



**DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES
REQUEST FOR PROPOSALS (RFP)
SOLICITATION NO. Q0016025**

Issue Date: June 22, 2017

PHARMACY SERVICES

With Amendments 1 - 33

<u>No. 1, dated: June 26, 2017</u>	<u>No. 18, dated: March 2, 2018</u>
<u>No. 2, dated: July 12, 2017</u>	<u>No. 19, dated: March 6, 2018</u>
<u>No. 3, dated: August 18, 2017</u>	<u>No. 20, dated: March 21, 2018</u>
<u>No. 4, dated: September 8, 2017</u>	<u>No. 21, dated: March 28, 2018</u>
<u>No. 5, dated: October 13, 2017</u>	<u>No. 22, dated: April 12, 2018</u>
<u>No. 6, dated: October 31, 2017</u>	<u>No. 23, dated: April 24, 2018</u>
<u>No. 7, dated: November 17, 2017</u>	<u>No. 24, dated: May 9, 2018</u>
<u>No. 8, dated: November 29, 2017</u>	<u>No. 25, dated: May 29, 2018</u>
<u>No. 9, dated: December 5, 2017</u>	<u>No. 26, dated: June 20, 2018</u>
<u>No. 10, dated: December 11, 2017</u>	<u>No. 27, dated: June 21, 2018</u>
<u>No. 11, dated: December 27, 2017</u>	<u>No. 28, dated: July 11, 2018</u>
<u>No. 12, dated: January 16, 2018</u>	<u>No. 29, dated: January 25, 2019</u>
<u>No. 13, dated: January 16, 2018</u>	<u>No. 30, dated: February 27, 2019</u>
<u>No. 14, dated: January 18, 2018</u>	<u>No. 31, dated: March 20, 2019</u>
<u>No. 15, dated: February 7, 2018</u>	<u>No. 32, dated: March 27, 2019</u>
<u>No. 16, dated: February 13, 2018</u>	<u>No. 33, dated: April 10, 2019</u>
<u>No. 17, dated: February 28, 2018</u>	

NOTICE

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

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO CONTRACTORS**

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

Title: Pharmacy Services

Solicitation No: Q0016025

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

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

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

REMARKS: _____

Contractor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

**STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
RFP KEY INFORMATION SUMMARY SHEET**

Request for Proposals: Pharmacy Services
Solicitation Number: Q0016025
RFP Issue Date: June 22, 2017
RFP Issuing Office: Department of Public Safety and Correctional Services
Procurement Officer: ~~Rachel Cruse~~ **Andrea R. Lockett**
~~Procurement Officer~~ **Procurement Officer**
~~45 Calvert Street, Room 134~~ **45 Calvert Street, Room 145**
~~Annapolis, MD 21401~~ **Annapolis, MD 21401**
~~Phone: 410-260-7430~~ **Phone: 410-260-7374**
~~e-mail: Rachel.Cruse@maryland.gov~~ **e-mail: Andrea.Lockett@maryland.gov**

Contract Monitor: Joseph Ezeh, MBA
Acting Director, Contract Administration
Department of Public Safety and Correctional Services
6776 Reisterstown Road, Suite 310
Baltimore, MD 2125
Phone: 410-585-3386 / e-mail: Joseph.Ezeh@maryland.gov

Proposals are to be sent to: 45 Calvert Street, Room ~~134~~ **145**
Annapolis, MD 21401
Attention: ~~Rachel Cruse~~ **Andrea R. Lockett**

Pre-Proposal Conference Tuesday, July 25, 2017, at 10 AM Local Time
Maryland Department of Transportation Headquarters
7201 Corporate Center Drive, Harry Hughes Suites 1 & 2 – Ground Floor, Hanover, MD 21076

