

# **Request for Proposals (RFP)**

## **INMATE PHARMACY SERVICES**

**Solicitation No. DPSCS Q0010022**



**Department of Public Safety and Correctional Services**

**Issue Date: Tuesday, November 9, 2010**

**Minority Business Enterprises are encouraged to respond to this solicitation**

**Prospective Offerors who have received this document from the Department of Public Safety and Correctional Services website or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.**



**STATE OF MARYLAND**  
**NOTICE TO OFFERORS/CONTRACTORS**

In order to help us improve the quality of State proposals solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to submit a proposal on this contract, please fax this completed form to: 410-974-3274 to the attention of Gabriel Gnall.

**Title:            INMATE PHARMACY SERVICES**

**Solicitation No: DPSCS Q0010022**

1.     If you have responded with a "no bid", 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 Maryland Government is simply too complicated. (Explain in REMARKS section)
  - We cannot be competitive. (Explain in REMARKS section.)
  - Time allotted for completion of the bid/proposals is insufficient.
  - Start-up time is insufficient.
  - Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
  - Bid/Proposals requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
  - MBE 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 bid or proposal, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use the reverse side or attach additional pages as needed.)

REMARKS: \_\_\_\_\_  
\_\_\_\_\_

Offeror Name: \_\_\_\_\_ Date \_\_\_\_\_

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

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



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## **KEY INFORMATION SUMMARY SHEET**

**STATE OF MARYLAND**

**Request for Proposals**

**Inmate Pharmacy Services**

**Solicitation No. DPSCS Q0010022**

**RFP Issue Date:** Tuesday, November 9, 2010

**RFP Issuing Office:** Department of Public Safety and Correctional Services

**Procurement Officer:** Gabriel Gnall  
Procurement Analyst  
Office Phone: (410) 260-7338  
Fax: (410) 974-3274  
E-Mail: [ggnall@dbm.state.md.us](mailto:ggnall@dbm.state.md.us)

**Proposals are to be sent to:** Department of Budget and Management  
45 Calvert St., Room 140  
Annapolis, MD 21401  
Attention: Gabriel Gnall, Procurement Officer

**Pre-Proposal Conference:** Wednesday, November 17, 2010 – 2:00 PM (Local Time)  
Department of Budget and Management  
45 Calvert St., Room 164 A/B  
Annapolis, MD 21401

**Closing Date and Time:** Friday, December 3, 2010 at 2:00 PM (Local Time)

**NOTE:** Prospective Offerors who have received this document from the Department of Public Safety and Correctional Service's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them. Contact the Procurement Officer to obtain an electronic file of the RFP.



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## Section 1 General Information

### 1.1 Summary Statement

The Department of Public Safety and Correctional Services (DPSCS), hereinafter called the “Department” or the “Agency,” is soliciting proposals from qualified Offerors to provide inmate pharmacy services within the confines of specified correctional institutions of the Maryland Division of Correction (DOC) and Maryland Department of Pretrial Detention and Services (DPDS).

### 1.2 Abbreviations and Definitions

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

1.2.1 “**Acquisition Cost**” is the actual amount paid by the Contractor to a pharmaceutical manufacturer or wholesaler to purchase patented/brand or generic prescription (“legend”) drugs, or non-prescription (“over-the-counter” or “non-legend”) drugs, or medical supplies (e.g., diabetic monitors, test strips, or asthma devices), without consideration of any subsequent rebate received by the Contractor for such purchases. Such drugs or supplies are provided by the Contractor to the Department under this Contract for direct/ultimate use by inmates.

If the Contractor makes more than one purchase of a legend or non-legend drug or medical supply item during a month, the acquisition cost shall be construed to be the amount invoiced to the Contractor closest to the end of the month in which the drug is provided to the Department.

If the Contractor does not purchase a legend or non-legend drug or medical supply item during the same month that such drug or item is provided to the Department under this Contract, the acquisition cost shall be construed to be the amount invoiced to the Contractor for its most recent purchase of that drug or item. For example, if a medication is purchased in March, April, and May, and dispensed to other clients regularly but not provided to the Department until August, the Contractor shall use the price of the medication in May as the acquisition price for the Department.

However, if the Contractor makes purchases of overstock or soon to be outdated drugs or items at discounted prices, the acquisition cost shall be construed to be the Contractor’s lowest invoiced discounted price paid for



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the item, regardless of when during the month the item was purchased by the Contractor or the quantities purchased.

- 1.2.2 “**Agency**” means the Department of Public Safety and Correctional Services (DPSCS).
- 1.2.3 “**American Correctional Association (ACA)**” means the national organization of correctional officials that promulgates standards related to correctional custody, including performance standards for medical services in prisons and jails.
- 1.2.4 “**Area Contract Operations Manager (ACOM)**” means the State employed representative(s) of the DPSCS, Office of Inmate Health Services, that are a part of the Nursing Unit of Clinical Services reporting to the Director of Nurses/Director of Quality Improvement/Director of infection Control for the Department and up to the Director for Clinical Services/DPSCS Medical Director. Their role is that of contract monitor(s), not Contract Manager(s), in that these individuals will report any observed deficiencies in contract performance by: 1. Communicating the deficiency to the Contractor, and; 2. Informing the Contact Manager of any substantive deficiency for possible further action by the Department.
- 1.2.5 “**Department**” means the Department of Public Safety and Correctional Services.
- 1.2.6 “**Department of Public Safety and Correctional Services (DPSCS)**” means the cabinet level unit of State government responsible for the supervision, care and custody of persons committed to the Division of Correction and the Division of Pretrial Detention and Services as well as those under the supervision in the community of the Division of Parole and Probation.
- 1.2.7 “**Discount**” is the percentage reduction proposed and agreed to by the Contractor to be applied to the Acquisition Cost invoiced to DPSCS for patented/brand or generic prescription (“legend”) drugs, or non-prescription (“over-the-counter” or “non-legend”) drugs, provided to the Department under this Contract for direct use by inmates. Separate discount percentages for patented/brand pharmaceuticals versus generic pharmaceuticals may be proposed for each Contract year, as per the Price Form (Attachment F).
- 1.2.8 “**Division of Correction (DOC)**” means the State prison system for Maryland within the Department of Public Safety and Correctional Services. Governance of the Division is in accordance with Title 3 of the Correctional Services Article, Maryland Annotated Code.
- 1.2.9 “**Division of Pre-trial Detention and Services (DPDS)**” means the pre-trial booking and detention facility for the City of Baltimore. It is State operated within





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the Department of Public Safety and Correctional Services. Governance of the Division is in accordance with Title 5 of the Correctional Services Article, Maryland Annotated Code.

- 1.2.10 “**Equipment**” is durable fixed assets to be used on-site at a Departmental facility as per RFP section 3.15 with a purchase price of \$200 or more that has an expected useful life of more than 1 year.
- 1.2.11 “**Electronic Medication Administration Record**” or “**EMAR,**” is a type of system that generates an electronic record of all medication administered to a patient. These systems are deployed in the correction health care environment as well as acute care hospitals and are interfaced with the patient’s medical record to ensure and document medication administered to a particular patient; identifying the patient, the date, the time, the type of medication, and dose, thus insuring and documenting continuity of care.
- 1.2.12 “**EMR**” (Electronic Medical Record) means an electronic record maintained for each individual patient, which contains at a minimum, current medication, medication history, problem list, progress notes, visits and consultation.
- 1.2.13 “**Emergent**” means required immediately (typically within 2 hours time); the sudden onset of acute signs or symptoms of sufficient severity that threaten or could permanently damage health, or result in a serious medical complication if treatment is delayed, up to and including death, and should be addressed as soon as possible.
- 1.2.14 “**Extraordinary care**” means care rendered beyond sick call or routine illness or treatment for a chronic condition. Extraordinary care includes, but is not limited to, all specialty care (on and off site), all off-site inpatient care, HIV medications, treatment for Hepatitis C, all emergency transportation and emergency treatment, all durable medical equipment (including prostheses, wheel chairs, glasses, etc.) whether temporary or permanent, dialysis (whether on or off site), and any special equipment required for treatment (such as special hospital beds, etc.).
- 1.2.15 “**Inmate**” means any person sentenced to or incarcerated within the Division of Correction (DOC), the Patuxent Institution (Patx), or the Division of Pre-trial Detention and Services (DPDS), any arrestee in the custody of DPDS whether committed or not committed to DPDS, any alleged parole violator in the custody of DOC, Patx or DPDS, and any person otherwise detained in any DPSCS facility, regardless of jurisdiction of original commitment.
- 1.2.16 “**Legend**” drugs means patented or generic prescription drugs.



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- 1.2.17 “**Maryland Commission on Correctional Standards (MCCS)**” means the Commission within the Department responsible for recommending and enforcing through inspection the minimum mandatory standards and approved standards for State and local correctional facilities as established and governed by Title 8, Subtitle 1, Correctional Services Article, Maryland Annotated Code.
- 1.2.18 “**Mid-level provider**” means a properly trained, supervised, and licensed physician’s assistant or nurse practitioner.
- 1.2.19 “**National Commission on Correctional Health Care (NCCHC)**” means the national organization of correctional officials that promulgates standards related to medical services in prisons and jails.
- 1.2.20 “**Next Gen**” is the proprietary name and identification of the Electronic Medical Record system currently utilized by the DPSCS.
- 1.2.21 “**Non-Legend**” drugs means non-prescription or “over the counter” drugs.
- 1.2.22 “**Office of Inmate Health Services (OIHS)**” means the office within the Office of Treatment Services of the DPSCS responsible for the provision of inmate health services through a service system of private providers, and having the authority to direct, modify, enforce, or abate the specific requirements of the contracts.
- 1.2.23 “**Patuxent Institution (Patx)**” means the prison within the Department of Public Safety and Correctional Services for inmates committed under sentence to the Commissioner of Correction, but who are found eligible for one of Patuxent’s programs targeted to the needs of chronic offenders. Governance of Patuxent is in accordance with Title 4 of the Correctional Services Article, Maryland Annotated Code. Patuxent is independent of the Division of Correction. However, DOC inmates may be incarcerated at Patuxent even when not admitted to one of the Patuxent remediation programs.
- 1.2.24 “**Pharmacy Provider,**” “**Provider,**” or “**Contractor**” means the successful Offeror to this RFP for pharmacy services unless modified by reference to one of the other health care provider modules, such as “mental health,” “dental,” or “medical” provider/contractor.
- 1.2.25 “**Service Delivery Area (SDA)**” means one of four geographical regions into which the State is divided for purposes of managing inmate health care services. The four SDAs include Eastern, Jessup, Baltimore, and Western. The Western SDA merges the Western and Hagerstown DOC regions.



- 1.2.26 **“Special confinement populations”** means any population housed together within a correctional facility who are subjected to restrictions within the facility due to their status. Special confinement populations include, but are not limited to, disciplinary segregation, administrative segregation, protective custody, mental health special needs units, and behavioral special needs units.
- 1.2.27 **“Staff”** means clinical pharmacists employed by the contractor or subcontractor working on-site at a Department facility.
- 1.2.28 **“Supplies”** are materials to be used on-site at a Departmental facility as per RFP section 3.15 with a purchase price of less than \$200, an expected useful life that does not exceed 1 year, or both.
- 1.2.29 **“Urgent”** means same-day treatment for a non-emergency medical condition (non-life threatening or serious, but require prompt medical attention).

### 1.3 Contract Type

The Contract that results from this RFP shall be a combination contract with cost reimbursement, and fixed price components, as these terms are described in COMAR 21.06.03. Specifically:

The purchase of all legend and non-legend drugs and other medical supplies shall be via cost reimbursement, as described under the definition of Acquisition Cost in RFP section 1.2.1 and section 3.33.

Payment for Staffing, Delivery, and Overhead and Profit as described in RFP section 4.6.1 and separately priced on the Price Form, shall be by fixed price, to be paid in equal monthly amounts as described in RFP section 3.2.3.

Supplies and Equipment used by the Contractor, or its subcontractors, at its (their) own facility to meet the requirements of the RFP and resulting contract shall be included within the fixed pricing for Overhead and Profit and not separately priced.

Supplies and equipment specifically purchased for use at a Public Safety facility in accordance with RFP section 3.15.2 shall be reimbursed at the contractor’s actual expense, without markup.

### 1.4 Contract Duration

The contract performance period shall be for a period of about three years, and commences on or about the date the Department executes the contract and terminates at the end of the fiscal year (June 30) after 3 years of performance have been completed. At its option, the State may extend the Contract for two additional one-year renewal periods.



### 1.5 Procurement Officer

The sole point-of-contact in the State for purposes of this RFP prior to the award of any contract is the Procurement Officer as listed below:

Gabriel Gnall  
Procurement Analyst  
Department of Budget and Management  
45 Calvert St., Room 140  
Annapolis, MD 21401  
Telephone #: 410-260-7338  
Fax #: 410-974-3274  
[ggnall@dbm.state.md.us](mailto:ggnall@dbm.state.md.us)

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

### 1.6 Contract Manager

The Contract Manager oversees the daily activities and performance of the Contract and provides technical guidance and supervision to the Contractor. The State's Contract Manager is:

Thomas P. Sullivan, Director  
Department of Public Safety and Correctional Services  
Treatment Services, Office of Inmate Health Services  
6776 Reisterstown Road Suite 309 Baltimore MD 21215  
Telephone # (410) 585-3368  
Fax # (410) 764-4195  
[tpsullivan@dpscs.state.md.us](mailto:tpsullivan@dpscs.state.md.us)

The Department may change the Contract Manager at any time by written notice to the Contractor.

### 1.7 Pre-Proposal Conference

A Pre-Proposal Conference ("Conference") shall be held on **Wednesday, November 17, 2010, beginning at 2:00PM** (local time), at the Department of Budget and Management, 45 Calvert St., Room 164 A/B, Annapolis, MD 21401. All interested prospective Offerors are encouraged to attend in order to facilitate their understanding of the RFP requirements.



As promptly as is feasible, a summary of the Conference and all questions and answers known at that time shall be distributed, free of charge, to all prospective Offerors known to have received a copy of this RFP.

It is requested that by 2:00 PM (local time), Monday, November 15, 2010, all prospective Offerors planning to attend the Pre-Proposal Conference email ([ggnall@dbm.state.md.us](mailto:ggnall@dbm.state.md.us)) or fax (410-974-3274) the Pre-Proposal Conference Response Form to the Procurement Officer with such notice. The Pre-Proposal Conference Response Form is included as Attachment E to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, it is requested that at least five days advance notice be provided. The Department shall make reasonable efforts to provide such accommodations.

## 1.8 Site Visits

Potential Offerors may contact the Procurement Officer if interested in scheduling a site visit in order to familiarize themselves with where services are to be provided, be more fully informed as to physical plant specifics, and how needs should be considered in the development of proposals. The Procurement Officer will coordinate with DPSCS staff, and attempt to arrange possible site visit times and dates.

Tours will not be used to answer questions about the RFP; rather the purpose of the tours is to familiarize potential bidders with the geography and physical layout of the facilities. Questions about the RFP should be submitted to the Procurement Officer as detailed in Section 1.9 below.

In order to assure adequate preparation and accommodations for the site visits and tours, it is requested that no more than two representative for each potential Offeror attend.

