self-perform this work?</b>	<b>Was this work made available to MBE Firms? If no, explain why?</b>
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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Please check if Additional Sheets are attached.

**TORFP GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST**

**PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS**

PAGE \_\_ OF \_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>SOLICITATION NUMBER</b>

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the TORFP includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the Master Contractor should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Master Contractor identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the Master Contractor that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see **Attachment D-1B – Exhibit A**). If the Master Contractor used a Non-MBE or is self-performing the identified items of work, Part 3 must be completed.

<b>Name of Identified MBE Firm &amp; MBE Classification</b>	<b>Describe Item of Work Solicited</b>	<b>Initial Solicitation Date &amp; Method</b>	<b>Follow-up Solicitation Date &amp; Method</b>	<b>Details for Follow-up Calls</b>	<b>Quote Rec'd</b>	<b>Quote Used</b>	<b>Reason Quote Rejected</b>
<b>Firm Name:</b> <hr style="border: 0.5px solid black;"/> <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b>  <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date:  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date:  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With:  <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE  <input type="checkbox"/> Self-performing

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
<b>Firm Name:</b> <hr/> <b>MBE Classification</b> (Check only if requesting waiver of MBE subgoal.)  <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date:  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date:  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With:  <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE  <input type="checkbox"/> Self-performing

Please check if Additional Sheets are attached.

**TORFP GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST**

**PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE  
QUOTES**

PAGE \_\_ OF \_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>SOLICITATION NUMBER</b>

This form must be completed if Part 2 indicates that an MBE quote was rejected because the Master Contractor is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE (Include spec/section number from TORFP)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ —	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____ —	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ —	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ —	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ —	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ —	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____ —	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ —	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____ —	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ —	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

Describe Identified Items of Work Not Being Performed by MBE (Include spec/section number from TORFP)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE	\$_____ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$_____ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

Please check if Additional Sheets are attached.

**MBE TORFP ATTACHMENT D-2**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

Complete and submit this form within 10 Business Days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the Task Order Proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

1. Master Contractor identified subcontracting opportunities in these specific work categories:

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2. Attached to this form are copies of written solicitations (with bidding/proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.

3. Master Contractor made the following attempts to personally contact the solicited MDOT-certified MBE firms:

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4. **Please Check One:**

- This project does not involve bonding requirements.
- Master Contractor assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):

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5. **Please Check One:**

- Master Contractor did attend the pre-proposal conference.
- No pre-Proposal meeting/conference was held.
- Master Contractor did not attend the pre-Proposal conference.

---

Company Name

---

Signature of Representative

---

Address

---

Printed Name and Title

---

City, State and Zip Code

---

Date



**MBE TORFP ATTACHMENT D-3A**  
**MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION**

**PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE MASTER CONTRACTOR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE TASK ORDER PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor’s Name) is awarded the TOA in conjunction with Solicitation No. \_\_\_\_\_, such Prime Contractor intends to enter into a subcontract with \_\_\_\_\_ (Subcontractor’s Name) committing to participation by the MBE firm \_\_\_\_\_ (MBE Name) with MDOT Certification Number \_\_\_\_\_ which will receive at least \$ \_\_\_\_\_ which equals to \_\_\_% of the Total TOA Amount for performing the following products/services for the TOA:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

Each of the Master Contractor and Subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and Subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Proposal and:

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

<p><b>PRIME CONTRACTOR</b></p> <p>Signature of Representative: _____</p> <p>Printed Name and Title: _____</p> <p>_____</p> <p>Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Address: _____</p> <p>_____</p> <p>Telephone: _____</p> <p>Date: _____</p>	<p><b>SUBCONTRACTOR</b></p> <p>Signature of Representative: _____</p> <p>Printed Name and Title: _____</p> <p>_____</p> <p>Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Address: _____</p> <p>_____</p> <p>Telephone: _____</p> <p>Date: _____</p>
--	---