Proposal Due (Closing) Date and Time: ~~Tuesday, August 22, 2017 at 2 PM Local Time~~
~~Monday, September 25, 2017 at 2 PM Local Time~~ **AMENDMENT #3**
~~Tuesday, October 31, 2017 at 2 PM Local Time~~ **AMENDMENT #4**
~~Thursday, November 30, 2017 at 2 PM Local Time~~ **AMENDMENT #5**
~~Thursday, December 20, 2017 at 2 PM Local Time~~ **AMENDMENT #6**
~~Thursday, December 21, 2017 at 2 PM Local Time~~ **AMENDMENT #7**
~~Monday, January 22, 2018 at 2 PM Local Time~~ **AMENDMENT #9**
~~Friday, February 2, 2018 at 2 PM Local Time~~ **AMENDMENT #12**
~~Tuesday, February 13, 2018 at 2 PM Local Time~~ **AMENDMENT #14**
~~Tuesday, February 27, 2018 at 2 PM Local Time~~ **AMENDMENT #15**
~~Wednesday, March 14, 2018 at 2 PM Local Time~~ **AMENDMENT #16**
~~Friday, March 23, 2018 at 10 AM Local Time~~ **AMENDMENT #18**
~~Friday, April 6, 2018 at 10 AM Local Time~~ **AMENDMENT #20**
~~Friday, April 13, 2018 at 10 AM Local Time~~ **AMENDMENT #21**
~~Monday, April 30, 2018 at 2:00 PM Local Time~~ **AMENDMENT #22**
~~Thursday, May 17, 2018 at 2:00 PM Local Time~~ **AMENDMENT #23***

~~* DUE TO THE RECEIPT OF A PROTEST, ANY INTERESTED PARTY MAY REQUEST A COPY:~~
~~Tuesday, June 5, 2018 at 2:00 PM Local Time~~ **AMENDMENT #24**
~~Tuesday, June 26 2018 at 2:00 PM Local Time~~ **AMENDMENT #25**
~~Tuesday, July 17, 2018 at 2:00 PM Local Time~~ **AMENDMENT #26**
~~Thursday, January 31, 2019 at 2:00 PM Local Time~~ **AMENDMENT #28***

~~* DUE TO THE RECEIPT OF AN APPEAL, ANY INTERESTED PARTY MAY REQUEST A COPY:~~
~~THURSDAY, FEBRUARY 28, 2019 AT 2:00 PM LOCAL TIME~~ **AMENDMENT #29***

~~* DUE TO A PENDING DECISION BY THE MSBCA:~~
~~THURSDAY, MARCH 28, 2019 AT 2:00 PM LOCAL TIME~~ **AMENDMENT #30**
~~THURSDAY, APRIL 11, 2019 AT 2:00 PM LOCAL TIME~~ **AMENDMENT #31**
WEDNESDAY, APRIL 17, 2019 AT 2:00 PM LOCAL TIME **AMENDMENT #33**

MBE Subcontracting Goal: ~~12%~~ **7%** **VSBE Subcontracting Goal:** 0 %

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AMENDMENT #1

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

- 1.1.1 The Department of Public Safety and Correctional Services (DPSCS) is soliciting proposals from qualified Offerors to provide Pharmacy Services to the facilities listed in Attachment R and as detailed in this RFP, which includes Pharmaceuticals and Supplies, packaging, delivery, staff, and equipment (see Sections 3.2.21 and 3.2.33).
- 1.1.2 It is the State's intention to obtain services, as specified in this RFP, from a Contract between the selected Offeror and the State. The anticipated duration of services to be provided under this Contract is five (5) years beginning on or about January 1, 2020, through December 31, 2024 ~~July 1, 2018, through June 30, 2023~~. The State at its sole discretion may extend for one (1) renewal option of two (2) years.
- 1.1.3 DPSCS intends to make a single award as a result of this RFP.
- 1.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

1.2 Abbreviations and Definitions

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

- 1.2.1 **Actual Acquisition Cost** - The cost paid by the Contractor to acquire Pharmaceuticals and Supplies other than those Pharmaceuticals and Supplies purchased under ~~either~~ the 340B Program (if implemented) or from local pharmacies for Urgent Medication Delivery (see Section 3.2.26).
- 1.2.2 **American Correctional Association (ACA)** - The national organization of correctional officials that promulgates standards related to correctional custody, including performance standards for medical services in prisons and jails.
- 1.2.3 **American Society of Health-System Pharmacists (ASHP)** - A professional organization representing the interests of pharmacists who practice in hospitals, health maintenance organizations, long-term care facilities, home care, and other components of healthcare.
- 1.2.4 **Best and Final Offer (BAFO)** – May be requested by the Procurement Officer in order to permit written revisions to an Offeror's initial proposal.
- 1.2.5 **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days excludes State observed holidays and other days when the State as a whole is officially closed. For the purposes of this Contract, holidays and other days when the State as a whole is closed are collectively referred to as Holidays (State Holidays can be found at: www.dbm.maryland.gov Keyword: State Holidays).
- 1.2.6 **Chief Medical Officer (CMO)** - The DPSCS employee physician who has final authority for clinical issues over the Pharmacy Services Contract.
- 1.2.7 **Chief Nursing Officer (CNO)** - The DPSCS employee nurse who supervises other Department nurses and has authority over the actions of the Contractor and its staff as specifically identified in the RFP.
- 1.2.8 **Clinician** - A Physician, Certified Registered Nurse Practitioner (CRNP), Physician's Assistant (PA) or Dentist.