The information that must be submitted includes a Name, Social Security Number, and Date of Birth for each representative. This will enable Security Staff in the facilities to do a brief background check that will allow them to issue a one-day pass for the tours. (Dates to be determined)

Restrictions, in addition to the numbers that may tour, include the following:

- No communication devices (cell phones, beepers, Blackberries, computers, etc.) will be admitted to any DOC or DPDS facility (This policy applies to all DPSCS facilities Statewide). The same applies to any weapons or cameras.
- No purses, bags, lunches, briefcases, or other carry-in materials more than a pad of paper and a writing instrument will be permitted in any facility. (Time will not permit visitors to apply for and get a locker for these items during the brief time vendor representatives will be on site).
- There can be no clothing items made from denim worn in the facilities.
- Other forbidden clothing items include open-toed shoes, sleeveless blouses not covered by a jacket, under-wire bras (visitors WILL be asked to remove them in some facilities so they should be avoided), shorts, tee- shirts, and jeans of any material.



- No sundries can be taken into facilities including tobacco, soda, water, other drinks, gum, candy, snacks. If it is necessary to have some sort of food because of a medical condition, it must be carried in a clear plastic baggie for inspection by security on arrival at each facility.

All vendors touring facilities should come prepared to walk multiple blocks, so comfortable shoes are advisable (heels may easily catch on catwalk-tiers in some of the facilities even if walking is not a part of the day).

All persons participating in these tours must carry a picture ID with them (such as a driver's license).

All persons visiting should be aware that they will be searched, including an electronic screening and a pat down at a minimum.

Some of the Service Delivery Areas (SDAs) will require the touring vendors to move their cars from facility to facility so plans to carpool are essential as parking may be less than desirable in some SDAs, and difficult in the Baltimore area.

Directions to the DPSCS facilities can be found on the web at:  
[http://www.dpscs.state.md.us/locations/dpp\\_offices.shtml](http://www.dpscs.state.md.us/locations/dpp_offices.shtml)

## 1.9 Questions

The Procurement Officer, prior to the Conference, shall accept questions from prospective Offerors. If possible and appropriate, such questions shall be answered at the Conference. Questions may be submitted to the Procurement Officer by mail, facsimile, or preferably, by e-mail. Questions, both oral and written, shall also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions shall be answered at the Conference.

Questions shall also be accepted subsequent to the Conference. All post-Conference questions should be submitted in a timely manner to the Procurement Officer only. The Procurement Officer shall, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the proposal due date. Answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, shall be distributed to all Contractors who are known to have received a copy of the RFP.

## 1.10 Proposals Due (Closing) Date

An unbound original and eight (8) bound copies of each proposal (technical and financial) must be received by the Procurement Officer, at the address listed in Section 1.5, no later than **2:00 PM (local time) on Friday, December 3, 2010** in order to be considered. An electronic version



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on CD of the Technical Proposal in MS Word format must be enclosed with the original Technical Proposal. An electronic version on CD of the Financial Proposal in MS Excel format must be enclosed with the original Financial Proposal. Ensure that the CDs are labeled with the date, RFP title, RFP number, and Offeror name and packaged with the original copy of the appropriate proposal (technical or financial).

Requests for extension of the closing date or time shall not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.02.10, proposals received by the Procurement Officer after the due date, **December 3, 2010 at 2:00 PM** (local time) shall not be considered. Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.

#### **1.11 Duration of Offer**

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date of proposals or of Best and Final Offers (BAFOs), if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

#### **1.12 Revisions to the RFP**

If it becomes necessary to revise this RFP before the due date for proposals, amendments shall be provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. Amendments made after the due date for proposals shall be sent only to those Offerors who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this RFP issued before the proposal due date must accompany the Offeror's proposal in the transmittal letter accompanying the Technical Proposal submittal. Acknowledgement of the receipt of amendments to the RFP issued after the proposal due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendment.

#### **1.13 Cancellations; Discussions**

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



#### **1.14 Oral Presentation**

Offerors may be required to make oral presentations to State representatives. Significant representations made by an Offeror during the oral presentation must be reduced to writing. All such representations shall become part of the Offeror's proposal and are binding if the contract is awarded. The Procurement Officer shall notify Offerors of the time and place of oral presentations. Typically oral presentations occur approximately two (2) weeks after the proposal due date. Offerors should plan accordingly.

Oral presentations will follow a specified format and the Procurement Officer will issue a letter with details and instructions prior to the presentations.

#### **1.15 Incurred Expenses**

The State shall not be responsible for any costs incurred by an Offeror in preparing and submitting a proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities relative to this RFP.

#### **1.16 Economy of Preparation**

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

#### **1.17 Protests/Disputes**

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

#### **1.18 Multiple or Alternate Proposals**

Multiple or Alternate proposals will not be accepted.

#### **1.19 Minority Business Enterprises**

A Minority Business Enterprise (MBE) subcontractor participation goal of 20% has been established for this solicitation. The contractor must attempt to subcontract with certified MBEs for a total subcontract value of at least 20% of the total value of the contract, excluding the cost of pharmaceutical drugs (legend or non-legend) and medical supplies. A prime contractor — including an MBE prime contractor — must utilize certified MBE subcontractors in an attempt to meet the MBE subcontract goal. A prime contractor comprising a joint venture that includes





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MBE partner(s) must utilize certified MBE subcontractors in an attempt to meet the MBE subcontract goal.

For any questions about the MBE subcontractor participation goal, proper completion of MBE Affidavits, or the MBE program in general, please contact the Procurement Officer prior to the Proposal Due (closing) Date. Questions or concerns regarding the MBE requirements of this solicitation must be raised before the opening of bids or receipt of initial proposals.

The Contractor shall structure its award(s) of subcontracts under the Contract in a good faith effort to achieve the goal in such subcontract awards by businesses certified by the State of Maryland as minority owned and controlled. MBE requirements are specified in Attachment D, "Minority Business Enterprise Participation." Subcontractors used to meet the MBE goal of this RFP must be identified in the Offeror's proposal.

Attachment D, "MBE Utilization and Fair Solicitation Affidavit," and "MBE Participation Schedule," must be properly completed and submitted with each Offeror's proposal. An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 1.19 must submit a request for waiver with its proposal submission based upon making a good faith effort to meet the MBE goal prior to submission of their proposal (full or partial waiver based on the MBE subcontracting commitment that is made). **Failure of the Contractor to properly complete, sign, and submit Attachments D at the time it submits Technical Response to the RFP will result in the State's rejection of the Contractor's Proposal to the RFP. This failure is not curable.**

A current directory of MBEs is available through the Maryland State Department of Transportation, Office of Minority Business Enterprise, 7201 Corporate Center Drive, P.O. Box 548, Hanover, Maryland 21076. The phone number is (410) 865-1269. The directory is also available at <http://www.e-mdot.com/>. Select the MBE Program label. The most current and up-to-date information on MBEs is available via the web site.

## **1.20 Access to Public Records Act Notice**

An Offeror should give specific attention to the clear identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials should not be disclosed by the State, upon request, under the Access to Public Records Act, Title 10, Subtitle 6, Part III, of the State Government Article of the Annotated Code of Maryland.

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 can be disclosed. (See COMAR 21.05.08.01)



### 1.21 Offeror Responsibilities

The selected Offeror shall be responsible for all products and services required by this RFP. Subcontractors must be identified and a complete description of their role relative to the proposals must be included in the Offeror's proposals.

### 1.22 Mandatory Contractual Terms

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

### 1.23 Proposal Affidavit

A completed and signed Bid/Proposal Affidavit must accompany the Technical Proposal submitted by an Offeror. A copy of this Affidavit is included as Attachment B of this RFP.

### 1.24 Contract Affidavit

All Offerors are advised that if a contract is awarded as a result of this RFP, the successful Offeror shall be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Attachment C of this RFP. This Affidavit must be provided within five (5) business days of notification of proposed contract award.

### 1.25 Arrearages

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

### 1.26 Procurement Method

This contract shall be awarded in accordance with the Competitive Sealed Proposals process under COMAR 21.05.03.

### 1.27 Verification of Registration and Tax Payment



Before a corporation can do business in the State of Maryland, it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. 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 the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for contract award.

### **1.28 False Statements**

Offerors are advised that Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland provides as follows:

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

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

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

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

### **1.29 Living Wage Requirements**

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland. Additional information regarding the State's Living Wage requirement is contained in this solicitation (see Attachment M, Living Wage Requirements for Service Contracts). If the Offeror fails to submit and complete the Affidavit of Agreement, the State may determine an Offeror to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$12.28 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total contract value are performed in the Tier 2 Area, an Offeror shall pay each covered employee at least \$9.23 per hour. 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) shall assign the tier



based upon where the recipients of the services are located. The contract resulting from this solicitation will be deemed 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. 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. 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. If the contractor provides more than 50% of the services from an out-of-State location, the State has determined that Tier 1 will be the wage tier, based on where the majority of the service recipients are located. The Offeror must identify in its proposal the location(s) from which services will be provided.

The Maryland Department of Labor, Licensing, and Regulation is responsible for establishing the wage rates and ensuring compliance with the laws. General information on the Living Wage Law is available on the DLLR website: <http://www.dllr.state.md.us/> Richard Avallone, program manager of the Employment Standards Unit, may be reached at (410) 767-2358 or [ravallone@dllr.state.md.us](mailto:ravallone@dllr.state.md.us). Questions regarding the application of the Living Wage Law relating to a particular procurement should be directed to the procurement officer named in the solicitation. General procurement questions may be directed to the Board of Public Works at (410) 260-7335 (local) or toll-free number (877) 591-7320.

### **1.30 Prompt Payment to Subcontractors**

This procurement and the contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs and dated August 1, 2008. Promulgated pursuant to Sections 11-201, 13-205(a), and Title 14, Subtitle 3 of the State Finance and Procurement Article (SFP), and Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Offeror who is awarded a contract must comply with the prompt payment requirements outlined in the Contract, §29 (see Attachment A). Additional information is available on the GOMA website at [http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs\\_000.pdf](http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs_000.pdf).

### **1.31 Electronic Funds Transfer**

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the form 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 and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 form is provided as Attachment L and can be downloaded at the following URL: [http://compnet.comp.state.md.us/General\\_Accounting\\_Division/Static\\_Files/gadx-10.pdf](http://compnet.comp.state.md.us/General_Accounting_Division/Static_Files/gadx-10.pdf)



### 1.32 Electronic Procurement Authorized

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, the Department of Public Safety and Correction Services (DPSCS) may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the bidder/offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the RFP, IFB or the Contract.
- C. “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMarylandMarketplace.com), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this RFP or IFB (e.g. §1.31 related to electronic funds transfer (EFT)) and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
1. The Procurement Officer may conduct this procurement using eMarylandMarketplace, e-mail or facsimile to issue:
    - a. the solicitation (e.g. the RFP or IFB);
    - 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 including requests for clarification, explanation, or removal of elements of an Offeror's proposal deemed not acceptable;
    - f. notice that a proposal is not reasonably susceptible for award or does not meet minimum qualifications and notices of award selection or non-selection; and
    - g. the Procurement Officer’s decision on any protest or Contract claim.
  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-



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mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;

- c. request a debriefing; or,
- d. submit a "No Bid Response" to the solicitation.

3. The Procurement Officer, the State's 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.

E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:

1. submission of initial bids or proposals;
2. filing of protests;
3. filing of Contract claims;
4. submission of documents determined by DPSCS to require original signatures (e.g. Contract execution, Contract modifications, etc); or
5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor, Bidder or Offeror be provided in writing or hard copy.

F. Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the RFP or IFB, the Contract, or in the direction from the Procurement Officer or Contract Manager.

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## **Section 2 MINIMUM QUALIFICATIONS**

Offerors shall clearly demonstrate and document within the Executive Summary of their technical proposal that, as of the proposal due date, the Offeror meets the following Minimum Qualifications. The Offeror's Executive Summary shall include reference to the page number(s) in the proposal where such evidence can be found:

Offeror shall have three (3) years experience (as a business; not just individual employees) providing the following concurrently:

- (a) Provision of pharmaceutical drugs and supplies to a correctional population in a correctional facility,
- (b) Operation of a full service pharmacy, including staffing and filling of all prescriptions, on a statewide basis with a minimum of five (5) sites or prisons, and
- (c) Operations of a fully automatic pharmacy and distribution system, which requires that medication be properly packaged (labeled with identification of the drug, amount, and the administering instructions) and delivered appropriately to the correctional facilities.

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## Section 3 SCOPE OF WORK

### 3.1 General Provisions

- 3.1.1 The Agency has delegated responsibility for the management of the delivery of inmate health care to the DPSCS Deputy Secretary for Programs and Services and, concomitantly, to the Office of Inmate Health Services (OIHS).
- 3.1.2 The terms of the RFP shall be incorporated by reference into the contract unless explicitly modified. The Agency intends that all provisions be susceptible to substantive enforcement at that time, regardless of the terminology. Whether the substantive provision is conveyed as the requirement of a plan, acknowledgment of an obligation, or assumption of a responsibility, the Agency shall be entitled to substantive enforcement of the requirement.
- 3.1.3 Each of the Department's Assistant Secretary for Treatment Services, Agency Director of the Office of Inmate Health Services, Agency Medical Director, and Agency Director of Nursing (DON) may order the Contractor to take specific actions that the Agency deems medically or administratively appropriate at any point during the duration of the contract that are consistent with the terms of the contract. Communication with and immediate oversight and instruction of the Contractor shall be by the Director of the Office of Inmate Health Services/the Contract Manager. Direction beyond the scope of the Contract may be made by written order of the Procurement Officer (see Contract §2.3) based on policy decisions made in conjunction with the Contract Manager. The Agency Medical Director shall have full and final authority to direct any clinical action required.
- 3.1.4 Inmate health care is provided in a multi-vendor model (see Sections 3.2 and 3.3 for more detail), with separate contractors providing the following services: (1) medical care, (2) mental health care, (3) pharmacy/pharmaceutical supplies, and (4) dental services. Success in the provision of inmate health services in a multi-vendor model in partnership with the Agency is dependent on open communication to assure successful health care on both the individual and population level. As described within this RFP, the Agency depends on regular meetings on an array of substantive issues to address inmate health needs. The Contractor shall provide appropriate representatives to serve on and attend all committee meetings as required by the Agency. The Medical Provider's statewide medical director shall chair regular statewide multi-vendor meetings, quarterly Continuous Quality Improvement (CQI) meetings, and regular Infectious disease meetings. The Contractor is expected to attend and fully participate in these meetings. *See* 45 CFR §164.512(k)(5) (providing for the disclosure of protected health information to a custodial correctional facility).





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- 3.1.5 The Contractor shall ensure that only qualified health professionals will provide required services, in accordance with all applicable federal or state laws, statutes, or regulations as presently enacted, or which may hereafter be enacted and which are applicable to the Department's facilities and inmate health care programs. This includes adherence to requirements for oversight of delegated tasks.
- 3.1.6 The Contractor shall assume full responsibility for the complete provision of pharmacy services effective upon the Contract start date. The Contractor shall submit a transition plan describing how it will be ready to initiate services at that time. Though expected to be fully capable of performance at the start of the Contract, the Contractor shall not be entitled to any remuneration for any transition services that precede the start of the Contract.
- 3.1.7 At the Agency's request, the Contractor shall participate in the development and transition plan for any new facility and/or mission change at any existing facility and shall send a representative to related meetings.