**MBE TORFP ATTACHMENT D-3B**  
**MBE PRIME - PROJECT PARTICIPATION CERTIFICATION**

**PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE FIRM HAS LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE MASTER CONTRACTOR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) with Certification Number \_\_\_\_\_ is awarded the TOA in conjunction with Solicitation No. \_\_\_\_\_, such MBE Prime Contractor intends to perform with its own forces at least \$\_\_\_\_\_ which equals to \_\_\_% of the Total TOA Amount for performing the following products/services for the TOA:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE). FOR CONSTRUCTION PROJECTS, GENERAL CONDITIONS MUST BE LISTED SEPARATELY.	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

<p><b>MBE PRIME CONTRACTOR</b>  Signature of Representative: _____  Printed Name and Title: _____  Firm's Name: _____  Federal Identification Number: _____  Address: _____  Telephone: _____  Date: _____</p>
--



**MBE TORFP ATTACHMENT D-4A**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Paid/Unpaid Invoice Report**

Report #: _____  Reporting Period (Month/Year): _____  <b>Prime Contractor: Report is due to the MBE Liaison by the 10<sup>th</sup> of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract/TOA #: _____ Contracting Unit: _____ Contract Amount: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
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Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	Fax:	E-mail:																																					
MBE Subcontractor Name:		Contact Person:																																					
Phone:	Fax:																																						
Subcontractor Services Provided:																																							
<b>List all payments made to MBE subcontractor named above during this reporting period:</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%; text-align: center;"><u>Invoice#</u></th> <th style="width: 30%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Paid: \$</b></td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Paid: \$</b>		_____	<b>List dates and amounts of any outstanding invoices:</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%; text-align: center;"><u>Invoice #</u></th> <th style="width: 30%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Unpaid: \$</b></td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Unpaid: \$</b>		_____
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- If more than one MBE subcontractor is used for this contract/TOA, you must use separate D-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment D-4B
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Manager: _____ Contracting Unit and Address: _____ _____
---

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

**MBE TORFP ATTACHMENT D-4B**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Report**

MBE Prime Contractor: Certification Number: Report #: _____ Reporting Period (Month/Year): _____ <b>MBE Prime Contractor: Report is due to the MBE Liaison by the ___ of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals: _____ Project Begin Date: _____ Project End Date: _____
--	--

Contact Person:		
Address:		
City:	State:	ZIP:
Phone:	Fax:	E-mail:

Invoice Number	Value of the Work	NAICS Code	Description of the Work

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

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ _____
---

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

**MBE TORFP ATTACHMENT D-5**  
**Minority Business Enterprise Participation**  
**MBE Subcontractor Paid/Unpaid Invoice Report**

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

MBE Subcontractor Name:																															
MDOT Certification #:																															
Contact Person:	E-mail:																														
Address:																															
City:	State:	ZIP:																													
Phone:	Fax:																														
<b>Subcontractor Services Provided:</b>																															
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1.																															
2.																															
3.																															
<b>Total Dollars Unpaid: \$</b> _____																															
Prime Contractor:	Contact Person:																														

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

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ _____
---

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





**ATTACHMENTS E – VETERAN-OWNED SMALL BUSINESS ENTERPRISE**

**ATTACHMENT E-1 - MASTER**

**OFFEROR’S ACKNOWLEDGEMENT OF TORFP VSBE PARTICIPATION REQUIREMENTS**

**(submit with Bid/Proposal)**

I acknowledge that the overall VSBE goal established for this RFP No. 050B7400008, Customer Service Training Contract, is **5 percent (5%)** and that the VSBE goal for each TORFP will be set at the subsequent Task Order Request for Proposals (TORFP) level.

In conjunction with the technical response that I submit in response to this RFP No. 050B7400008, Customer Service Training Contract, I affirm that if I am awarded a Master Contract under this RFP, and I respond to any TORFP that contains a VSBE Participation commitment, I commit to make a good faith effort to achieve the VSBE goal established in 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 Name

\_\_\_\_\_  
Signature of Offeror’s Authorized Representative and Date

\_\_\_\_\_  
Offeror’s Authorized Representative’s Printed Name and Title

\_\_\_\_\_  
Telephone Number

Email Address of Offeror’s Authorized Representative: \_\_\_\_\_

Offeror’s FEIN: \_\_\_\_\_

Offeror’s Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**TORFP ATTACHMENT E-1**  
**VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule**

**(submit with Task Order Proposal)**

This document **MUST BE** included with the Task Order Proposal. If the Master Contractor fails to complete and submit this form with the TOP, the Procurement Officer may determine that the Bid is non-responsive or that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Task Order Proposal submitted in response to Task Order RFP # \_\_\_\_\_,

I affirm the following:

1.  I acknowledge and intend to meet the overall verified VSBE participation goal of X%. Therefore, I will not be seeking a waiver.