- 1.2.9 **Clinical Liaison** – The Contractor shall designate one Clinical Doctor of Pharmacy (Pharm.D.) that has completed residency training, or has equivalent experience in direct patient care and disease management as defined by the American College of Clinical Pharmacy, to act as the Clinical Liaison to the CMO and who will be the designated co-chairperson for the Department's quarterly Statewide Pharmacy & Therapeutics Committee (P&T Committee) meetings. This Contractor Clinical Liaison is in addition to the five (5) Contractor Clinical Pharm.Ds required under RFP § 3.2.17 and will have the obligation to supervise the five (5) Clinical Pharm.Ds and be responsive to any requests by the DPSCS CMO to attend other meetings as required and facilitate problem solving regarding medication utilization with other vendor statewide medical and mental health Directors. Other Healthcare Contractors as requested. The Clinical Liaison will also respond to any inquiries or concerns raised by the DPSCS Chief Nursing Officer. It is preferred but not required that the Clinical Liaison shall have correctional experience as well as supervisory/managerial experience in order to provide guidance in the reporting of the pharmaceutical processes, cost saving, protocols/policy experience. National Board certification with clinical process experiences are preferred. Cost models development experience regarding HCV and HIV medications is also preferred.
- 1.2.10 **Code of Maryland Regulations (COMAR)** - Available on-line at www.dsd.state.md.us.
- 1.2.11 **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will include all general State terms and conditions, and will incorporate the entire RFP, including any amendments, addenda, and the selected Offeror's Proposal. The Contract will be in the form of Attachment A.
- 1.2.12 **Contract Commencement** - The date the Contract is signed by DPSCS following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required.
- 1.2.13 **Contract Monitor (CM)** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope.
- 1.2.14 **Contract Year** – The 12-month period immediately following the Go-Live Date, and subsequent 12-month periods thereafter.
- 1.2.15 **Contractor** – The selected Offeror that is awarded a Contract by the State.
- 1.2.16 **Contractor Clinical Pharm.D.** – A clinical pharmacist, employed by the contractor, or the contractor's subcontractor(s), who holds a Pharm.D. degree with residency training completion, or has equivalent experience in direct patient care as defined by the American College of Clinical Pharmacy, and has in-depth knowledge of medications and consults with physicians and other health care professionals on drug dose control and drug usage. The Contractor Clinical Pharm.D. is the primary point-of-contact for the CMO for clinical or non-administrative issues concerning the Contractor's performance under the Contract.
- 1.2.17 **Contractor's Program Manager** - Representative appointed by the Contractor who works from an office located in Maryland and is responsible for the daily management and administrative functions of the Contract from the Contractor's perspective at the various facility locations.
- 1.2.18 **Department of Public Safety and Correctional Services** – DPSCS.
- 1.2.19 **Dispensary** – Area in a DPSCS facility from which Pharmaceuticals and Supplies are administered or given in clinical processes.
- 1.2.20 **Division of Correction (DOC)** – The unit within DPSCS responsible for operating the State's prison system as set forth in the Annotated Code of Maryland, Correctional Services Article, Title 3.