## **3.2 Introduction**

- 3.2.1 This pharmacy services module is one component of the overall inmate health services program within the Department. The Contractor shall provide all pharmaceuticals, packaging, delivery, pharmacy services, and staff related to the pharmacy services module of the inmate health care program.
- 3.2.2 In addition to this RFP, the Agency has issued separate RFP's for medical services with utilization management, mental health services, and dental services. Successful coordination among the inmate health care providers, including the open exchange of information and accurate and timely updates to an inmate's EMR upon the provision of services or medication, is of paramount concern to the Department.
- 3.2.3 Remuneration to the Contractor shall be based on: (a) reimbursement of the Acquisition Cost, as per RFP Section 1.2.1, for legend and non-legend drugs and medical supplies, minus the Contractor's proposed Discount percentage per brand or generic pharmaceutical as detailed in its price proposal for the particular Contract Year; (b) reimbursement of the purchase price without markup of equipment and supplies used on-site at Departmental facilities as per RFP section 3.15.2; and (c) payment of the fixed annual administration fee for each respective year of the Contract for drug delivery, staffing, and overall administration (including overhead and profit), divided into twelve monthly installments. *See* RFP Section 4.5 and RFP Attachment F for the financial proposal format.



### **3.3 Multi-Provider Model for the Delivery of Care to those in custody of the Agency**

- 3.3.1 The multi-disciplinary services system for the delivery of inmate health care represented by this RFP together with the simultaneous modules identified in section 3.2.2 requires collaboration between various vendors, sub-contractors, and Agency personnel overseeing the contracts. In order to meet the total health care needs of the individual and the inmate population in a timely, safe, and holistic manner, collegial relationships are to be fostered and maintained throughout the duration of the contract. It is expected that contractors shall share information openly and without reservation with the Agency health care management to ensure the Agency is aware of any and all positive progress as well as any adverse situations that may arise throughout the term of the Contract. Staff of all awarded contractors should expect to speak openly with Agency representatives without filter or fear of retribution. *See* 45 CFR §164.512(k)(5) (providing for the disclosure of protected health information to a custodial correctional facility).
- 3.3.2 The Contractor shall participate in, no less than quarterly, regional meetings with other DPSCS health care providers to identify trends and promote cost effective practices for the medical services providers. The Contractor will also participate in monthly regional pharmacy and therapeutic meetings and agency Medical Advisory Council (MAC) and Continuous Quality Improvement (CQI) meetings.

### **3.4 Geographical & Inmate Status Scope of Responsibility**

- 3.4.1 The pharmacy services requested under this RFP are to be delivered for all persons incarcerated or otherwise held in any institution of the DPSCS. As set forth more fully below, DPSCS operates the institutions comprising the Maryland Division of Correction (DOC), the Patuxent Institution (Patx), and the Maryland Division of Pre-Trial Detention and Services (DPDS).
- 3.4.1.1 As described more fully in Attachment G, DOC is comprised of approximately 23 institutions and pre-release facilities. They are separated for contract management into four service delivery areas (SDA). The Western SDA is comprised of two facilities outside of Cumberland, and three maintaining institutions and one pre-release facility in Hagerstown. The Eastern SDA is comprised of one two-compound institution (ECI) and a minimum security facility (ECI-Annex) in Somerset County, and a minimum security/pre-release facility in Wicomico County. The Jessup SDA is comprised of seven facilities including two maintaining institutions for males, the maintaining institution for females (MCIW), the Patuxent Institution, two minimum security facilities (one of which serves as the gateway to and from the Pre-release system), and a pre-release facility. The Baltimore SDA is comprised of the DPDS and



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three maintaining institutions (the Reception and Diagnostic Center (MRDCC) and two pre-release units).

3.4.1.2 DPDS is the local jail in Baltimore City primarily for non-sentenced detainees. It is comprised of the Baltimore Central Booking and Intake Center (BCBIC), a women's detention center (WDC), and a men's detention center divided into two units: the main detention center (MDC) and the dormitories in the jail industries building (JI).

3.4.1.3 The population at BCBIC is included as a population that must be provided full pharmacy services as defined throughout this RFP. All pharmacy services must be provided to this population, and this population is covered by the Contractor's proposal and staffing matrix submitted; no additional reimbursement shall be made for pharmacy services provided to this population. The cost of the staff to provide services at BCBIC is part of the Contractor's submitted price.

3.4.2 Maryland hosts a number of federal inmates throughout its system. A concentration of federal inmates (up to 250 of the 500 beds) currently occupies the Maryland Correctional Adjustment Center (MCAC) in Baltimore. All of these inmates are present in short term status in conjunction with a court appearance at the Federal Court in Baltimore. All federal inmates shall be treated in a manner consistent with that required for the entire DPSCS population.

### **3.5 Plan for the Delivery of Inmate Pharmacy Services**

3.5.1 Upon the start of the contract, the Contractor shall be responsible for implementing the full terms of the integrated health care system described in its plan in coordination with the other inmate health care providers.

3.5.2 The Contractor's plan shall include an acknowledgement of the obligation and description of the provider's ability to adhere to and maintain compliance, throughout the term of the contract, with the following:

- (1). All Consent Decrees and Memoranda of Agreement in force and effect, including but not limited to the Memorandum of Agreement between the Agency and the Department of Justice with respect to DPDS and the partial settlement pending litigation in the federal District Court for the District of Maryland in the case of *DuVal v O'Malley* (see Attachments H-1 and H-2);
- (2). Applicable Federal and State laws and regulations, including but not limited to those relating to the control of pharmaceuticals and those defining certification or licensing requirements and scope of occupational practice;



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- (3). Standards promulgated by the Maryland Commission on Correctional Standards;
  - (4). Departmental protocols and directives, including but not limited to procedural manuals of the Office of Inmate Health Services, and directives, regulations, and post orders of DPSCS or any of the custody agencies relating to security and employee conduct, as currently existing and as modified throughout the term of the contract;
  - (5). Health care standards of the National Commission on Correctional Health Care (NCCHC), regardless of whether the correctional institution is accredited; and
  - (6). Health care standards of the American Correctional Association (ACA), regardless of whether the correctional institution is accredited.

3.5.3 The Contractor shall acknowledge its obligation to obtain and retain all Federal and State licenses and certificates necessary to legally provide the pharmacy program or any of its sub-components in the name of the Agency, and to provide copies as directed by the Agency. The Contractor shall acknowledge its responsibility for the payment of any fees associated with licenses and/or certificates required by the licensing board or bureau and necessary for the Agency's programs to be maintained immediately upon receipt of invoice, and to report all matters regarding licensure promptly to the Agency in the manner directed. The implementation plan must address the timing for acquisition of such licenses and certificates.

3.5.4 Any obligation set forth as a required component of the Contractor's performance and implementation plans shall be susceptible to substantive enforcement upon start of the contract.

## **3.6 Staffing and Management**

3.6.1 The Contractor shall retain sufficient staff and management to fulfill the obligations of this RFP and will retain such staffing as necessary to meet all obligations under this RFP and the Agency's Manual of Policies and Procedures. In the event that the Contractor determines that additional staffing during the Contract term is necessary to deliver the services required, the Contractor shall institute that staffing at its own expense absent a material change in circumstances after the time of the award acknowledged by the Procurement Officer. In the event the Procurement Officer determines that a material change in circumstance has occurred such that the



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Contractor is entitled to additional payment for the provision of additional staff, a contract modification will be prepared and submitted for approval.

- 3.6.2 The Contractor shall ensure that there is no interruption in services due to staff vacancies, vacations, trainings, or any other situation that may or may not make it appear that there are insufficient personnel to complete services named throughout the RFP and the Contract.

### **3.7 Policies and Procedures**

- 3.7.1 The Agency reserves the right to approve or withhold approval of policies and procedures of the Contractor prior to implementation.
- 3.7.2 The Contractor shall ensure that its staff recognizes the obligation to abide by the Contractor's Policy and Procedure Manuals.
- 3.7.3 Policies and procedures shall take into account any restrictions or requirements placed on licensure by the respective licensing boards. Contractor policies and procedures shall meet ACA standards, NCCHC standards, MCCS standards and applicable Maryland statutes, regulations, policies and guidelines.
- 3.7.4 Policies and procedures shall be reviewed and updated as follows:
- 3.7.4.1 The policy review shall occur at least once in every twelve (12) month period.
- 3.7.4.2 A statement signed by the Contractor's Senior Administrator for Maryland confirming that such a review has been conducted, along with any revisions, shall be submitted to the Agency by the scheduled review date. The statement shall specifically note what changes have been made and where the changes may be found in the document.
- 3.7.5 Policies and Procedures shall include, but are not limited to, direction regarding the following:
- (1) Administrative Matters
  - (2) Medication Delivery (including handling of medications requiring refrigeration, access to institutions, marking of packages, etc.) and Inventory control
  - (3) Packaging of medications, including blister packaging and release medications
  - (4) Prescription processing
  - (5) Refills
  - (6) Medication dispensing and administration



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- (7) Methadone utilization
  - (8) Formulary adherence and requirements for variation
  - (9) Emergency medications
  - (10) Pharmacists
  - (11) Pharmacy and Therapeutics processes
  - (12) Continuous Quality Improvement
  - (13) Emergency Management Plans
  - (14) Equipment and Supply (including medications) Inventory Control
  - (15) Medical Records
  - (16) Utilization Management and Peer review
  - (17) Risk Management and mortality review
  - (18) Personnel Policies and Procedures
  - (19) ARP (Administrative Remedy Procedure) and Grievance Process
  - (20) Pharmacy Manual
  - (21) Peer Review Process
  - (22) HIPAA requirements

- 3.7.6 The manuals shall be made available within thirty days of any contract award. Distribution and/or availability of these manuals shall occur in a manner approved by the Agency such that the information is readily available to all staff and staff is aware of the manner in which to access this information.

### **3.8 Hiring Process and Retention**

- 3.8.1 The Agency Director, Medical Director, and Director of Nursing, shall be provided the opportunity to review the credentials and meet with the Contractor's designated pharmacists.
- 3.8.2 The Agency reserves the right to negate a hire if the candidate is believed to have less than the necessary credentials and/or experience or professionalism to perform the functions of these positions.

### **3.9 Orientation and Training**

- 3.9.1 The Contractor shall develop and maintain a comprehensive competency based orientation program for new staff. The orientation shall include a review of the Policies and Procedures manual of the Agency, the Policies and Procedures manual of the Contractor, how to access those manuals, and a review of the limits of the scope of responsibility based on competency. This provision applies to on-site facility staff only (at any DPSCS facility).



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3.9.2 The Contractor shall develop and implement pre-service training for its staff, covering subjects related to this RFP. Training shall be in compliance and be consistent with MCCA standards, NCCCH and ACA standards, and the applicable practice requirements of any regulatory body with jurisdiction over the provision of these health care services. This pre-service training shall be provided to all staff that performs services on this Contract.

3.9.3 The Contractor shall implement training on any revisions to directives, manuals, policies, protocols, and procedures and shall institute a program of annual refresher training. This training shall be provided to all staff that performs services on this Contract.

Not later than thirty (30) days after having been informed by the Agency of any new directives, manuals, policies, protocols, and/or procedures applicable to a DPSCS facility or the inmate health care program, or within thirty (30) days of adopting its own modifications, the Contractor shall implement training on the issue to those staff members that may be required to apply the processes and those supervisors that may enforce the processes.

3.9.4 The Contractor is responsible for creating and maintaining, on site for each of its employees and those of its on-site subcontractors, documentation that those persons have received the pre-service and in-service training required by the Agency.

### **3.10 Contractor Staff Credentials**

3.10.1 The Contractor and any subcontractor(s) shall employ only those persons, including pharmacy technicians preparing prescriptions under the Contract, who maintain the proper training, licenses, certificates, cooperative agreements and registrations necessary to provide those services in Maryland. Such personnel shall be subject to oversight by other professionals as required by law for the applicable licensing, certificate, or registration.

3.10.2 The Contractor shall:

- (1) Maintain current policies and procedures that define and outline the credentialing requirements;
- (2) Submit all credentialing related documents electronically (email or e-fax) to the Department as directed. Hard copies must be maintained at any NCCCH and ACA accredited facility where both electronic and hard copies are required;
- (3) Provide all federal, state and local licenses, certificates, registrations, cooperative agreements and specialty board certifications or notices



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of eligibility for certification, that are legally required for an employee or subcontractor:

- (a) Prior to the performance of any services under the contract, and
- (b) Within one month of the renewal date of the credential.

3.10.3 The Contractor shall assemble, if applicable, by licensure requirements and have accessible on site and available for review by the Agency, credentialing information that includes, at a minimum, for pharmacists:

- (1) Signed application and required background check;
- (2) Verification of education, training, and work history;
- (3) Professional references;
- (4) Malpractice claims history;
- (5) Current license to practice;
- (6) Board or specialty certification (physicians);
- (7) DEA and CDS certificate(s);
- (8) Evidence of present illicit drug non-use; and
- (9) CPR / AED certification which may include electronic certification; and
- (10) National data bank self inquiry submission results

3.10.4 The Contractor shall have available at all times complete and up-to-date credential folders that contain the items required for the Contractor's employees for all health care providers employed by a subcontractor.

3.10.5 All staff performing under this Contract must meet the licensing and certification requirements of the various health occupations boards relating to the performance discipline contained in the Code of Maryland Regulations and the Health Occupations Article of the Maryland Annotated Code.

### **3.11 Contractor Staff Screening**

The Contractor shall retain documentation regarding the employment screening of all potential on-site employees, including on-site employees of subcontractors. The Contractor shall obtain where applicable by licensure or Departmental requirement, at a minimum:

- (1) A criminal history check prior to employment or at any other time it is requested by the Agency. The Contractor shall be prepared to have each of its employees and those of a subcontractor who provide services on-site under this contract supply the Agency with the employee's Social Security





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Number, date of birth, fingerprints and any other data which the Agency may require to conduct a criminal history check.

- (2) All medical information required for employees that meet minimal standards of health such as TB screening.
- (3) Any screening deemed necessary to assure safety and for the prevention of disease or for cause that relates to drug and alcohol tests in accordance with DPSCS policies.

### **3.12 Contractor Staff Institutional Access/Security**

- 3.12.1 The Agency may, at its sole discretion, remove from or refuse admittance to any Agency facility any person providing services under this Contract without incurring penalty or cost for exercising this right. The Contractor shall be responsible for assuring that the required Contract services, which the person so removed or denied access was assigned, are delivered in accordance with the Contract.
- 3.12.2 The Contractor will abide with Departmental processes for obtaining security clearance for access for each of their on-site employees and sub-contractors.
- 3.12.3 The Contractor, its on-site employees, and the on-site employees of its subcontractor(s), shall know and follow all of the security regulations of the Agency and the facilities within the SDA region.

Violation of the security regulations by the Contractor or any of its subcontractors is sufficient cause to terminate the contract for default.

### **3.13 Contractor Staff Disciplinary Actions**

- 3.13.1 The Contractor is responsible for the actions and/or inactions of all of its employees and subcontractor(s) providing services under this contract.
- 3.13.2 The Contractor shall inform the Agency of all disciplinary actions, including counseling and legal action, taken against any member of the Contractor's staff or the staff of a subcontractor who provides any services required under this contract within twenty four (24) hours of the action, and shall provide any documentation of the incident requested by the Agency.