**OR**

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

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

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

**ATTACHMENT E-1A**  
**VSBE Prime/Subcontractor Participation Schedule**

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: - _____	

List Information For Each Verified VSBE Prime Contractor or Subcontractor On This Project

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

Continue on a separate page, if needed.

**SUMMARY**

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

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

\_\_\_\_\_  
 Master Contractor Name  
*(PLEASE PRINT OR TYPE)*

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

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

**VSBE TORFP ATTACHMENT E-1B - Exhibit A**  
**VSBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
 \_\_\_\_\_ (Name of Veteran-owned firm)  
 located at \_\_\_\_\_  
 \_\_\_\_\_ (Number) \_\_\_\_\_ (Street)  
 \_\_\_\_\_  
 \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip)

was offered an opportunity to bid on Solicitation/TORFP No. \_\_\_\_\_  
 in \_\_\_\_\_ County by \_\_\_\_\_  
 \_\_\_\_\_ (Name of Prime Contractor's Firm)

\*\*\*\*\*  
 \*\*\*\*\*

2. \_\_\_\_\_ (Veteran-owned Firm), is either unavailable  
 for the \_\_\_\_\_  
 work/service or unable to prepare a bid for this project for the following reason(s):

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

_____ Signature of Minority Firm's VSBE Representative	_____ Title	_____ Date
---	----------------	---------------

_____ USDVA #	_____ TELEPHONE #
------------------	----------------------



4. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Veteran-Owned Small Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

_____ Signature of Prime Contractor	_____ Title	_____ Date
--	----------------	---------------



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

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

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

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: _____	Total TOA Amount: \$
Name of Veteran-Owned Firm:	DUNS Number:
Address:	FEIN:
Work to Be Performed:	
Percentage of Total TOA:	Total Subcontract Amount: \$

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

**PRIME CONTRACTOR SIGNATURE**

**SUBCONTRACTOR SIGNATURE**

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

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

\_\_\_\_\_  
 Name, Title

\_\_\_\_\_  
 Name, Title

Date \_\_\_\_\_

Date \_\_\_\_\_

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

**TORFP ATTACHMENT E-3**  
**Veterans Small Business Enterprise (VSBE) Participation**  
**VSBE Prime Contractor Paid/Unpaid Invoice Report**

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

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	Fax:	E-mail:																																					
VSBE Prime Contractor Services Provided (if applicable):																																							
Subcontractor Name:		Contact Person:																																					
Phone:	Fax:																																						
VSBE Subcontractor Services Provided (if applicable):																																							
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<b>Total Dollars Unpaid: \$</b> _____																																							

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

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

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ _____
---



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

This form must be completed monthly  
by all VSBE subcontractors.

**FORFP ATTACHMENT E-4**  
**Veterans Small Business Enterprise Participation**  
**VSBE Subcontractor Paid/Unpaid Invoice Report**

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

VSBE Subcontractor Name: _____																																
Department of Veterans Affairs Certification #: _____																																
Contact Person: _____	E-mail: _____																															
Address: _____																																
City: _____	State: _____	ZIP: _____																														
Phone: _____	Fax: _____																															
<b>VSBE Subcontractor Services Provided:</b>																																
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1.																																
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3.																																
<b>Total Dollars Unpaid: \$</b>	_____																															
Prime Contractor: _____		Contact Person: _____																														

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

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ _____
---

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

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

***(TO BE SUBMITTED UNDER THE TORFP PROCESS AND NOT WITH THE OFFEROR'S TECHNICAL PROPOSAL TO THIS RFP)***

**Living Wage Requirements for Service Contracts**

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

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

**Maryland Living Wage Requirements Affidavit of Agreement**  
(submit with Task Order Proposal)

Contract No. \_\_\_\_\_

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

Address \_\_\_\_\_

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

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

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

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

**If the Contract Is a Living Wage Contract**

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

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

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

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

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

Name of Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Name (Typed or Printed)

\_\_\_\_\_  
Witness Signature Date

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

**ATTACHMENT G- FEDERAL FUNDS ATTACHMENT**

This solicitation does not include a Federal Funds Attachment.