- 1.2.21 **Division of Pre-Trial Detention and Services (DPDS)** – The unit within DPSCS responsible for operating the State’s booking and detention facilities ~~in the City of Baltimore~~ as set forth in the Annotated Code of Maryland, Correctional Services Article, Title 5.
- 1.2.22 **Drug Utilization Report (DUR)** – A monthly, ongoing report provided electronically of healthcare provider prescribing, pharmacist dispensing, and patient use of medication. DURs involve a comprehensive review of patients' prescription and medication data before, during, and after dispensing to ensure appropriate medication decision making and positive patient outcomes.
- 1.2.23 **Electronic Medical Record (EMR)** - Electronic portion of the Inmate’s permanent medical record that includes sections representing documentation opportunities for Medical, Mental Health, Dental and Pharmacy specific information, including templates and forms.
- 1.2.23 **Electronic Medication Administration Record (eMAR)** - Electronic component of the EMR used specifically to document the nursing administration of medication orders by a Clinician. An e-MAR is also the electronic version of the MAR.
- 1.2.24 **eMaryland Marketplace (eMM)** - The State’s electronic commerce system.
- 1.2.25 **Emergency** - Sudden onset of acute signs or symptoms of sufficient severity that threaten life or could permanently damage health.
- 1.2.26 **Emergency Medication Kit** - Contains only those medications for which immediate administration is required in order to alleviate pain or infection, modify dangerous behavior, or preserve life, including HIV prophylactics.
- 1.2.27 **Equipment** - Any DPSCS owned property of a durable nature with an original purchase price of \$50 or more that retains its identity through its useful life, which is expected to be more than 1 year.
- 1.2.28 **Federal Drug Administration - FDA**
- 1.2.29 **Formulary** - Listing of medications approved by the P&T Committee for dispensing and administration to Inmates within DPSCS.
- 1.2.30 **Go-Live Date** – The date when the Contractor must begin providing all services required by this solicitation.
- 1.2.31 **Infirmary** - An area in a DPSCS facility from which Inmates are monitored and/or treated clinically for conditions that require special inpatient observation and/or hospital processes that would be part of disease management, including medication administration, IV therapy, etc.
- 1.2.32 **Inmate** - Any person sentenced to the custody of DPSCS or incarcerated within DPSCS facilities, including the Patuxent Institution (PATX) or DPDS, any arrestee in the custody of DPDS whether committed or not committed to DPDS, any alleged parole violator in the custody of DPSCS and any person otherwise detained in any DPSCS facility, regardless of jurisdiction of original commitment.
- 1.2.33 **Key Personnel** - Any employee of the Contractor or subcontractor(s) identified in Tab F and any other employee identified in the Contractor’s Technical Proposal as being essential to the performance of the Contract.
- 1.2.34 **Legend drugs** - Patented or generic prescription drugs.
- 1.2.35 **Local Time** - The time in the Eastern Time Zone as observed in the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- 1.2.36 **Maryland Board of Public Works** – BPW

- 1.2.37 **Maryland Commission on Correctional Standards (MCCS)** - The Commission within DPSCS 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 Maryland Annotated Code, Correctional Services Article, Title 8.
- 1.2.38 **Medication Administration Record (MAR)** - A document in the Inmate's permanent paper medical record that serves as a legal record of the medications administered to an Inmate at a facility.
- 1.2.39 **Medication Room** - A secured area(s) within a facility in which medication and medication cards are stored and secured, along with the secure storage of narcotics.
- 1.2.40 **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.2.41 **Monthly Management Fee** – The Monthly Management Fee will be as priced on the Financial Proposal Form (Attachment F).
- 1.2.42 **National Commission on Correctional Health Care (NCCHC)** - The national organization of correctional officials that promulgates standards related to medical services in prisons and jails.
- 1.2.43 **NextGen™** - The proprietary name and identification of the EMR system currently utilized by DPSCS. DPSCS is currently using NextGen 5.6.9.12.
- 1.2.44 **Non-Formulary** - Any drug that is not included in the Formulary.
- 1.2.45 **Non-Legend drugs** - Over-the-counter drugs.
- 1.2.46 **Notice to Proceed (NTP)** - A written notice from the Procurement Officer that work under the Contract is to begin as of the Go-Live Date, subject to the conditions of the Contract. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the CM regarding the start date for any service included within this RFP with a delayed or non-specified implementation date.
- 1.2.47 **Offeror** - An entity that submits a Proposal in response to this RFP.
- 1.2.48 **Office of Inmate Health Services (OIHS)** - The unit within DPSCS that addresses administrative and clinical services related to contracted Inmate health services.
- 1.2.49 **Off-site** - Any location that is not “On-site.”
- 1.2.50 **On-call Clinical Pharm.D.** – Contractor Clinical Pharm.D. available 24 hours per day, seven days per week, including holidays, and responsible for responding by telephone to on-duty Other Healthcare Contractors' staff within fifteen minutes of the telephone call.
- 1.2.51 **On-site** - Physically on the premises of a DPSCS facility.
- 1.2.52 **Other Healthcare Contractors** - Any or all of the entities under contract with DPSCS for the specialized delivery of Dental, Mental Health or Medical services to Inmates under the jurisdiction of DPSCS. These Other Healthcare Contractors may be individually referred to in the RFP as the Dental Contractor, Mental Health Contractor, Medical Contractor, and **potential** 340B Covered Entity.
- 1.2.53 **Par** - The inventory needed to meet customer demand and provide a cushion in case of an unexpected spike in demands or a delay in delivery.