### **3.14 Contractor Use of Telephones and Utilities**

- 3.14.1 The Agency will provide the Contractor, as necessary, with such on site telephone services, utilities service and office space as the Agency provides to Department employees.
- 3.14.2 The Contractor shall be responsible for the cost of any long distance telephone calls, including those to its own offices.
- 3.14.3 The Contractor shall have its own employees, any Agency employees it supervises, and the employees of its subcontractor(s) keep a log of all long distance calls made from Agency phones. The log shall list the date, the time, the phone number, the name of the party called and the name of the person making the call. Such logs shall be retained for review by the Department at any time during the Contract term.

### **3.15 Equipment and Supplies**

- 3.15.1 The Contractor shall supply all packaging equipment, furniture, office supplies, and any other supplies and equipment needed to provide pharmacy services as necessary outside of the institution. Additionally, the Contractor shall supply and maintain any office equipment or other equipment other than computers required for the clinical pharmacists employed under this contract. Responsibility for medication carts, on-site refrigerators for medication storage, other medication storage, and other on-site medication administration and storage equipment shall be the responsibility of the Medical Provider. Bar code scanners and other inventory control equipment shall be the responsibility of the Contractor.
- 3.15.2 Except as noted in RFP Section 3.15.1, all equipment and supplies purchased under this Contract for on-site use become the property of the State. The Agency shall make all final decisions regarding need for purchase of an item or items if questions arise regarding purchase.
- 3.15.3 For equipment bought for use on-site at a Public Safety Facility, the Contractor shall be responsible for maintaining a perpetual inventory and adhering to State regulations relating to inventory.
- 3.15.3.1 The Contractor shall adhere to the requirements set forth in the Department of General Services (DGS) Inventory Control Manual:  
[www.dgs.maryland.gov/ISSSD/InventoryControlManual.pdf](http://www.dgs.maryland.gov/ISSSD/InventoryControlManual.pdf)

Where the DGS Manual requires responsibilities (e.g. reporting) to DGS, the Contractor shall report DPSCS.



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- 3.15.3.2 Whenever the Contractor purchases a piece of equipment, it shall enter the equipment information into the perpetual inventory and shall place State inventory numbers on the equipment consistent with the DGS Inventory Control Manual.
- 3.15.3.3 If it becomes necessary that any piece of equipment be transferred from one location to another, the Contractor will complete and submit to the Agency the appropriate Transfer Form prior to moving the equipment and follow Agency protocol for the transfer of that equipment.
- 3.15.3.4 The Contractor shall develop a database of all equipment in use or obtained through future purchases and log the maintenance and repair of that equipment on that database. The requirement is set forth further in section 3.31.3 of this RFP.
- 3.15.3.5 The following record keeping requirements shall be maintained for the equipment inventory:
- 1) Equipment description
  - 2) Name of supplier and purchase order or other acquisition document number.
  - 3) Acquisition cost and date.
  - 4) Physical location of item (Facility code + Room Number or Name)
  - 5) Serial number, if any
  - 6) State tag number, if any
  - 7) Equipment Condition
- 3.15.3.6 A complete physical inventory report shall be submitted to the Agency within the first 90 days of award and within the last ninety days of each fiscal year, due no later than 6/30/XX, in the form and format as requested by the Agency. The annual inventory report shall include a completed and signed DPSCS Property Form by each facilities property officer.

### **3.16 Delivery of Pharmacy Services**

- 3.16.1 The Contractor bears ultimate responsibility for the delivery of pharmacy services to the inmate population in all DPSCS facilities by delivering medications daily to each institution in the Department, as required.
- 3.16.1.1 The Contractor shall supply prescription and nonprescription medications and supplies, as applicable, to each facility within each Service Delivery Area, using Contractor-supplied transportation, in unit dose blister and/or cellophane packs, or in the most effective size and package for dispensing.



- 3.16.1.2 The Contractor shall be responsible for packaging all deliveries to each institution appropriately and utilizing a Contractor-supplied automated bar-coded medication delivery receipt and inventory scanning system.
- 3.16.2 The Contractor shall supply prescribed medications (including drugs and biologicals) and related supplies for all physician orders and reorders and other facility requested pharmacy supplies, as approved or ordered and in quantities prescribed.
- 3.16.2.1 Included in the responsibility for supply are over-the-counter medications, prescription medications, controlled drugs, Mantoux serum, influenza vaccine, hepatitis vaccine, and other related items.
- 3.16.2.2 The Contractor shall use the DPSCS Formulary in conjunction with the supply and dispensing of medication. *See* RFP section 3.18 for requirements in connection with developing and maintaining the DPSCS Formulary.
- 3.16.2.3 Generic equivalents are to be supplied whenever possible, unless not approved by the prescribing physician (i.e. usually noted by “Dispense as Written”). At the discretion of the pharmacy vendor, a physician may appeal such a decision to the Director of Pharmacy, with final appeal to the Department.
- 3.16.3 All medications ordered from and communicated to the Contractor shall be dispensed and delivered to the appropriate location within the institution, as identified in Attachment X, before 4:00 P.M local time, the SAME DAY, unless an emergency “stat” need has been designated. *See* Attachment X, Pharmacy Delivery Locations.
- 3.16.4 Access to all drugs and biologicals shall be controlled and limited to necessary and appropriate personnel. Prescriptions shall be dispensed in complete compliance with local, state, and federal laws regulating delivery of pharmaceutical services, the inmates and the facility.
- 3.16.5 All drugs and biologicals shall be labeled in complete compliance with local, state, and federal law.
- 3.16.5.1 Each prescription shall be labeled individually, with the inmate’s name, inmate number, drug name and strength, directions for use, prescriber name, facility name, prescription number, expiration date (if applicable) and available refills, if any.



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- 3.16.5.2 The Contractor shall label all drugs and biologicals with cautionary instructions using auxiliary labels as required, describing drug reactions, interactions, cautions, etc.
- 3.16.5.3 The Contractor must utilize peel-off reorder labels for transmitting reorders to the pharmacy.
- 3.16.6 The Contractor shall track the following information:
- (1). patient medication which may, for any reason, be contraindicated;
  - (2). data on physician prescribing practices;
  - (3). information on drugs prescribed and costs; and
  - (4). patient specific information.
- 3.16.7 The Contractor shall make available to all other inmate health services providers an emergency toll free telephone number for consultation and inquiries and a toll-free telephone number for faxing, and electronic communication.
- 3.16.8 As prescribed, the contractor shall provide a 30 day supply of any medication and/or medical supply for an inmate being released. This 30 day supply should be provided as of the date specified by the physician.

### **3.17 Medication Immediate Start and Emergency Supplies**

- 3.17.1 Drugs and stock quantities for starter doses shall be available in amounts determined in conjunction with the Medical Director of the Service Delivery Area, subject to Agency approval.
- 3.17.1.1 Any stock medication ordered shall be prescribed for 3 to 7 days, to include both prescription medication as well as over-the-counter medication.
- 3.17.1.2 A completed accountability sheet shall be returned to the pharmacy (for reconciliation of doses) when stock is depleted. The drugs shall be recorded and reissued when medically appropriate and ordered by the physician.
- 3.17.1.3 Documentation of controlled drugs shall be provided according to the DPSCS policy and State and Federal regulations.
- 3.17.1.4 The Contractor must account for and dispose of all controlled substances within the guidelines of all Federal and State laws.
- 3.17.2 The Contractor shall supply an emergency medication kit to each pharmacy location.



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- 3.17.2.1 The emergency medication kit shall contain only those medications for which immediate administration is required in order to alleviate pain, infection, modify dangerous behavior, or preserve life, including HIV prophylactics.
  - 3.17.2.2 The Contractor shall make determinations on emergency medication kit drugs and stock quantities shall be in conjunction with the Contractor's statewide Medical Director and the Agency Director.
  - 3.17.2.3 All emergency medication kit contents shall be listed on the outside of the kit and kits shall be restocked as necessary.
  - 3.17.2.4 The Contractor shall inventory the emergency medication kit monthly, or as required by the facility.
  - 3.17.3 Emergency or "stat" medications, not found in either the emergency medication kit or starter dose packs, shall be delivered to the Service Delivery Area within four (4) hours of receipt of the order.
    - 3.17.3.1 The Contractor shall be responsible for the delivery of the medications to the institution using Contractor-supplied transportation. All contents shall be listed on the kit.
    - 3.17.3.2 Emergency medication services shall be provided on a seven (7) day a week, twenty-four (24) hour per day basis.

### **3.18 Agency Formulary**

- 3.18.1 The Contractor shall be responsible for maintenance and enforcement of the DPSCS drug formulary list ("DPSCS Formulary), beginning with the Formulary in existence now.
- 3.18.2 The DPSCS Formulary may be modified only following review by the Contractor's Pharmacy and Therapeutics committee (see RFP Section 3.29), and with Agency approval.
- 3.18.3 The Contractor shall make the DPSCS Formulary list available to all inmate health providers through an electronic means with hard copy back-up.
  - 3.18.3.1 The means adopted shall be subject to Agency approval.
  - 3.18.3.2 The most current formulary list shall be available at all times and shall be appropriately indexed and marked as to version to reflect the effective dates and nature of changes.



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- 3.18.3.3 A notation shall be made to indicate the effective date of any modification on the DPSCS Formulary.
  - 3.18.3.4 Any hard copy back up shall be in a format that allows for convenient updating. The hard copy and electronic version shall be appropriately indexed and marked as to version number to reflect the effective dates and nature of changes.
  - 3.18.4 Any prescription for a non-formulary medication shall be reviewed by a clinical pharmacist assigned by the Contractor who shall determine whether sufficient documentation has been provided to support the non-formulary request, and whether formulary alternatives were sufficiently exhausted.
    - 3.18.4.1 The pharmacist shall return a non-approved prescription to the prescribing physician with a replacement alternative for non-emergent requests within 48 hours; emergent/urgent requests must be responded within 8 hours of receipt.
    - 3.18.4.2 A prescribing physician may appeal a determination to reject a non-formulary prescription through the Contractor's statewide Medical Director, consistent with Agency policies and procedures.

### **3.19 Interdisciplinary Consultation**

- 3.19.1 Patient Clinical Case Conferences may be planned and implemented for any medical or mental health patient noted to be out of the ordinary such as those with multiple diagnoses requiring acute attention to treatment to avoid error, behavioral problems disrupting clinical services, or out of state persons that may require special planning for continuity of care.
- 3.19.2 The Contractor shall attend such Patient Care conferences as requested.

### **3.20 Infection Control**

- 3.20.1 The Medical Provider manages an infection control program in compliance with CDC guidelines and OSHA regulations, which includes concurrent surveillance of inmates and staff, preventive techniques, and treatment and reporting of infections in accordance with local and state laws and Agency policy and guidelines.
- 3.20.2 The Contractor shall participate in a monthly infection control meeting, organized and chaired by the Medical Provider in each service delivery area, that shall include as attendees representatives from each of the inmate medical services



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providers, the Agency, and local health departments, the Department of Health and Mental Hygiene, and the AIDS Administration as appropriate and necessary.

### **3.21 Investigation and Follow up of Grievance/ARPS and Complaints**

- 3.21.1 Inmate correspondence or correspondence from any person of interest relating to this Pharmacy Services module received by the Agency shall be reviewed and forwarded to the Contractor if response is appropriate.
- 3.21.2 A copy of complaints about service received directly from the Contractor shall be forwarded to the Agency upon receipt to determine whether response is required.
- 3.21.3 A copy of any response shall be sent to the applicable ACOM or, if a Statewide issue, to the Agency Director of Nursing.
- 3.21.4 Any time a response is considered to be non-responsive (i.e. does not directly answer the question posed) it can and shall be returned to the Contractor for re-investigation and more appropriate response.
- 3.21.5 All correspondence relating to complaints and all grievances shall be investigated and responded to consistent with Agency policy and procedures. (See Attachments P-1 through P-4: ARP Policies and Procedures).
- 3.21.6 The Agency, in its sole discretion, may direct that the Contractor take specified action with regard to a complaint.

### **3.22 Emergency Preparedness**

- 3.22.1 The Contractor shall ensure that appropriate personnel are available to provide pharmacy services as required by this Contract during severe weather, natural disasters, pandemics, and other emergencies.
- 3.22.2 The Contractor shall develop and implement, as necessary, an emergency management plan consistent with the Agency's and specific facility's Emergency Preparedness Plans and/or Continuity of Operations Plans (COOP).
- 3.22.3 The Contractor shall participate in all regional and statewide institutional emergency services plan rehearsals.

### **3.23 Hazardous Waste**





The Contractor shall dispose of all pharmaceuticals, bio-hazardous or toxic waste created by the operation of the Pharmacy Services program by the Contractor and/or its sub-contractor(s), including any medication returned by Public Safety for which credit is not issued by the Contractor in accordance with RFP Section 3.33.2, in accordance with Federal and State laws. Removal of these wastes from the facilities is the responsibility of the Medical Care Provider, and the Pharmacy Contractor shall utilize the Medical Care Provider's waste removal program when disposing of these items.

### **3.24 Renovations of Any Facility Sites or Portions of Those Sites**

The Contractor shall not renovate any Agency structure without the written permission of the Agency.

### **3.25 Research**

- 3.25.1 The Contractor shall cooperate with Agency approved research studies and/or special clinical programs.
- 3.25.2 Research shall not be conducted without specific written approval by the Agency, and as applicable, individual participants.

### **3.26 Continuous Quality Improvement**

- 3.26.1 The Contractor shall manage a program for continuous quality improvement (CQI) as outlined in its manual.
- 3.26.2 The Contractor shall conduct internal CQI meetings for its employees and subcontractors monthly to review measures of performance and to develop and monitor and measure quality improvement outcomes.
- 3.26.3 The Contractor shall participate in quarterly Multidisciplinary Continuous Quality Improvement Committee meetings and reviews in each Service Delivery Area, chaired by the Medical Director of the Medical Provider for the SDA to monitor the health services provided, collect, trend and disseminate data, develop and monitor corrective action plans and facilitate communication between disciplines.

### **3.27 Peer Review**



- 3.27.1 The Contractor shall ensure that each pharmacist performing services on this Contract be professionally reviewed by an independent and clinically appropriate pharmacist on an annual basis.
- 3.27.2 The results shall be communicated to the Agency within 15 days of the anniversary of the pharmacist's entrance on duty date.

### **3.28 Risk Management Program**

- 3.28.1 The Contractor shall abide by all Agency rules, regulations, policies, and procedures regarding risk management and will work in collaboration with all other inmate health care providers/contractors to assure that safety and prudence are exercised at all times.
- 3.28.2 The Contractor shall submit a monthly report of all incidents/accidents/errors occurring or discovered by its staff. Reports will include the incident or event, the date it occurred, how it was discovered, any outcomes as a result of that event (good and/or bad), and what is being done to prevent re-occurrence. Monthly narratives, summations of audit findings or verbal reports will not be considered as acceptable. Reportable events include but are not limited to:
- (1). Unexpected or unexplainable deaths,
  - (2). All suicides successful or attempted,
  - (3). Assaults on contractor staff,
  - (4). Inmate assaults requiring medical treatment,
  - (5). Post "use of force" examinations,
  - (6). Emergency Responses necessary to maintain or resuscitate life,
  - (7). Injuries occurring as a part of work accidents, such as, but not limited to medication error, needle sticks, missing documentation, staff falls, etc.
  - (8). Exposures to infectious diseases,
  - (9). Prophylaxis administration,
  - (10). Security Breaches (e.g. lost keys, missing sharps or medications, contraband, etc.).