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

**Reference COMAR 21.05.08.08**

A. “Conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. “Person” has the meaning stated in COMAR 21.01.02.01B(64) and includes a Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Proposal is made.

C. The Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail — attach additional sheets if necessary):

E. The Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Offeror shall immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the Procurement Officer of any contrary action to be taken.

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

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Authorized Representative and Affiant)

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**



## ATTACHMENT I – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through Department of Budget & Management (the “Department”), and \_\_\_\_\_ (the “Contractor”).

### RECITALS

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for CUSTOMER SERVICE TRAINING MASTER CONTRACT Solicitation #050B7400008; and

**WHEREAS**, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively “Contractor’s Personnel”) with access to certain information the State deems confidential (the “Confidential Information”).

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the solicitation and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, “Confidential Information” means (1) any and all information provided by or made available by the State to the Contractor in connection with the Contract and (2) any and all Personally Identifiable Information (PII) (including but not limited to personal information as defined in Md. Ann. Code, General Provisions §4-101(h)) and Protected Health Information (PHI) that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. The Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. The Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT I-1. The Contractor shall update ATTACHMENT I-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.

4. The Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, adopt or establish operating procedures and physical security measures, and take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. The Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. The Contractor shall, at its own expense, return to the Department all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract. The Contractor shall complete and submit ATTACHMENT J-2 when returning the Confidential Information to the Department. At such time, the Contractor shall also permanently delete any Confidential Information stored electronically by the Contractor.
7. A breach of this Agreement by the Contractor or the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
  - a. This Agreement shall be governed by the laws of the State of Maryland;
  - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
  - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
  - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
  - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;

- f. The Recitals are not merely prefatory but are an integral part hereof; and
- g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

**IN WITNESS WHEREOF**, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

Contractor: _____	Department of Budget & Management
By: _____ (SEAL)	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____



**NON-DISCLOSURE AGREEMENT – ATTACHMENT I-2**

**CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and

\_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 20\_\_\_\_ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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

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

NAME OF CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)

**ATTACHMENT J – HIPAA BUSINESS ASSOCIATE AGREEMENT**

This solicitation does not require a HIPAA Business Associate Agreement.

**ATTACHMENT K – MERCURY AFFIDAVIT**

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

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

This solicitation does not require a Location of the Performance of Services Disclosure.

## ATTACHMENT M – CONTRACT

### CUSTOMER SERVICE TRAINING SERVICES

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

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

#### 1. Definitions

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract” means this agreement between (Contractor’s name) and the State of Maryland, acting through the Department of Budget and Management.
- 1.3 “Contract Manager” means the following Department employee identified as the Contract Manager: Joy Epstein, 45 Calvert Street, Room 143, Annapolis, Maryland, 21401.
- 1.4 “Contractor” or “Master Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.5 “Department” means the Department of Budget and Management.
- 1.6 “Financial Proposal” means the Contractor’s Financial Proposal dated (Financial Proposal date).
- 1.7 “Procurement Officer” means the following Department employee identified as the Procurement Officer: Pam Malech, 45 Calvert Street, Room 138, Annapolis, MD 21401.
- 1.8 “RFP” means the Request for Proposals for Customer Service Training Solicitation # 050B7400008, and any addenda thereto issued in writing by the State.
- 1.9 “State” means the State of Maryland.
- 1.10 “Task Order Agreement” (TOA or TO Agreement) means a signed contract between the Department and the Contractor selected via a TORFP to perform a TO Agreement.
- 1.11 “TOA Contractor” means a Contractor awarded a Task Order Agreement under a TORFP.
- 1.12 “Task Order Proposal” (TOP or TO Proposal) means the technical and financial response by a Master Contractor to a TORFP.