- 1.2.54 **Personnel** – Individuals acting as employees or agents of the Contractor as well as all subcontractors, subcontractors’ employees or agents.
- 1.2.55 **Pharmaceuticals and Supplies** – The medications that are articulated as part of the Department’s formulary and non-formulary prescribed drugs as well as nutritional supplements and supplies requiring a prescription (e.g., diabetic and wound care supplies). See the Pharmaceuticals & Supplies Tab on Attachment F. For the purposes of this RFP, drugs and medications are included in the definition of Pharmaceuticals and Supplies.
- 1.2.56 **Pharmacy Services** – The Contractor shall be responsible for the packaging and delivery and other services as defined in the RFP.
- 1.2.57 **Post Order** – Written orders issued by DPSCS officials directed to DPSCS custody staff and applicable to a particular post assignment. Post orders provide specific instructions to correctional staff identifying all tasks, policies and procedures of the assigned post. Posts include but are not limited to Infirmary, recreation areas, housing areas, educational areas, etc.
- 1.2.58 **Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative who can authorize changes to the Contract. DPSCS may change the Procurement Officer at any time by written notice to the Contractor.
- 1.2.59 **Proposal** - As appropriate, means either or both of an Offeror’s Technical or Financial Proposal.
- 1.2.60 **Regional Pharmacy and Therapeutics Committee (Regional P&T Committee)** – A Contractor-led Pharmacy and Therapeutics Committee that meets monthly and ultimately has pharmacy trend reports reviewed by the Statewide Quarterly P&T Committee.
- 1.2.61 **Staff** - As applicable: 1. the Contractor’s employees, sub-Contractors, the employees of a sub-Contractor, and specialists and consultants used by the Contractor; 2. Employees, sub-Contractors, the employees of a sub-Contractor, and specialists and consultants used by Other Healthcare Contractors to diagnose and/or treat Inmates, or 3. DPSCS personnel. Whenever the word Staff is used under this definition, it will always be preceded or followed by the identification of whose Staff is being described; e.g., DPSCS; Other Healthcare Contractors; the Medical Contractor.
- 1.2.62 **Starter Medication Kit** – A packet, card, blister pack, bottle, container, or other single package that is provided to an Inmate as one or more unit doses.
- 1.2.63 **Statewide Pharmacy and Therapeutics Committee (P&T Committee)** – A multidisciplinary committee that meets quarterly to perform functions as described in the Scope of Work. The Clinical Liaison and Contractor’s Program Manager are required to attend. Certain DPSCS medical, mental health, dental, nursing, and CM, as well as Other Healthcare Contractors, will also be in attendance as determined by the CMO.
- 1.2.64 **State Fiscal Year** - The twelve-month period beginning July 1, of one calendar year and ending June 30, of the following calendar year.
- 1.2.65 **State of Maryland** – State.
- 1.2.66 **Total Proposal Price** - The Offeror’s total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment F – Financial Proposal Form, and used in the financial evaluation of Proposals.
- 1.2.67 **Urgent Medication Delivery** – All medications deemed urgent by the Other Healthcare Contractors shall be delivered by the Contractor within four (4) hours of the medication order being generated received by the Contractor.