### **3.29 Pharmacy and Therapeutics**

- 3.29.1 The Contractor shall organize and chair a quarterly Statewide Pharmacy and Therapeutics (P&T) Committee, which shall be responsible for additions and deletions to the DPSCS Formulary, monitoring usage of pharmaceuticals including psychotropic medications, and identifying prescribing patterns of practitioners.



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The Committee shall be led by the Contractor, and shall include representatives of the Agency and representatives from all Providers of inmate health services. Final authority over therapeutic decisions rests with the statewide Medical Director.

- 3.29.2 The Contractor shall also chair a monthly P&T Committee meeting to be held in each of the service delivery areas for the purpose of identifying prescription trends, medication administration or effectiveness issues, interactions and any pertinent information to the continued maintenance of the DPSCS Formulary.
  - 3.29.2.1 The monthly meeting shall be led by the Contractor and shall include representatives of the Agency and representatives from all inmate health care providers/contractors.
  - 3.29.2.2 The P&T Committee shall review all cases of patients receiving more than four prescription drugs at one time.

### **3.30 Patient Health Records**

- 3.30.1 The Contractor, through its pharmacists, shall enter all patient specific medication information into the inmate's Electronic Medical Record (EMR) as appropriate.
  - 3.30.1.1 The primary patient health record is maintained within the EMR system and it is the obligation of the Contractor to access EMR and make entries where appropriate. The Department's formulary shall be imported into the EMR twice a year.
  - 3.30.1.2 The Contractor shall be responsible for an initial training program for all of its potential users as well as for ongoing new employee orientation to the NextGen product, as well as for additional training relative to any future upgrade of or change from the current EMR product. The Contractor shall also provide periodic refresher or remediation training as is required for the program and effective use of this EMR.
- 3.30.2 The Contractor shall use an approved Agency form for all Departmental business unless a form for a particular purpose does not exist, in which case the Contractor shall work with the Agency to develop a State approved form for that purpose.

The Contractor may develop a temporary form until an approved form is developed, but may not use that form until it has been submitted to the Agency for approval.



- 3.30.3 All aspects of the inmate medical record are the property of the State and should not reflect the name of any contractor. Records may not be removed from State property, destroyed, altered, etc.
- 3.30.4 The Contractor shall be responsible for the deployment of a fully operational Electronic Medication Administration Record (EMAR). The EMAR shall electronically record all medication administered to an inmate via direct observation. The EMAR must document the issuing of “Keep-on-Person” medication, and must interface with the NextGen medical record system. The interface with NextGen shall be available to all medical staff that prescribe medication, with such prescription orders transmitted from the medical record to the pharmacy in real time. The development and deployment of the EMAR and any associated interface is the responsibility of the Pharmacy Services Contractor. The Contractor shall coordinate with the Medical Services provider, as the Medical Services provider’s staff will be the ones actually administering the medication to the inmates.

### **3.31 Data and Reports**

- 3.31.1 The Contractor shall be responsible for the development and/or upkeep of electronic data tracking in a format approved by the Agency, and with the capacity to provide reports to the Agency.
- 3.31.2 The Contractor shall establish and maintain a Peer Review database which will contain all of the elements of a peer review for onsite pharmacists. At a minimum, the database will include:
- The Name of the individual employee/pharmacist
  - The individual’s professional discipline
  - The date of the review
  - A list of the source material used for the review
  - Any verbal results from a review summarized
  - Any suggestions for improvement noted
  - A date for follow up review, if such is recommended.
- 3.31.3 The Contractor shall establish and maintain an Equipment database, which shall include an onsite equipment inventory as well as maintenance provided. At a minimum, the database will include:
- Inventory item by description
  - Date of purchase
  - Cost at time of purchase
  - Remark that equipment is labeled with State Equipment Label



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Serial Number of Equipment if available  
State Equipment number  
Purchased for Inmate shall include the inmate ID number  
Delivered to Inmate date (if applicable)  
Monthly inspection date  
Inspection outcome (condition of equipment)  
Repairs needed (if applicable)  
Repairs completed (if applicable)

3.31.4 The Contractor shall produce reports addressing the work being performed under the Contract.

3.31.4.1 Monthly information and utilization reports shall be submitted to the Agency no later than the fifth of the month following the month the report reflects in a form and format prescribed by the Agency as required. Such reports shall address, but are not limited to:

- (1). Prescriptions filled by drug, type, whether formulary or non-formulary, and quantity on a State-wide basis;
- (2). Prescriptions filled by drug, type, whether formulary or non-formulary, and quantity on an institution by institution basis;
- (3). Patient profiles;
- (4). Prescription trends;
- (5). Drug history and physician prescribing reports;
- (6). Usage and disposal reports;
- (7). Prescriptions filled in conjunction with inmate releases to the community;
- (8). Delivery reports by date and institution including emergency deliveries; and
- (9). Other reports as deemed necessary by the Agency.

3.31.4.2 The Contractor shall also submit a narrative monthly report delineating the status of the programs and services required to be delivered, citing those elements of the contract that are not in compliance and providing a corrective action plan by Service Delivery Area.

3.31.5 The Contractor shall also provide a report on a monthly basis relating to grievances and claims arising from the contract

3.31.5.1 The monthly grievance report shall include:

- (1) Name and identification number of inmate
- (2) Institution from which claim arose



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- (3) Form of grievance or claim (letter of complaint; ARP; grievance; litigation)
  - (4) Nature of claim (delay of care; medication distribution; referral, etc)
  - (5) Date received
  - (6) Summary of response
  - (7) Date of response

3.31.5.2 The Contractor shall provide a monthly litigation report. The litigation report shall include the information above from the grievance report, but shall be separately reported to identify court, case number, whether counsel filed or pro se, and amount of claim. Each entry shall be updated each month to identify whether dispositive motions are pending, discovery proceeding, trial set (date), trial held, judgment rendered, and/or appeal noted. All rulings on dispositive motions, judgments and settlements, and the terms of any judgment or settlement shall also be reported, regardless of whether the named defendant is the corporate defendant, a corporate subcontractor, or an individual employed by the Contractor or a subcontractor if the suit arises from performance of the services under this RFP.

3.31.5.3 In addition, the Contractor shall provide a cumulative semi-annual grievance and complaint report. The report shall be filed in July and January of each contract year analyzing grievance and complaint data for the immediate preceding relevant six-month period by institution, region, and nature of claim. The report shall include an assessment of whether corrective action is necessary or appropriate to respond to any trends and shall recommend a corrective action plan where appropriate.

3.31.6 All databases/data tracking tools are subject to periodic revisions and updates and shall be made available to Agency management upon request and without delay.

### **3.32 Failure of Performance**

It is critical to the success of the State's inmate health care services contract that services be maintained in a timely manner and that the Contractor operate in an extremely reliable manner. It would be impracticable and extremely difficult to fix the actual damage sustained by the State in the event of certain delays or failures in administration, service, reporting, and attendance of Contractor personnel on scheduled work and provision of services under this Contract. In the event of certain such delays and failures, the amount of damage which will be sustained from a failure to perform to certain standards will be the amounts set forth in Attachment V (the Contractor agrees that in the event of any such failure of performance, the Contractor shall pay such amount as liquidated damages and not as a penalty). The State, at its option for amount due the State as liquidated damages, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.



### 3.33 Invoicing

- 3.33.1 As noted in section 3.2.3, remuneration to the Contractor shall include:
- (a) Reimbursement of the Acquisition Cost, as per RFP Section 1.2.1, for legend and non-legend drugs and medical supplies, minus the Contractor's proposed Discount percentage per brand or generic pharmaceutical as detailed in its price proposal for the particular Contract Year;
  - (b) Reimbursement of the purchase price without markup of equipment and supplies used on-site at Departmental facilities as per RFP section 3.15.2;
  - (c) Payment of the fixed annual services fee for each respective year of the Contract, which covers all services (staffing, delivery, administrative, etc.) and all other costs (general, overhead, profit, etc.) under the Contract. The annual fee for the particular Contract Year shall be paid in twelve equal monthly installments (if Contract Year 1 is longer than 12 months, then the "yearly" fee will be divided by the number of actual months for Contract Year 1).

- 3.33.1.1 Monthly invoices from the Contractor to the Department shall be submitted electronically and in hard copy, using an Excel spreadsheet or some other format acceptable to the Department.

In addition to the monthly invoice, the Contractor shall prepare an Excel workbook file that includes a monthly report that lists all drug types provided to the Department in that particular month, the quantities of each drug type provided, the Contractor's invoiced acquisition cost per drug type provided (with the Contractor providing copies of its suppliers' invoices as verification), and the Contractor's price to the Department per drug, reflecting the Contractor's proposed Discount percentage.

- 3.33.1.2 The Contractor's invoice must show at a minimum for each prescription:
- (1). Inmate's Name
  - (2). Inmates ID Number
  - (3). Prescriber
  - (4). Generic Code
  - (5). Other code if non-formulary
  - (6). Dosage Form
  - (7). Package Size
  - (8). NDC Code
  - (9). Quantity
  - (10). Date of order and date of fill
  - (11). Date dispensed
  - (12). Whether initial fill or refill



- 3.33.1.3 Each month the Contractor shall provide with its invoice to the Department a copy of the manufacturer's or wholesaler's invoice in accordance with RFP section 1.2.1, for all drugs and supplies provided under the Contract for the preceding month (the month for which the invoice is submitted). With the provision of copies of the invoices for all items provided under the Contract, the Contractor shall include an affidavit stating that these invoices represent its Acquisition Cost for each item, as defined in RFP section 1.2.1. In addition, copies of any invoices for equipment purchased by the Contractor that the Department is to reimburse the Contractor for are to be provided for equipment that was purchased in the previous month (see RFP Section 3.15.2).

Included in the portion of the monthly invoice submitted by the Contractor to the Department for the pharmaceuticals purchased by and distributed to the Department, the Contractor shall apply the discount it has proposed in its Price Form (Attachment F) for the particular Contract Year to the actual acquisition cost the Contractor paid for each brand or generic pharmaceutical provided to the Department. These detailed calculations shall be shown on the monthly invoice. The rationale for requiring these discounts is to allow the Contractor to pass through the savings it receives from manufacturer/supplier rebates for the pharmaceuticals the Contractor purchases. These brand and generic discount percentages to be applied to the monthly invoices may change per year, based on the Contractor's Price Proposal. The final amount paid to the Contractor by the Department for pharmaceuticals delivered shall reflect the Contractor's proposed brand and generic discounts for the particular Contract Year the invoiced period falls within.

- 3.33.1.4 The Department may audit the Contractor's payment records at any time to verify that invoices submitted per RFP section 3.33.1 represent the Contractor's acquisition cost, as defined in RFP section 1.2.1. Such audits may be conducted as frequently as deemed necessary by the Department, including as frequently as monthly. Such audits may be conducted either by Department internal audit staff or by an audit firm obtained by the Department for this purpose. Audits may be performed on-site at the Contractor's office(s), at a Department location, or at the location of the Department's contracted audit firm.

If audits are conducted on-site at a Contractor location, the audit will be performed during normal business hours, with at least 5 days advanced notice. For audits at a Contractor location, the Contractor must provide copies of all invoices the Contractor received from any and all wholesalers





or manufacturers for a given month or months for drugs and medical supplies billed to the Department during the month or months being audited.

For audits performed at a State location (Department office or facility), or the audit firm location, the Contractor must provide copies, electronically or by hard copy, of all such invoices and transmit them to the Department or Department's audit firm within 10 days of the request.

If such audits (either by the Department or by an independent audit firm obtained by the Department) reveal discrepancies between the acquisition cost verified by the Audit and the acquisition cost billed by the Contractor, an adjustment will be made as a liquidated damage by DPSCS equivalent to the percentage of the discrepancy identified by the Department Audit for the time period covered by the audit. *See RFP Section 3.32.*

The audit for the final Contract month will be conducted promptly after the conclusion of the Contract. Final payment of the final month of the contract shall be withheld until the results of this audit are finalized.

If any audit reveals that the Contractor under-billed the Acquisition Cost, the Department will pay the Contractor the amount under billed. To the extent that the Contractor over-billed the Acquisition Cost, such overage shall be deducted from payments to be made to the Contractor.

- 3.33.2 One hundred percent (100%) credit shall be given to the Agency for medications returned in original blister or cellophane packs, except for medication that is outdated, has deteriorated, or has been outside of the control of the institutional pharmacy. No credit will be issued for controlled substances. Returned medications for which the Agency is not given credit shall be destroyed by the Contractor in accordance with RFP section 3.23.

### **3.34 Insurance Requirements**

The Contractor shall maintain general liability, property and casualty insurance with minimum limits sufficient to cover losses resulting from or arising out of Contractor action or inaction in the performance of the Contract by the Contractor, its agents, employees or subcontractors.

- 3.34.1 The Contractor shall provide a copy of the Contractor's current certificate of insurance that, at a minimum, shall contain the following:

Worker's Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employee's Liability Act.



Errors and Omissions – The Contractor shall purchase and maintain Errors and Omissions liability coverage in the minimum amount of: \$1,000,000.

Commercial General Liability – The Contractor shall purchase and maintain at least the following insurance protection for liability claims arising as a result of the Contractor's operations under this Contract:

- \$10,000,000: General Aggregate Limit (including without limitation druggist coverage and other than products/completed operations)
- \$2,000,000: Products/completed operations aggregate limit
- \$1,000,000: Each Occurrence Limit
- \$1,000,000: Personal and Accidental Injury Limits
- \$50,000: Fire Damage Limit
- \$5,000: Medical Expense

3.34.2 Upon execution of a Contract with the State, Contractor shall: (i) provide the State with current certificates of insurance that identify the State as an additional insured, and (ii) shall maintain and report such insurance annually to the Procurement Officer.

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## **SECTION 4 - Proposal Format**

### **4.1 Two Part Submission**

Offerors must submit proposals in two separate volumes:

- a. Volume I - TECHNICAL PROPOSAL
- b. Volume II - FINANCIAL PROPOSAL

### **4.2 Proposals**

Volume I-Technical Proposal, must be sealed separately from Volume II-Financial Proposal, but submitted simultaneously to the Procurement Officer (address listed in Section 1.5 of this RFP). An unbound original, so identified, and eight (8) copies of each volume are to be submitted. An electronic version of both the Volume I- Technical Proposal in MS Word format and the Volume II- Financial Proposal in MS Excel format must also be submitted with the unbound originals technical or financial volumes, as appropriate. Electronic media on CD shall bear the RFP number and name, name of the Offeror and the volume number.

### **4.3 Submission**

Each Offeror is required to submit a separate sealed package for each "Volume", which is to be labeled Volume I-Technical Proposal and Volume II-Financial Proposal. Each sealed package must bear the RFP title and number, name and address of the Offeror, the volume number (I or II), and the closing date and time for receipt of the proposals on the outside of the package. All pages of both proposal volumes must be consecutively numbered from beginning (Page 1) to end (Page "x").