1.13 “Task Order Request for Proposal” (TORFP) means a solicitation document containing a description by the State of the individual project for which proposals will be solicited.

1.14 “Technical Proposal” means the Contractor’s Technical Proposal dated (Technical Proposal date).

## **2. Scope of Contract**

2.1 The Contractor shall provide deliverables, programs, goods, and services specific to the Contract for customer service consultation, training, and performance improvement services awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – Task Order Agreement (when executed)

Exhibit C – TORFP (when released)

Exhibit D - State Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_

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

Exhibit F – The Contractor’s Proposal (Technical and Financial) to the RFP

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle 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 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

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

3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live Date contained in the written Notice to Proceed. From this Go-Live Date, the Contract shall be for a period of approximately five years beginning approximately June 1, 2017 and ending on May 31, 2022.



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

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

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

4.2 Unless a payment is unauthorized, deferred, delayed, or setoff under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if: (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and (2) A Contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland. The State is not liable for interest: (1) accruing more than one year after the 31st day after the agency receives the proper invoice; or (2) on any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is (Contractor's FEIN or SSN). Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Manager. 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.

4.5 Contractor's eMaryland Marketplace vendor ID number is (Contractor's eMM number).

#### **5. Rights to Records**

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

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, 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 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 that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Department's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract.

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

- 7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any

related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **8. 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 the implementation of 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) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

- 8.2 This Section 8 shall survive expiration or termination of this Contract.

## **9. Loss of Data**

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

## **10. Indemnification**

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.

- 10.3 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or lawsuit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, lawsuit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 10.6 This Section 10 shall survive termination of this Contract.

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

No official or employee of the State, as defined under Md. Code Ann., 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**

- 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 or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.
- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

**14. Nondiscrimination in Employment**

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

**16. Non-Availability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's 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; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(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, interruptions, interferences, 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 Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

**22. Financial Disclosure**

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

**23. Political Contribution Disclosure**

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a

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

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

The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

#### **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 and/or subcontractor'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 Contract services being performed for the State.

25.2 Upon three (3) Business Days' notice, the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. 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, at its own expense, any record related to the services performed and provided under this Contract.

25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the Department has the right to audit such subcontractor(s).

25.4 The Contractor and/or subcontractors shall cooperate with Department and Department's

designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.

25.5 This Section shall survive expiration or termination of the Contract.

## **26. Compliance with Laws**

The Contractor hereby represents and warrants that:

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

## **27. Cost and Price Certification**

- 27.1 By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its 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 portion of the services provided 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; provided, however, that a Contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## **29. Liability**

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



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

**30. Commercial Nondiscrimination**

- 30.1 As a condition of entering into this Contract, the Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, the Contractor may not discriminate on the basis of race, color, religion, ancestry or 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 other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination. The 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. The 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 the 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 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, the Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

**31. Prompt Pay Requirements**

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- a. Not process further payments to the contractor until payment to the subcontractor is verified;
  - b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
  - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
  - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - e. Take other or further actions as appropriate to resolve the withheld payment.
- 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 provision, may not:
- a. Affect the rights of the contracting parties under any other provision of law;
  - b. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
  - c. Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. 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 the:
- 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 agency may withhold payment of any invoice or retainage. The agency 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. Contract Manager and Procurement Officer**

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

**35. 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: Pam Malech  
Procurement Officer  
45 Calvert Street, Room 138  
Annapolis, MD 21401

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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## 36. Liquidated Damages

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

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

36.1.1 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 in the TORFP/TOA) per day until the monthly report is submitted as required.

36.1.2 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): \$(to be determined by requesting agency and entered in the TORFP/TOA) per MBE subcontractor.

36.1.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.

36.1.4 Failure to meet the Contractor’s total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

36.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$(to be determined by requesting agency and entered in the TORFP/TOA) per day until the undisputed amount due to the subcontractor is paid.

36.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or otherwise may be available at law or in equity.

(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.)

**37. Parent Company Guarantee**

(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.

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

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

**39. Limited English Proficiency**

The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq. and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services.

**40. Miscellaneous**

- 40.1 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.
- 40.2 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.