- 1.2.68 **Veteran-owned Small Business Enterprise (VSBE)** – A business that is verified by the Office of Small & Disadvantaged Business Utilization (OSDBU) of the United States Department of Veterans Affairs as a veteran-owned small business. See COMAR 21.11.13.
- 1.2.69 **Wholesale Acquisition Cost (WAC)** – **For the purposes of the RFP, the term Wholesale Acquisition Cost means, with respect to a Pharmaceutical or Supply, the manufacturer’s list price for the drug or biological to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price.**

1.3 Contract Type

- 1.3.1 The Contract resulting from this solicitation shall be a combination contract with (i) cost reimbursement without fee and (ii) indefinite quantity with firm fixed price components, as these terms are described in COMAR 21.06.03. Specifically:
- 1.3.1.1 The purchase of indefinite quantities of all Pharmaceuticals and Supplies shall be via cost reimbursement of the AAC, where applicable, without fee as per COMAR 21.06.03.03.A(1), minus the Offeror’s proposed Fixed Discount as set forth in the Financial Proposal Form (Attachment F). The cost reimbursement principles of allowable and allocable costs as described in COMAR 21.09 do not apply.
- 1.3.1.2 Payments for the Monthly Management Fee will be as priced on the Financial Proposal Form (Attachment F), and shall be via firm fixed price as per COMAR 21.06.02A(2).

1.4 Contract Duration

- 1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is signed by DPSCS following any required approvals of the Contract, including approval by the BPW, if such approval is required (“Contract Commencement”).
- 1.4.2 The period of time from the date of Contract Commencement through the Go-Live Date will be the Contract “Start-up Period.” During the Start-up Period the Contractor shall perform start-up activities such as are necessary to enable the Contractor to begin the successful performance of Contract activities as of the Go-Live Date. No compensation will be paid to the Contractor for any activities it performs during the Start-up Period.
- 1.4.3 As of the Go-Live Date contained in a Notice to Proceed anticipated to be on or about July 1, 2018, the Contractor shall perform all activities required by the Contract, including the requirements of this solicitation, and the offerings in its Technical Proposal, for the compensation described in its Financial Proposal.
- 1.4.4 The duration of the Contract will be for the period of time from the Go-Live Date plus five (5) years with one (1) two (2) year renewal option from the Go-Live Date for the provision of all services required by the Contract and the requirements of this solicitation.
- 1.4.5 The Contractor’s obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

1.5 Procurement Officer

The Procurement Officer is the sole point of contact in the State for purposes of this solicitation prior to the award of any Contract (see definition of “Procurement Officer”).

The name and contact information of the Procurement Officer are indicated in the RFP Key Information Summary Sheet.

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

1.6 Contract Monitor

The CM is the State representative for this Contract who is primarily responsible for Contract administration functions after Contract award (see definition of “Contract Monitor”).

The name and contact information of the CM are indicated in the RFP Key Information Summary Sheet

DPSCS may change the CM at any time by written notice.

1.7 Pre-Proposal Conference and Site Visit

A Pre-Proposal Conference (the Conference) will be held at the date, time, and location indicated in the RFP Key Information Summary Sheet. All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

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

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

Prospective Offerors to the RFP are encouraged to participate in site visits to familiarize themselves with where services are to be provided to be more fully informed as to physical plant specifics and how these needs should be considered in the development of proposals.

Tours will not be used to answer questions about the RFP; rather the purpose of the tours is to familiarize potential offerors with the geography and physical layout of the facilities to be served by the Contractor. Questions concerning the solicitation will not be answered during a site visit, and should be submitted in writing to the Procurement Officer. See RFP Section 1.9.

~~In order to assure adequate preparation and accommodations for the site visits and tours, it is requested that no more than two representatives of each potential Offeror attend.~~ **A maximum of four representatives for each potential Offeror may attend the site visits and tours.**

The information that must be submitted for each intended site visit attendee includes a Name, Social Security Number, and Date of Birth. This information must be provided to the Procurement Officer at least two weeks prior to the site visits. 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. Anticipated site visit dates are provided in Attachment AA. All visitors to DPSCS facilities are subject to Entry and Exit Procedures – Correctional Facilities, Directive OPS.110.0033 relating to entry to DPSCS facilities. The Directive is located at <http://itcd.dpscs.state.md.us/PIA/ShowFile.aspx?fileID=1460>

All prospective Offeror’s representatives 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 significant

walking is not required). The following are prohibited: clothes that expose a person's midriff, side or back, have revealing necklines and/or excessive splits, culottes, form fitting clothes (such as leotards, leggings or spandex), halter tops, mini-dresses or skirts, see through clothing, shawls, shorts, skirts, tank tops, and tube tops. Coats, jackets shawls and scarves will be placed in an appropriate place during visits.