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

Technical proposals must be submitted in a separate sealed package. Each section of the Technical Proposal must be separated by a Tab as detailed below:

#### **TAB A. TRANSMITTAL LETTER**

A transmittal letter must 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



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be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. Only one transmittal letter is needed and it does not need to be bound with the technical proposal. The letters should contain:

1. Name & Address of Contractor
2. Name, Title and Telephone Number of Contact for Offeror
3. Statement that proposal is in response to this Solicitation
4. Signature, Typed Name and Title of individual authorized to commit Offeror to proposal
5. Federal Employer Identification Number of the Offeror, or, if a single individual, a social Security Number
6. Statement accepting all State contract terms or that exceptions are taken (to be listed in the Executive Summary; see below).
7. Acknowledgement of all Addenda to this RFP

#### **TAB B. TITLE AND TABLE OF CONTENTS**

The technical proposal should begin with a title page bearing the name and address of the Offeror and the name and number of this RFP. A table of contents for the technical proposal should follow the title page. **Information that is claimed to be confidential is to be placed after the Title Page and before the Table of Contents in the Offeror's Technical Proposal, and if applicable, also in its Financial Proposal.** Unless there is a compelling case, an entire proposal should not be labeled confidential but just those portions that can reasonably be shown to be proprietary or confidential.

#### **TAB C. EXECUTIVE SUMMARY**

The Offeror shall condense and highlight the contents of the technical proposal in a separate section titled "Executive Summary". The summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. **Warning: 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 an Offeror takes no exception to State terms and conditions, the Executive Summary should so state.

#### **TAB D. OFFEROR TECHNICAL RESPONSE TO RFP REQUIREMENTS**

The Offeror must address each criterion in the technical proposal and describe how the proposed services will meet the requirements as described in Section 3 of the RFP. If the State is seeking Offeror agreement to a requirement, the Offeror shall state agreement or disagreement. As stated above, any exception to a term or condition may result in having the proposal deemed



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unacceptable or classified as not reasonably susceptible of being selected for award. Any paragraph that represents a work requirement shall include **an explanation of how the work will be done.**

1. An Offeror shall demonstrate an understanding of the Agency's necessity to develop a strong multi-disciplinary model of health care with all of the Agency's contractors and sub-contractors. An Offeror must propose, in writing in the body of its response, a plan for collaboration between various health providers, custody, and the Agency health care management. The written collaboration plan shall include the steps, with timelines, the Offeror will take to assure that this collaboration will be implemented and honored.
2. An Offeror shall demonstrate an ability to serve the full population throughout the State to whom DPSCS has an obligation to provide pharmacy services. An Offeror shall set forth a delivery of services plan to demonstrate its ability to sufficiently recruit and retain staff, or otherwise deliver services across the state at a level necessary to meet the obligations under this RFP.
3. An Offeror shall propose a plan for the delivery of the full range of pharmacy services to the inmate population consistent with this RFP, all relevant standards, the Agency's Manual of Policies and Procedures for Inmate Health Care, and Consent decrees.
4. An Offeror shall include in its staffing plan, at a minimum, four (4) Clinical Pharm. D's to cover each service delivery area. These pharmacists and their schedules shall be identified to the agency, assigned only to this contract, and shall not have responsibilities for any other contract. The Offeror shall also include in its plan a disease management program that outlines potential cost savings for inpatient and offsite care related to cardiac, diabetes, HCV, HIV, INR and wound care management infectious diseases directly related to the use of clinical pharmacy.
5. The Offeror shall propose the management structure it will utilize upon award in narrative and chart of organization.
6. The Offeror shall acknowledge its obligation to formulate and distribute to its staff a manual of policies and procedures that are consistent with those of the Agency.
7. The Offeror shall provide evidence in its proposal that all relevant Agency Policies, Procedures, and Manuals have been reviewed and an acknowledgement that its own policies and procedures are consistent with those of the State or that it will modify its own policies and procedures to eliminate any inconsistency within thirty days of contract initiation. Disputes about conflicts between Agency and Contractor policies and procedures will be considered by the Agency. However, the Agency's decision on any matters of policy and/or procedure shall be considered as final.



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8. The Offeror shall acknowledge its obligation to adhere to the Agency's policies and procedures and its obligation to carry out those policies and procedures in collaboration with the Agency and the other successful Offerors.
  9. The Offeror shall acknowledge the Agency's role in personnel decisions.
  10. The Offeror shall acknowledge its obligation for orientation and training of employees.
  11. The Offeror shall acknowledge its obligation to provide a plan and schedule for regular competency based in-service trainings following orientation with on-site follow up training for clinicians, and shall demonstrate its understanding of the criticality of such training by reference to the intended scope of competency evaluation.
  12. The Offeror shall acknowledge the responsibility of the Pharmacy Provider to purchase and provide all necessary supplies and equipment except as stated in Section 3.15 of the RFP.
  13. The Offeror shall describe a plan to ensure the availability of medications to all inmates in need of immediate access consistent with Agency procedures.
  14. The Offeror shall include in its proposal Quality Assurance and Performance Measurements that:
    - Assure the delivery of pharmacy services including appropriate labeling and packaging, and timely delivery (Section 3.16), and immediate access to medications as necessary (Section 3.17);
    - Assure effective management of the Pharmacy and therapeutics process (Section 3.29) and control of the agency formulary (Section 3.18);
    - Assure the delivery of an effective continuous quality improvement program (Section 3.26) and peer review program (Section 3.27); and
    - Measure clinical pharmacist performance.
  15. The Offeror shall acknowledge and include in its proposal its plan for assuring a collaborative working relationship with the custody staff as well as the treatment services staff and case management staff. An important aspect of program management will be coordinating with the custody staff. Correctional Officers will be relied upon to assist the program and must be included as an integral partner with service provision staff, both clinical and delivery.
  16. The Offeror shall describe in detail how it will implement and deliver a fully operational EMAR system (see RFP Section 3.30.4).



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**TAB E. PERSONNEL/RESUMES**

The Offeror must describe its personnel capabilities in compliance with the overall performance requirements of the contract. Resumes must be provided for all key personnel proposed for this project.

**TAB F. OFFEROR EXPERIENCE, CAPABILITIES, AND REFERENCES**

Offerors shall include information on past experience with projects with similar requirements within the past five years. Offerors shall describe their experience and capabilities through a response to the following:

1. An overview of the Offeror's experience providing services similar to those included in this RFP. This description shall include:
  - a) A summary of the services offered
  - b) The number of years the Offeror has provided these services
  - c) The number of clients and geographic locations the Offeror currently serves
2. All references shall include the identification of all contracts that your firm has undertaken with a similar scope of work as presented in the body of this RFP. Identify the entity contracted with, the general scope of services provided, the number of inmates/clients serviced and the duration of the contract. If the contract is current, identify the current contact person for references. If the contract is not current, indicate the cause for termination, and the previous contact person for reference.

Note: The State shall have the right to contact any reference as part of the evaluation and selection process. The State also reserves the right to request site visits to the Offeror's offices and facilities for the purpose of evaluating proposals.

3. Offeror shall submit a Corporate Fact Sheet that includes but is not limited to the following:

Evidence of experience in the delivery of correctional medical services (see RFP Section 2 for minimum experience requirements); Corporate history; Primary areas of specialization; and Company size.

4. Offerors shall submit a staff skills and qualifications matrix in their own format to summarize relevant experience for the proposed staff, including any subcontractor staff. Offeror and subcontractor staff experience shall be presented in two separate matrices.



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**TAB G. FINANCIAL CAPABILITY AND INSURANCE:**

The Offeror must provide:

- a) Evidence that the Offeror has the financial capacity to provide the service via profit and loss statements and balance sheets for the last two years.
- b) A copy of the Offeror's current certificates of insurance which, at a minimum, should contain the following:
  - Carrier (name and address)
  - Type of insurance
  - Amount of coverage
  - Period covered by insurance
  - Exclusions

**TAB H. ECONOMIC BENEFIT FACTORS**

The Offeror shall describe the benefits that will accrue to the State of Maryland economy as a direct or indirect result of the Offeror's performance of the contract resulting from this RFP. The Offeror will take into consideration the following elements (do not include any details of the financial proposal with this information):

- 1) The estimated percentage of contract dollars to be recycled into Maryland's economy in support of the contract, through the use of Maryland subcontractor, suppliers, and joint venture partners. Offerors should be as specific as possible and provide a percentage breakdown of expenditures in this category.
- 2) The estimated number and type of jobs for Maryland residents resulting from this contract. Indicate job classifications, number of employees in each classification, and the aggregate Maryland payroll percentages to which the contractor has committed at both prime and, if applicable, subcontract levels.
- 3) Tax revenues to be generated for Maryland and its political subdivisions as a result of this contract. Indicate tax category (sales tax, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the contract.
- 4) The estimated percentage of contract payments to be committed to Maryland small businesses and MBEs.

In addition to the factors listed above, the Offeror should explain any other economic benefit to the State of Maryland that would result from the Offeror's proposal.

**TAB I. SUBCONTRACTORS**





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Offerors must identify all subcontractors (including MBE subcontractors), if any, and the role these subcontractors will have in the performance of the contract.

**TAB J. BID/PROPOSAL AFFIDAVIT** (Attachment B - to be submitted with original of Technical Proposal)

**TAB K. MBE FORMS**  
(Attachment D utilization and fair solicitation affidavit and MBE participation schedule – to be submitted with original of Technical Proposal)

**TAB L. LIVING WAGE AFFIDAVIT** (Attachment M – to be submitted with original of Technical Proposal)

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

- 4.5.1 Under separate sealed cover from the Technical Proposal and clearly identified with similar information noted on the Technical Proposal (RFP Section 4.3), the Offeror must submit an unbound original, seven copies, and an electronic version in Microsoft Excel of the Financial Proposal. The Financial Proposal must contain all cost information in the format specified below and the Proposal Price Form (Attachment F) must be submitted and completely filled in (no blanks or omissions).
- 4.5.2 Do not change or alter these forms. Substantive alterations to the price form that an offeror refuses to remove when directed to do so, will cause the proposal to be rejected.
- 4.5.3 The Proposal Price Form shall be completed and dated by an individual who is authorized to bind the firm to the prices offered. Enter the title of the individual and the company name in the spaces provided.
- 4.5.4 All criteria included in the Proposal Price Form, i.e., the estimated quantity of various items, etc., shown on these forms are for price evaluation purposes. The State reserves the right, at its sole discretion, to purchase the goods and services in different quantities than those referenced in the Proposal Price Form. The State reserves the right, at its sole discretion, not to purchase any goods or service for which proposals are solicited under this RFP.
- 4.5.5 The Proposal Price Form page is used to calculate the vendor's EVALUATED PRICE PROPOSED (Attachment F).
- All Unit Prices must be clearly typed with dollars and cents, e.g., \$24.15.



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- All goods or services required or requested by the State and prices offered by the vendor at No Cost to the State must be clearly typed in the Unit and Extended Price with “0.”
  - Nothing shall be entered on the Proposal Price Form that alters or proposes conditions or contingencies on the proposal response.
  - Recording \$0.00 or any variation will be treated and considered as No Cost to the State for that good or service.

4.5.6 It is imperative that the prices included on the Proposal Price Form are entered correctly by the vendor. Any incorrect entries by the vendor will be treated as provided in COMAR 21.05.03.03 E and 21.05.02.12.

4.5.7 In order to assess capacity to acquire at a rate most beneficial to the State, Offerors are directed to submit the acquisition cost (as defined in RFP Section 1.2.1) in effect on October 31, 2010 that would be reflected on an invoice to the Agency per dose for each medication identified on Attachment F at the quantities specified. To evidence the accuracy of the prices entered on the price form, the offeror shall provide copies of actual invoices showing that the prices entered on the Price Form are the prices charged by the supplier to the offeror as of October 31, 2010.

In the event an offeror did not purchase a particular drug or medical supply included on the price form on October 31, 2010, the price submitted must be the most recent price that the Offeror would have paid prior to October 31, 2010, based upon an established catalog, or published price list from the supplier of the item (wholesaler or manufacturer). The Offeror must include a copy of such a catalog or published price list for any drugs or medical supplies priced accordingly.

4.5.8 All costs associated with packaging, delivery, overhead, clinical staffing, general and administrative expenses, profit, etc. shall be aggregated into a single, annual fee and entered on Attachment F as instructed. Each Offeror is requested to attribute across the cost centers identified in Attachment F the break down of the annual fee for purposes of ensuring the reasonableness of any proposal. Once a determination of reasonableness has been made, the only amount that will be assessed with respect to the annual fee is the aggregate amount.

4.5.9 In order for the Agency to assess the total financial offer, the Price Form will automatically calculate the Offeror’s total evaluated cost as indicated on Attachment F. Offerors are reminded that the Price Form includes a “tab” for each Contract Year, and Offerors are to propose service pricing and generic and brand drug discounts for every year, including option years. The completed Attachment shall be included in the Financial Section (Volume II) of the Proposal.

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## SECTION 5 - EVALUATION CRITERIA AND SELECTION PROCEDURE

### 5.1 Evaluation Criteria

Evaluation of the proposals will be performed by a committee organized for that purpose. Evaluations will be based on the criteria set forth below. The Contract resulting from this RFP will be awarded to the Offeror that is most advantageous to the State, considering price and the technical evaluation factors set forth herein. In making this determination, price factors will receive greater weight than technical factors.

### 5.2 Technical Criteria

The criteria to be applied to each technical proposal are listed in descending order of importance:

- Work Plan. Offeror response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements to include an explanation of how the work will be done. Responses to work requirements such as “concur” or “will comply” will receive a lower evaluation ranking than those Offerors who demonstrate they understand a work requirement and have a plan to meet or exceed it. (Ref. Section 3)
- Staffing. (Ref. Section 4.4)
- Offeror Experience and Capabilities. (Ref. Section 4.4)
- Economic Benefit Factors. (Ref. Section 4.4)

### 5.3 Financial Criteria

All qualified Offerors will be ranked from the lowest to highest based on their total evaluated price proposed.

### 5.4 Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland Contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference shall be given if: a responsible Offeror whose headquarters, principal base of operations, or principal site that shall primarily provide the services required under this RFP is in



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another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and, the preference does not conflict with a Federal law or grant affecting the procurement contract. The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its residents.

### **5.5 Selection Procedures**

The contract will be awarded in accordance with the competitive sealed proposals process under Code of Maryland Regulations 21.05.03. The competitive sealed proposals method allows discussions and revision of proposals following discussions.

Accordingly, the State may hold discussions with all Offerors judged reasonably susceptible of being selected for award, or potentially so. However, the State also reserves the right to make an award without holding discussions. In either case of holding discussions or not doing so, the State may determine an Offeror to be not responsible and/or not reasonably susceptible of being selected for award, at any time after the initial closing date for receipt of proposals and the review of those proposals.

### **5.6 Selection Procedures**

- 1) The first level of review will be an evaluation for technical merit. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform, and to facilitate arrival at a contract that will be most advantageous to the State. For scheduling purposes, Offerors should be prepared to make an oral presentation and participate in discussions approximately two weeks after delivery of proposals to the State. The Procurement Officer will contact Offerors when the schedule is set by the State.
- 2) Offerors must confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions. Any such written clarification or change then becomes part of the Offeror's proposal.
- 3) The financial proposal of each Offeror will be evaluated separately from the technical evaluation. After a review of the financial proposals of Offerors, the Procurement Officer may again conduct discussions.
- 4) When in the best interest of the State, the Procurement Officer may permit Offerors who have submitted acceptable proposals to revise their initial proposals and submit, in writing, best and final offers (BAFOs).