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

CONTRACTOR

STATE OF MARYLAND  
DEPARTMENT OF BUDGET AND  
MANAGEMENT

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

\_\_\_\_\_  
By: Secretary David R. Brinkley  
Or designee:

\_\_\_\_\_  
Date

PARENT COMPANY (GUARANTOR) (if applicable)

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(BPW Item #)

**ATTACHMENT N – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID

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

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

Name and Department ID

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

**C. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

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

#### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

##### I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a contract for a procurement 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.

#### E. DRUG AND ALCOHOL FREE WORKPLACE

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

##### I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:



- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

#### F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

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

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

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

**ATTACHMENT O – DHR HIRING AGREEMENT**

This solicitation does not require a DHR Hiring Agreement.

**ATTACHMENT P –SAMPLE TASK ORDER AGREEMENT (TOA)**

**MASTER CONTRACT No.  
TASK ORDER AGREEMENT  
CUSTOMER SERVICE TRAINING CONTRACT (CSTC) TORFP No. CSTC-2017-01-  
001-(DBM)  
Purchase Order No. F10P999999999**

This Task Order Agreement (“TOA”) is made this 15th day of September 2015 by and between John Brown Company and the STATE OF MARYLAND, acting through the DEPARTMENT OF BUDGET AND MANAGEMENT (DBM), OFFICE OF THE SECRETARY.

IN CONSIDERATION of the premises and the covenants herein contained, the parties agree as follows:

1. Definitions. In this Contract, the following words have the meanings indicated:
  - a. “Agency” – A State agency identified in a TORFP.
  - b. “CSTC TORFP” means the Department of Budget and Management Customer Service Training Contract, Task Order Request for **CSTC-2017-01-001-(DBM), dated June 2, 2017.**
  - c. “Contract Manager” means the State individual designated by the State on the Master Contract or a successor designated by the Department;
  - d. “DBM 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 task order agreement work identified in the Customer Service Training Contract TORFP No. **CSTC-2017-01-001-(DBM)**;
  - h. “TOM” means the agency Task Order Manager or a successor designated by the agency;
  - i. “TOP-Technical Proposal” - TOA Contractor’s Technical response dated March 30, 2017, to the Customer Service Training Contract TORFP;
  - j. “TOP-Financial Proposal” -TOA Contractor’s Financial response dated March 30, 2017, to the Customer Service Training Contract TORFP;
  - k. “TOP-BAFO” -TOA Contractor’s combined Technical and Financial final response to the Customer Service Training Contract TORFP, dated August 22, 2015 as a Best and Final Offer; and,
  - l. “TOA Contractor’s Certificate of Confidentiality” -TORFP’s Attachment 6 completed form for the TOA Contractor’s Certificate of Confidentiality, dated July 2, 2017, that becomes the Exhibit A to the TOA.

## 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 Section 2 of the CSTC TORFP No. **CSTC-2017-01-001- (DBM)**;
- 2.2 These services shall be provided in accordance with the Master Contract, this TOA, and the following exhibits, which are attached 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 July 2, 2017;
  - B) Exhibit A, The TOA Contractor Certificate of Confidentiality, dated July 2, 2017;
  - C) Exhibit B – Customer Service Training Contract TORFP: ASC-20150-01-001- (DBM), dated June 2, 2015;
  - D) Exhibit C-TOA Contractor’s TOP-BAFO, dated June 30, 2017;
  - E) Exhibit D-Master Contractor’s TOP-Technical, dated June 20, 2017; and,
  - F) Exhibit E-Master Contractor’s TOP-Financial, dated June 20, 2017.
- 2.3 The DBM Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the TOA. No other order, statement or conduct of the DBM 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.

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 SCS TORFP. The term of this TOA is for a period that commences on the date of the initial Notice to Proceed and terminates February 15, 2018. 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 the TOA Contractor shall be a Not-To-Exceed of **\$92,000.00**. **As the Master Contract is a Time and Materials contract (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 **00-0000000**. 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 DBM Procurement Officer, the TOA Contractor fails to perform in a satisfactory and timely manner, the DBM 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 DBM Procurement Officer.