All persons participating in these tours must carry a picture ID with them (such as a driver's license). All visitors should be aware that they shall be searched, including at a minimum, an electronic screening and a pat down.

Some of the SDAs will require that touring prospective Offeror's representatives move their cars from facility to facility, so plans to carpool are essential as parking may be less than desirable in some SDAs, and extremely limited in Baltimore. The Assistant Commissioner in Baltimore has arranged for prospective Offeror's representatives touring the facilities to have one-day parking passes. If this is needed, information regarding the car style and license plate will be required with the ID information in advance of the visit. There are only ten (10) spots to be "borrowed" so parking will also be first-come-first-served, and carpools will have extra consideration over single drivers.

Directions to the DPSCS facilities can be found on the web at: <http://www.dpscs.state.md.us/locations/prisons.shtml>

1.8 eMarylandMarketplace

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

In addition to using the DPSCS website and possibly other means for transmitting the RFP and associated materials, the solicitation and summary of the Conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM.

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

1.9 Questions

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

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer via email in a timely manner prior to the Proposal due date. **No questions will be accepted after Friday, March 23, 2018, at 2 PM.** Questions are requested to be submitted at least five (5) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the RFP in sufficient time for the answer to be taken into consideration in the Proposal.

1.10 Procurement Method

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

1.11 Proposals Due (Closing) Date and Time

Proposals, in the number and form set forth in Section 4.2 “Proposals” must be received by the Procurement Officer at the Procurement Officer’s address and no later than the Proposal Due date and time indicated in the RFP Key Information Summary Sheet in order to be considered.

Offerors mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in this section will not be considered.

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

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

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

1.12 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted.

1.13 Economy of Preparation

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

1.14 Public Information Act Notice

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

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

1.15 Award Basis

The Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP.

1.16 Oral Presentation

Offerors may be required to make oral presentations to State representatives. Offerors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions. Any such written

clarifications or changes then become part of the Offeror's Proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations.

1.17 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for 365 days following the closing date for submission of Proposals or best and final offers if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.18 Revisions to the RFP

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

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

1.19 Cancellations

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

1.20 Incurred Expenses

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

1.21 Protest/Disputes

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

1.22 Offeror Responsibilities

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this RFP.

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

1.23 Substitution of Personnel

1.23.1 Continuous Performance of Key Personnel

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

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

1.23.2 Definitions

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

- **Extraordinary Personal Circumstance** – means any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and that precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual's home that causes a major disruption in the individual's normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.
- **Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual's position in the RFP or the Contractor's Technical Proposal.
- **Sudden** – means when the Contractor has less than thirty (30) days' prior notice of a circumstance beyond its control that will require the replacement of any Key Personnel working under the Contract.

1.23.3 Key Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution:

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

- Any evidence of any required credentials.

1.23.3.3 The CM may request additional information concerning the proposed substitution. In addition, the CM and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.

1.23.3.4 The CM will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The CM will not unreasonably withhold approval of a requested Key Personnel replacement.

1.23.4 Replacement Circumstances

1.23.4.1 Voluntary Key Personnel Replacement

To voluntarily replace any Key Personnel, the Contractor shall submit a substitution request as described in this section to the CM at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in this section, a substitution may not occur unless and until the CM approves the substitution in writing.

1.23.4.2 Key Personnel Replacement Due to Vacancy

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

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

1.23.4.3 Key Personnel Replacement Due to an Indeterminate Absence

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

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

1.23.4.4 Directed Personnel Replacement

A. The CM may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation. If after such remediation the CM determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen

(15) days notification of a directed replacement will be provided. However, if the CM deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the CM can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

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

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

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

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

1.24 Mandatory Contractual Terms

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

1.25 Proposal Affidavit

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

1.26 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included as Attachment C of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. This Contract Affidavit is also required to be submitted by the Contractor with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), note that a business entity that is organized outside of the State of Maryland is considered to be a "foreign" business.