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### **5.7 Award Determination**

Upon completion of all discussions and negotiations, reference checks and site visits, if any, the Procurement Officer will recommend award of the contract to the responsible Offeror whose proposal is determined to be the most advantageous to the State considering technical evaluation and price factors as set forth in this RFP. In making the most advantageous Offeror determination, price factors will be given greater weight than technical factors.

The final award approval will be made by the Board of Public Works.

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## ATTACHMENTS

**In addition to eMaryland Marketplace, all Attachments (excluding attachments in the RFP) are posted at <http://www.dpscs.state.md.us/publicservs/procurement/ihs/>**

Attachment A	Example of State's Contract
Attachment B	Bid/Proposal Affidavit
Attachment C	Contract Affidavit
Attachment D	Minority Participation Forms
Attachment E	Pre-Proposal Conference Response Form
Attachment F	Pharmacy Services Proposal Price Form
Attachment G	G-1, DPSCS Overview G-2, Average Daily Population
Attachment H	H-1, Duvall vs. O'Malley Consent Decree H-2 Duvall vs. O'Malley Consent Decree Annotated
Attachment I	Pharmacy Equipment Inventory /Condition, Sept. 2009
Attachment J	Telemedicine / Telepsychiatry locations
Attachment K	Annual Utilization Summary Data
Attachment L	COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form
Attachment M	Living Wage Requirements
Attachment N	Facility-by-Facility Medication Distribution Method Requirements
Attachment O	Dialysis Treatment Trends
Attachment P	P-1, DOC ARP Policy 185.003 P-2, DOC ARP Policy 185.002 P-3, DPDS Adult Help Request Process 180.4



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P-4, DPDS Adult Grievance Procedures 180.1

Attachment Q	Q-1 Sample State Stat Utilization Report Sample Q-2 Sample State Stat Staffing Report State Stat Template Q-3 Sample State Stat Chronic Care Report Q-4 Sample State Stat HIV HEP-C Report
Attachment R	Pharmacy Staffing Matrix
Attachment S	Release Policy
Attachment T	Infection Control Reporting Form
Attachment U	Medicaid Eligibility Forms
Attachment V	V-3 Pharmacy Liquidated Damages Table
Attachment W	IMMS Policy
Attachment X	Proposed Pharmacy Delivery Schedule
Attachment Y	Suicide Prevention Program

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## ATTACHMENT A Contract

**THIS CONTRACT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by and between \_\_\_\_\_ and the **STATE OF MARYLAND**, acting through the **DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES** (the “DPSCS” or sometimes the “Agency”).

**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:

1.1 “Contract Manager” means the DPSCS representative and first point of contact for contract procedures and any discrepancies.

1.2 “Contractor” means \_\_\_\_\_ whose principal business address is \_\_\_\_\_ and whose principal office in Maryland is \_\_\_\_\_.

1.3 “Department” means the Department of Public Safety and Correctional Services (DPSCS)

1.4 “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_.

1.5 “Procurement Officer” means the individual listed in RFP Section 1.5, or designee.

1.6 “RFP” means the Request for Proposals for DPSCS Inmate Pharmacy Services DPSCS Solicitation No. Q0010022.

1.7 “State” means the State of Maryland.

1.8 “Technical Proposal” means the Contractor’s Technical Proposal, dated \_\_\_\_\_.

### 2. Scope of Work

2.1 The Contractor shall provide programs and services specific to the module awarded in accordance with Exhibits A-C listed in this paragraph 2.1 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 – Request for Proposals –Project No. Q0010022
- Exhibit B – Contractor’s Technical Proposal dated \_\_\_\_\_.
- Exhibit C – Contractor’s Financial Proposal dated \_\_\_\_\_.
- Exhibit D – The Contractor’s Contract Affidavit dated \_\_\_\_\_.

**2.3** The Procurement Officer may, at any time, by written change order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of a 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 may be the basis for a claim under the Disputes clause. The Contractor may not delay or refuse performance under a change order for any reason, but will proceed immediately and diligently with performance of the Contract in accordance with the change.

**3. Time for Performance.**

The term of this Contract begins on the date the Contract is executed by the Department, and unless terminated earlier in accordance with the Contract, ends \_\_\_\_\_. The Contractor shall undertake transition activities necessary to provide its services under the Contract immediately upon receipt of a written notice to proceed issued by the Procurement Officer. Apart from transition activities, the Contractor shall provide all the services, hardware, related software, and other deliverables under this Contract during the period \_\_\_\_\_ to \_\_\_\_\_.

**4. Compensation and Method of 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 (dependant on contract type, to be supplied later). Except with the express written consent of the Procurement Officer, payment to the Contractor pursuant to this Contract shall not exceed \$ \_\_\_\_\_. Contractor shall notify the Contract Manager, in writing, at least 60 days before the total of Contract payments equals the “not to exceed” amount in this paragraph 4.1. The State may unilaterally, and in its sole discretion, increase the “not to exceed” amount. After notification by the Contractor, if the State fails to increase the “not to exceed” amount, the Contractor shall have no obligation to perform under this Contract after payments reach the “not to exceed” amount.



4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Agency's receipt of a proper invoice for services provided by the Contractor, acceptance by the Agency of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is \_\_\_\_\_. 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 should be submitted to the Agency Contract Manger. If the Contractor submits an invoice for reimbursement of its expenses as authorized under this Contract, the invoice is a "proper invoice" under this paragraph 4.2 only if the invoice includes complete copies of the invoices for which it is seeking reimbursement. Electronic funds transfer will be used by the State to pay Contractor under 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.

4.3.1 The Agency may adjust payment to the Contractor to cover damages.

4.3.1.1. The Contractor shall not be responsible for damages to the extent that the damages are directly the result of acts or omissions by the State's employees. Each party shall bear responsibility for the damages directly caused by their acts or omissions.

4.3.1.2 Liquidated Damages

4.3.1.2.1 The Agency may deduct liquidated damages as set forth in Attachment (RFP Attachment V).

4.3.1.2.2 When the Agency has identified a deficiency for which it could assess a liquidated damage, it shall notify the Contractor in writing of the deficiency.

4.3.1.2.3 The Contractor shall provide to the Agency Representative within 10 working days of the date that the Contractor receives the agency's notice, its written explanation for the deficiency.

4.3.1.2.3.1 The Agency may determine whether or not to assess the liquidated damages without considering the Contractor's response if it has not received the Contractor's explanation within 10 working days.



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4.3.1.2.4 The total amount for liquidated damages arising out of any one incident or occasion may not exceed \$150,000.

4.3.1.3 Direct Damages.

4.3.1.3.2 The Agency may deduct for direct damages sustained as a result of Contractor's failure to perform as required under this Contract.

4.3.1.3.3 If hospitalization, outpatient or specialty care not otherwise provided on site is required as a result of provider negligence, the contractor will be responsible for these and related costs. The determination as to whether these services were required as a result of provider negligence will be that of the DPSCS Medical Director, whose decision shall be final.

4.3.1.4 Notification

4.3.1.4.2 The Agency shall notify the Contractor of each adjustment.

4.3.1.4.2.1 The Agency shall provide the Contractor with such evidence as the Agency determines is adequate to justify each adjustment.

4.3.1.4.2.2 If the Contractor does not agree with the adjustment or the action taken to obtain the adjustment, the Contractor's sole remedy to resolve the issue is as provided in ARTICLE 11 of the contract.

4.4 Unless otherwise provided in the Contract, the Contractor shall make all payments owed to the Agency within 30 days after receipt by the Contractor of a correct invoice. Final payment will not be made under the contract until Public Safety validates that all deliverables have been received under the contract. For any deliverables not received as of the required submission/performance date, appropriate deduction will be made from the final payment by the Department.

4.5 Payment of an invoice by the Agency is not evidence that services were rendered as required under this Contract.

4.6 The Agency is not responsible for bills incurred or paid by the Contractor for processing fees, indirect or direct costs, or overhead costs related to bills paid or incurred by the Contractor, other than those fees or costs which the Contractor has included in its price stated in ATTACHMENT F or for which the Contractor is authorized to submit an invoice for reimbursement under this Contract.

4.7 In the event that any monies due the Contractor are not sufficient to satisfy all claims against the Contractor, the Agency may invoice the Contractor for all additional amounts due. In the event the Contractor fails to pay the amount owed within 30 days, the Agency, in



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addition to any other remedies, may deduct the amounts due from any monies due the Contractor during any renewal term of the contract or under any other contract between the parties.

## 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 solely for purposes of this Contract shall be the sole property of the Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 Upon the request of the Agency, the Contractor shall provide, free of charge, certified copies of all records related to this Contract produced through the use of a time keeping or other record systems owned, developed or utilized by the Contractor.

5.3 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 Department, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.4 The Contractor shall report to the Procurement Officer, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this agreement.

5.5 The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## 6. Patents, Copyrights, Intellectual Property

6.1 If the Contractor furnishes any design, device, material, process, or other item (“Product”) that is covered by a patent or copyright, or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

6.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any Product infringes any patent, trademark, copyright, or trade secret. If a third party claims that a Product infringes that party’s patent or copyright, the Contractor will



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defend the Department against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a Court finally awards, provided the Department (i) promptly notifies the Contractor in writing of the claim; and (ii) 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 paragraph 6.3 below.

6.3 If any Product becomes, or in the Contractor's opinion is 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 Product, b) replace the Product with a non-infringing product substantially complying with the item's specifications, or c) modify the Product so that it becomes non-infringing and performs in a substantially similar manner to the original Product.

## 7. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, 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.

7.1 The Contractor shall not use Maryland data or create any publication related to the system of programs and services being provided under the contractor with out first obtaining the written approval of the Assistant Secretary for Treatment Services.

## 8. Loss of Data

In the event of loss of any State data or records held or maintained by the Contractor in the performance services, 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 Procurement Officer. The Contractor shall ensure that all data is backed up, and is recoverable by the Contractor.

## 9. Indemnification

9.1 The Contractor shall indemnify the State and the State's employees against liability for any suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.



9.1.1 This shall not be construed to mean that the Contractor shall indemnify the State or the State's employees against liability for any suits, actions, or claims of any character that are directly the result of acts or omissions in the performance of the State or of the State's employees. Each party shall bear sole responsibility for any liability for any suits, actions, or claims of any character to the extent that such are directly caused by their acts or omissions.

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

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

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

## 10. Non-Hiring of Employees

No official or employee of the State of Maryland, as defined under State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## 11. Disputes

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



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12. Maryland Law

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

13. Nondiscrimination in Employment

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

14. Contingent Fee Prohibition

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

15. Non-Availability of Funding

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



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16. Termination for Cause

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

17. Termination for Convenience

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

18. Vendor Transition

If the Agency awards a contract to another vendor to perform services presently being performed by the Contractor under the Contract, the Contractor shall cooperate with the Agency and the new vendor in facilitating the transition as the Agency directs, including providing the new vendor with a copy of all the current policies, procedures and work plans applicable to the institutions covered by the Contract.

19. Delays and Extensions of Time

The Contractor agrees to perform this Agreement continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from





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unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

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

21. Pre-Existing Regulations

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

22. Financial Disclosure

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

23. Political Contribution Disclosure

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

24. Retention of Records



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The Contractor shall retain and maintain all records and documents in any way relating to this Contract for five years after final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section.

## 25. Compliance with Laws

The Contractor hereby represents and warrants that:

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

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

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

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

## 26. Costs and Price Certification

26.1 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 bid or offer.

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

## 27. Subcontracting; Assignment

27.1 The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Department, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Department. Any such subcontract or assignment shall include such terms of this Contract as the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.



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27.2 The Contractor shall not write into any subcontract or negotiate with any subcontractor for a requirement that would in any way limit the subcontractor's flexibility to compete with the Contractor or to negotiate with a competitor of the Contractor for any future contract with the State.

28. Commercial Nondiscrimination

- A. As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- B. The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the DPSCS, in all subcontracts.
- C. As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

29. Prompt Payment Requirements and MBE Compliance



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- 29.1. If a 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.
- 29.2. An “undisputed amount” means an amount owed by a 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.
- 29.3. An act, failure to act, or decision of a procurement officer or a representative of the Department, concerning a withheld payment between a Contractor and 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.
- 29.4. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
- 29.5. To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
  - (b) This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.
    - iv. Verification shall include a review of:
      - a. The Contractor’s monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and



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- b. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
  - (c) If the Department determines that a Contractor is in noncompliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
  - (d) If the Department determines that a Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
    - i. Terminate the contract;
    - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
    - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
  - (e) Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

30. Administrative

30.1 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 Agreement shall be referred to the Procurement Officer for determination.

30.2 Authority of the Department - Except as expressly prohibited by Maryland law, any of the State's rights, powers or duties under this Contract may be exercised or enforced by any officials or employees of the Department who are authorized to do so by the Secretary of Public Safety and Correctional Services. Where this Contract provides for the exercise or enforcement of rights, powers or duties by a specific official or employee of the Department, the Department may unilaterally, and within its sole discretion, change the designated official or employee upon written notice to the Contractor. To the extent that the Department utilizes internal review or approval processes in making determinations under this Contract, the Contractor has no right to or in connection with those processes.

30.3 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:



Thomas P. Sullivan, Director  
Department of Public Safety and Correctional Services  
Treatment Services, Office of Inmate Health Services  
6776 Reisterstown Road Suite 309 Baltimore MD 21215  
Telephone # (410) 585-3368  
Fax # (410) 764-4195  
[tpsullivan@dpscs.state.md.us](mailto:tpsullivan@dpscs.state.md.us)

If to the Contractor: (to be completed)

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

CONTRACTOR

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

\_\_\_\_\_  
Date

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

MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

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

\_\_\_\_\_  
Date

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

Approved for form and legal  
sufficiency this \_\_\_\_\_ day  
of \_\_\_\_\_, 2010.

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



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**ATTACHMENT B Bid/Proposal Affidavit**

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**BID/PROPOSAL AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT:

I am the (title) \_\_\_\_\_ and the duly authorized representative of (business) \_\_\_\_\_ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

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

**B-1. Certification Regarding Minority Business Enterprises.**

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

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;



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- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;
  - (3) Fail to use the certified minority business enterprise in the performance of the contract; or
  - (4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

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

**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





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

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**E. AFFIRMATION REGARDING DEBARMENT**

**I FURTHER AFFIRM THAT:**

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



been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

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

I FURTHER AFFIRM THAT:

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

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

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**G. SUB-CONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

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

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

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



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

#### I. FINANCIAL DISCLOSURE AFFIRMATION

##### I FURTHER AFFIRM THAT:

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

#### J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

##### I FURTHER AFFIRM THAT:

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

#### K. DRUG AND ALCOHOL FREE WORKPLACE

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

##### I CERTIFY THAT:

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



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



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

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

(4) I acknowledge and agree that:

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

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

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

#### L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

(If not applicable, so state).

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

#### M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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



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person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

N. Repealed.

O. ACKNOWLEDGEMENT

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

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

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



**ATTACHMENT C Contract Affidavit**

**COMAR 21.07.01.25**

**A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT:

I am the

\_\_\_\_\_ (title)

and the duly authorized representative of

\_\_\_\_\_ (business)

and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

**B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT**

I FURTHER AFFIRM THAT:

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

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

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

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



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C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Bid/Proposals Affidavit dated \_\_\_\_\_, 20\_\_\_\_, and executed by me for the purposed 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: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Authorized Representative and Affidavit)





ATTACHMENT D MINORITY PARTICIPATION FORMS

**Attachment D-1 – Certified MBE Utilization and Fair Solicitation Affidavit**

This document **MUST BE** included with the bid or offer. If the Bidder or Offeror fails to complete and submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

In conjunction with the bid or offer submitted in response to Solicitation No. DPSCS Q0010022, I affirm the following:

1.  I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of **20%** of the total contract dollar amount. Therefore, I will not be seeking a waiver pursuant to COMAR 21.11.03.11.