## 5. Liquidated Damages

5.1 This contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise ("MBE") Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

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

- 5.1.1 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.
- 5.1.2 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$\_\_\_ per MBE subcontractor.
- 5.1.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- 5.1.4 Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- 5.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$\_\_\_ per day until the undisputed amount due to the subcontractor is paid.

5.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Master Contract and to exercise any and all other rights or remedies which may be available under the Master Contract or which otherwise may be available at law or in equity.

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

**John Brown Company**

**MARYLAND DEPARTMENT OF  
BUDGET AND MANAGEMENT**

*Signature*

*Signature*

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

By: Contract Manager \_\_\_\_\_

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

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

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

*Signature* \_\_\_\_\_

*Signature* \_\_\_\_\_





## APPENDIX 1

### Appendix 1: Abbreviations and Definitions

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

1. **Agency/Agencies** – All State of Maryland government entities, including the University System of Maryland.
2. **Awardee** – One of the selected Offerors for the services required in this RFP.
3. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
4. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us).
5. **Contract(s) or Master 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.
6. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
7. **Contract Manager** – 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 State may change the Contract Manager at any time by written notice.
8. **Contractor or Master Contractor** – Each **Qualified** Offeror that is awarded a Master Contract as a result of this RFP.
9. **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.
10. **Department or DBM** – The Maryland Department of Budget and Management.
11. **eMM** – eMaryland Marketplace (see RFP Section 4.2).
12. **Fixed Hourly Labor Category Rates** – 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 Fixed 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.

13. **Fully Loaded** – Including in Labor Category Rates all profit, direct and indirect costs associated with performing a Task Order Agreement. 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 TOA Agreement. Non-Routine Travel costs will be identified in a TORFP, when appropriate.
14. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation.
15. **Key Personnel** – 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. In addition, any personnel proffered in response to a Task Order are Key Personnel. See RFP Sections 3.10 and 5.4.2.7.
16. **Labor Categories** – Descriptions of personnel and required qualifications forming the basis of the Master Contractor’s payment. See RFP Section 2.3.8 for the **Master Contract’s Summary of Approved Labor Categories and Minimum Requirements Table**.
17. **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.
18. **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.
19. **Not-To-Exceed (NTE)** – The dollar amount that the TOA Contractor must stop performing any services for which it would seek payment beyond. See RFP Section ~~2.3.2~~ for more information.
20. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.
21. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go-Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Department Contract Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
22. **Offeror** – An entity that submits a Proposal in response to this RFP.
23. **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.

24. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
25. **Request for Proposals (RFP)** – This Request for Proposals issued by the Department of Budget and Management, with the Solicitation Number and date of issuance indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors), including any addenda.
26. **State** – The State of Maryland.
27. **Suspended** – ~~A~~The status of a Master Contractor that is **not eligible to respond to and no longer able to participate in the Task Order Request for Proposal (TORFP) or participate in the TORFP process.** See as per RFP Section 2.3.5
28. **Task Order Agreement (TOA)** – An executed contract between DBM and the Master Contractor(s) selected to perform a task 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 Attachment P as an example of a TOA.
29. **TOA Contractor** – A Master Contractor awarded a Task Order Agreement under a TORFP.
30. **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.
31. **Task Order Proposal (TOP)** - The specific technical and financial response by a Master Contractor to a TORFP.
32. **Task Order Request for Proposal (TORFP)** - Describes the scope of work and the performance requirements of the 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.
33. **Total Proposal Price** - The Offeror’s total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment B – Financial Proposal Form, and used in the financial evaluation of Proposals (see RFP Section 6.3).
34. **Travel** – An expense incurred by the Master Contractor for travelling in the performance of providing Customer Service consultation and training services, 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 Customer Service Training or Consultation site, there is **no payment for labor hour 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 agency site for which services are requested. 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](http://www.dbm.maryland.gov) – search: Fleet Management.

35. **Veteran-owned Small Business Enterprise (VSBE)** – A business that is verified by the U.S. Department of Veterans Affairs Office of Small and Disadvantaged Business Utilization as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
36. **Qualified Offeror – A responsible Offeror determined to have submitted an acceptable Proposal.**