**OR**

- I conclude that I am unable to achieve the MBE participation goal. I hereby request a complete waiver, in whole, 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 21.11.03.11.

**OR**

- I conclude that I am unable to achieve the MBE participation goal. I hereby request a partial waiver of the overall goal and have identified the portion of the MBE goal I intend to achieve through a specific commitment of the certified Minority Business Enterprises listed in the MBE Participation Schedule below. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation (for the portion I am unable to achieve) in accordance with COMAR 21.11.03.11.

2. ***I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.***

- (a) Outreach Efforts Compliance Statement (Attachment D-2)  
(b) Subcontractor Project Participation Statement (Attachment D-3)  
(c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

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



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

**MBE Participation Schedule**

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

List Information For Each Certified MBE Subcontractor On This Project

Minority Firm Name	MBE Certification Number
-----	
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
-----	
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
-----	
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
-----	
Percentage of Total Contract	

Continue on a separate page, if needed.



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***SUMMARY***

**Total MBE Participation:** \_\_\_\_\_ %

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

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

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

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



**ATTACHMENT D-2**

**OUTREACH EFFORTS COMPLIANCE STATEMENT**

In conjunction with the proposal or offer submitted in response to Solicitation Number DPSCS Q0010022, I state the following:

1. Bid/Offeror identified opportunities to subcontract in these specific work categories.  
  
Attached to this form are copies of written solicitation (with instructions) used to solicit certified MBEs for these subcontract opportunities. (Item #2 on this form is optional for the initial solicitation phase.)
3. Bid/Offeror made the following attempts to contact personally the solicited MBEs.
4. Bid/Offeror assisted MBEs to fulfill or to seek waiver of bonding requirements. (DESCRIBE EFFORTS)  
  
\_\_\_\_\_ This project does not involve bonding requirements.
5. Bid/Offeror \_\_\_\_\_ DID \_\_\_\_\_ DID NOT attend the pre-proposal conference.  
  
\_\_\_\_\_ No pre-proposal conference was held.

\_\_\_\_\_  
Bid/Offeror Name

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

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
Date



**ATTACHMENT D-3**

**SUBCONTRACTOR PROJECT PARTICIPATION STATEMENT**

SUBMIT ONE FORM FOR EACH CERTIFIED MBE LISTED IN THE MBE PARTICIPATION SCHEDULE.

Provided that \_\_\_\_\_ is awarded the State contract in \_\_\_\_\_ (Prime Contractor Name) conjunction with Solicitation Number DPSCS Q0010022, it and

\_\_\_\_\_,  
MDOT Certification No. \_\_\_\_\_, intend to enter into a contract by which Subcontractor

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

(Describe Work)

\_\_\_\_\_ No bonds are required of Subcontractor.

\_\_\_\_\_ The following amount and type of bonds are required of Subcontractor.

\_\_\_\_\_  
Prime Contractor Signature

\_\_\_\_\_  
Subcontractor Signature

By: \_\_\_\_\_  
Name, Title and Phone Number

By: \_\_\_\_\_  
Name, Title and Phone Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**ATTACHMENT D-4**

**MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL  
SERVICES  
MINORITY BUSINESS ENTERPRISE PARTICIPATION**

**PRIME CONTRACTOR UNPAID MBE INVOICE REPORT**

*To be Completed Monthly by Prime Contractor*

Report: Month/Year \_\_\_\_\_

**Report due by the 15<sup>th</sup> of following month.**

ADPICS Document Numbers

***Blanket Purchase Order Number***

\_\_\_\_\_

Purchase Order Number

\_\_\_\_\_

MBE Subcontract Amount

\_\_\_\_\_

Contract Begin Date

\_\_\_\_\_

Contract End Date

\_\_\_\_\_

Prime Contractor

\_\_\_\_\_

Address

\_\_\_\_\_

City

\_\_\_\_\_

Phone

\_\_\_\_\_

Contact Person

\_\_\_\_\_

State \_\_\_\_\_ Zip

\_\_\_\_\_

Fax

\_\_\_\_\_

Subcontractor

\_\_\_\_\_

Address

\_\_\_\_\_

City

\_\_\_\_\_

Phone

\_\_\_\_\_

Contact Person

\_\_\_\_\_

State \_\_\_\_\_ Zip

\_\_\_\_\_

Fax

\_\_\_\_\_



Subcontractor Services Provided

List any unpaid invoices over 30 days old received from this vendor and reason for non-payment.

- 1.
- 2.
- 3.

Total Amount Unpaid \$ \_\_\_\_\_

**\*\* If more than one MBE subcontractor is used for this contract, please use separate forms & include the blanket purchase order number.**

Signature \_\_\_\_\_  
(Prime Contractor)

Date \_\_\_\_\_

**Return one (1) copy of this form to each of the following addresses:**

Tia Rattini, MBE Manager  
Office of Minority Affairs  
Department of Public Safety & Correctional Services  
6776 Reisterstown Road, Suite 208  
Baltimore, MD 21215

Thomas P. Sullivan, Director of Treatment Services  
Department of Public Safety & Correctional Services  
6776 Reisterstown Road, Suite 309  
Baltimore, MD 21215



**ATTACHMENT D-5**

**MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL  
SERVICES  
MINORITY BUSINESS ENTERPRISE PARTICIPATION**

**SUBCONTRACTOR PAYMENT REPORT**

**To be Completed Monthly by MBE Subcontractor**

Report: Month/Year \_\_\_\_\_

**Report due by the 15<sup>th</sup> of following month.**

ADPICS Document Numbers

***Blanket Purchase Order Number***

\_\_\_\_\_

Purchase Order Number

\_\_\_\_\_

MBE Subcontract Amount

\_\_\_\_\_

Contract Begin Date

\_\_\_\_\_

Contract End Date

\_\_\_\_\_

MBE Subcontractor Name

\_\_\_\_\_

MDOT Certification #

\_\_\_\_\_

Contact Person

\_\_\_\_\_

Address

\_\_\_\_\_

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

\_\_\_\_\_

Phone \_\_\_\_\_ Fax

\_\_\_\_\_

Subcontractor Services Provided

\_\_\_\_\_





**List all payments received from Prime Contractor in the preceding 30 days.**

- 1.
- 2.
- 3.

TOTAL DOLLARS PAID

\$ \_\_\_\_\_

Prime Contractor Name

\_\_\_\_\_

Signature \_\_\_\_\_  
(Subcontractor)

**Return one (1) copy of this form to each of the following addresses:**

Tia Rattini, MBE Manager  
Office of Minority Affairs  
Department of Public Safety & Correctional Services  
6776 Reisterstown Road, Suite 208  
Baltimore, MD 21215

**List dates and amounts of any outstanding invoices.**

- 1.
- 2.
- 3.

TOTAL DOLLARS UNPAID

\$ \_\_\_\_\_

Contact Person

\_\_\_\_\_

Date \_\_\_\_\_

Thomas P. Sullivan, Director of Treatment Services  
Department of Public Safety & Correctional Services  
6776 Reisterstown Road, Suite 309  
Baltimore, MD 21215



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

**Project No. Q0010022  
Inmate Pharmacy Services**

A Pre-Proposal Conference shall be held on **Wednesday, November 17, 2010, 2:00 PM** (Local Time) at the Department of Budget and Management, 45 Calvert St., Room 164 A/B, Annapolis, MD 21401. Please return this form by 2:00 PM, **Monday, November 15, 2010** advising whether or not you plan to attend.

Email or fax this form to the Procurement Officer:

Gabriel Gnall  
Procurement Analyst  
Department of Budget and Management  
Fax # (410) 974-3274  
Email: [ggnall@dbm.state.md.us](mailto:ggnall@dbm.state.md.us)

Please indicate:

\_\_\_\_\_ Yes, the following representatives (by name and title) shall be in attendance:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

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

\_\_\_\_\_ Contact Name (Please Print)

\_\_\_\_\_ Signature

\_\_\_\_\_ Company Name and Title

\_\_\_\_\_ E-Mail Address



## ATTACHMENT F - INSTRUCTIONS FOR COMPLETING PRICE FORM

Offerors are instructed to use the Price Form provided separately as Excel file "Attachment F – Proposal Price Form." Enter information in only the "yellow" fields in the Price Form (Offeror Information, Offeror's Acquisition Costs, proposed Generic and Brand discounts for each year, Annual Services Costs, and signature/date). All other fields are locked. The Price Form will automatically make the calculations described below in the "blue" fields.

The Excel file contains "tabs" for the three Contract Years and the two Option Years. Offerors are instructed to enter their proposed Discount percentages for brand and generic drugs, and their Annual Services Costs for every year including Option Years.

The following information applies primarily to the first "tab" titled "Contract Year 1 and Totals" (Column identifications and Line numbers may be different for each subsequent "tab" Year):

**Offeror Information (Lines 4 – 11)** – Offerors are to enter their Company Name, Address, Federal Identification Number, eMaryland Marketplace number, Minority Business Enterprise (MBE) number (if applicable), Phone number, and Email address.

**Lines 13 – 188:**

**Column A – Drug Name** - represents the generic or brand name of the most frequently used medications as prescribed and distributed to the inmate population and the presentence/detention population. The dosage quantity per unit is listed next to the Drug Name.

**Column B – Annual Quantity** – represents the amount of drugs used by DPSCS for the inmate population and detention/pretrial population in a prior one-year time period.

**Column C – Unit of Measure for Pricing** – represents the unit of measurement of the listed drugs; ex. per "tab" (tablet), per "cap" (capsule, caplet), etc.

**Column D – Acquisition Cost\*** (as of October 31, 2010) - Offeror are to enter their actual Acquisition Cost\* for each drug specified, at the quantity and unit of measurement provided in the Price Form, as of October 31, 2010. To evidence the accuracy of the prices entered on the Price Form, the Offeror shall provide copies of actual invoices in its Financial Proposal showing that the prices entered on the Price Form are the prices charged to the Offeror by the Offeror's supplier on October 31, 2010. In the event the Offeror did not purchase a particular drug or medical supply included on the price form on October 31, 2010, the price submitted must be the most recent price that the Offeror would have paid prior to October 31, 2010, based upon an established catalog, or published price list from the supplier of the item (wholesaler or



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manufacturer). The Offeror must include a copy of such a catalog or published price list for any drugs or medical supplies priced accordingly.

\*As defined in Section 1.2.1, except as modified below in this Column D explanation.

**Column E - Estimated 12 Month Acquisition Cost** – calculation of the estimated cost for 12 months for each drug listed, based on the Annual Quantity as supplied in Column B and Unit of Measure in Column C multiplied by the Offeror’s September 30, 2010 Acquisition Cost entered in Column D (Annual Quantity x Unit of Measure for Pricing x Acquisition Cost = Estimated 12 Month Acquisition Cost).

**Line 189 - Total Estimated 12 Month Generic Drug Acquisition Costs** – represents the estimated total cost for one full year of supplying the generic drugs at the quantities and acquisition costs listed in the Price Form. For evaluation purposes, this amount will be used for each year’s generic drug calculations.

**Line 190 – Discount Percentage: Generics** – the actual percentage discount proposed by the Offeror that will be applied to the Total Estimated 12 Month Generic Drug Acquisition Costs (Line 189) for that year. *This is the actual percentage discount the Contractor will apply as a reduction to all invoices submitted to DPSCS for acquisition cost of generic pharmaceuticals under the Contract that results from this RFP.*

**Line 191 - Total Evaluated 12 Month Generic Drug Acquisition Costs (Generic Discount included)** – the evaluated total 12 month generic drug acquisition cost calculated by reducing the Total Estimated 12 Month Generic Drug Acquisitions Costs amount (Line 189) by the Discount Percentage for Generics (Line 190) for that year.

**Line 192 - Total Estimated 12 Month Brand Drug Acquisition Costs** – represents the estimated total cost for one full year of supplying the brand drugs at the quantities and acquisition costs listed in the Price Form. For evaluation purposes, this amount will be used for each year’s brand drug calculations.

**Line 193 – Discount Percentage: Brands** – the actual percentage discount proposed by the Offeror that will be applied to the Total Estimated 12 Month Brand Drug Acquisition Costs (Line 192) for that year. *This is the actual percentage discount the Contractor will apply as a reduction to all invoices submitted to DPSCS for acquisition cost of brand pharmaceuticals under the Contract that results from this RFP.*

**Line 194 - Total Evaluated 12 Month Brand Drug Acquisition Costs (Generic Discount included)** – the evaluated total 12 month brand drug acquisition cost calculated by reducing the Total Estimated 12 Month Brand Drug Acquisitions Costs amount (Line 189) by the Discount Percentage for Brands (Line 190) for that year.



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**Line 195 – Total Evaluated 12 Month Drug Acquisition Costs** – the total of the Total Evaluated 12 Month Generic Drug Acquisition Costs (Line 191) and the Total Evaluated 12 Month Brand Drug Acquisition Costs (Line 194) for that year.

**Lines 196-199 – Annual Services Costs** – divided into three categories: Delivery, Staffing, and Overhead and Profit; separate fields for each year.

Delivery shall be priced as the annual cost for the once a day delivery to the correctional facilities as identified in the RFP.

Staffing – shall be priced as the annual cost to provide clinical pharmacists under the Contract.

Overhead and Profit – shall be priced as an annual cost, and shall include any remaining payments to the Contractor, not included under Acquisition Costs, “Delivery,” and “Staffing.”

**Line 200 – Total Annual Services Costs** – calculated by adding the Annual Services Costs for Delivery, Staffing, and Overhead and Profit (Lines 196, 197, and 198) for that particular year.

**Line 201 – Evaluated Price** – the total of the Total Evaluated 12 Month Drug Acquisition Costs (Line 195) and the Total Annual Services Costs (Line 200) for each year.

**Line 206 – Total Evaluated Price** – the total of the Evaluated Price for each year (Contract Years 1, 2, 3, and Option Years 1, 2).

**The Financial Proposal is to be completed, signed, and dated by an Authorized Representative for the Offeror (Lines 207 and 208).**



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**ATTACHMENT F - Proposal Price Form – Pharmacy Services**

**Attached to the RFP as a separate Excel document titled “Attachment F - Proposal Price Form – Pharmacy Services.”**

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**



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**ATTACHMENT M – Living Wage Requirements**

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Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract. The Living Wage Law does not apply to an employee who works less than thirteen consecutive weeks and full-time on a contract subject to the Living Wage.
- 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:

performs work on a State contract for services valued at less than \$100,000,

    - (A) employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
    - (B) 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) Contracts involving services needed 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 procurement ("Unit"); or
      - a. Services between a Unit and a County or Baltimore City.



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





**Affidavit of Agreement**  
**Maryland Living Wage Requirements-Service Contracts**

Contract No. \_\_\_\_\_ – \_\_\_\_\_

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

Address \_\_\_\_\_

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

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

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

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

**If the Contract is a Living Wage Contract**

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