1.27 Compliance with Laws/Arrearages

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

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

1.28 Verification of Registration and Tax Payment

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

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

1.29 False Statements

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

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

- 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.

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

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

1.30 Payments by Electronic Funds Transfer

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

http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf

1.31 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14,

Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract "Prompt Payment" clause (see Attachment A). Additional information is available on GOMA's website at: http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Electronic_Funds_Transfer/

1.32 Electronic Procurements Authorized

- 1.32.1 Under COMAR 21.03.05, unless otherwise prohibited by law, DPSCS may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Annotated Code of Maryland, Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 1.32.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- 1.32.3 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- 1.32.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
- 1.32.4.1 The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
- the solicitation (e.g., the RFP);
 - any amendments;
 - pre-Proposal conference documents;
 - questions and responses;
 - communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
 - notices of award selection or non-selection; and
 - the Procurement Officer's decision on any Proposal protest or Contract claim.
- 1.32.4.2 An Offeror or potential Offeror may use e-mail or facsimile to:
- ask questions regarding the solicitation;
 - reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - submit a "No Proposal Response" to the solicitation.
- 1.32.4.3 The Procurement Officer, the CM, 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 CM.
- 1.32.5 The following transactions related to this procurement and any Contract awarded pursuant to it are not authorized to be conducted by electronic means:
- submission of initial Proposals;

- filing of Proposal Protests;
- filing of Contract Claims;
- submission of documents determined by DPSCS to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
- any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

1.32.6 Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or CM.

1.33 Minority Business Enterprise Goals

1.33.1 Establishment of Goal and Subgoals

An overall MBE subcontractor participation goal of ~~12%~~ **7%** of the total value of the Annual Management Fee portion only (aggregate of the Annual Management Fee paid on entire contract as set forth in Attachment F), including all option years, if any, has been established for this procurement.

No subgoals have been established for this procurement:

The Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

1.33.2 **Attachments D-1 to D-5** – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:

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

1.33.3 An Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (Attachment D-1A) whereby;

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

1.33.3.2 The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE Prime (including a Prime participating as a joint venture) to be counted towards meeting the MBE participation goals; and

1.33.3.3 An Offeror requesting a waiver should review Attachment D-1B (Waiver Guidance) and D-1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

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

- 1.33.4 Offerors are responsible for verifying that each MBE (including any MBE Prime and/or MBE Prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in Attachment D-1A is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.
- 1.33.5 Within ten (10) Business Days from notification that it is the recommended Contractor or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer:
- (Outreach Efforts Compliance Statement (Attachment D-2).
 - MBE Subcontractor/Prime Project Participation Certification (Attachment D-3A/3B).
 - If the recommended Contractor believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended Contractor must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.
 - Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

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

- 1.33.6 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.state.md.us/directory/>. The most current and up-to-date information on MBEs is available via this website. Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.
- 1.33.7 The Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE Participation:
- **Attachment D-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report)
 - **Attachment D- 4B** (MBE Prime Contractor Report, *if applicable*)
 - **Attachment D-5** (MBE Subcontractor/Contractor Unpaid MBE Invoice Report)
- 1.33.8 A Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C) and all documentation within ten (10) Business Days from notification that it is the recommended Contractor or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.
- 1.33.9 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (Attachment D-1A), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – Attachment A, Section 2.1).
- 1.33.10 The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – Attachment A, “Liquidated Damages” clause).

- 1.33.11 As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a Contract as a Prime Contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

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

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE Prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract.

- 1.33.12 With respect to Contract administration, the Contractor shall:

- 1.33.12.1 Submit to the DPSCS designated representative by the 10th of the month following the reporting period:

- A. A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
- B. (If Applicable) An MBE Prime Contractor Report (Attachment D-4B) identifying an MBE Prime's self-performing work to be counted towards the MBE participation goals.

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

- 1.33.12.3 Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.

- 1.33.12.4 Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.

- 1.33.12.5 Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

1.34 Living Wage Requirements

Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 18-101 *et al.* The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a Contractor subject to the

Living Wage Law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. *See* COMAR 21.11.10.05.

If subject to the Living Wage Law, Contractor agrees that it will abide by all Living Wage Law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. See the “Living Wage” clause in the Contract (Attachment A).

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

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

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

- 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 agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 1 Contract.

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

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

1.35 Federal Funding Acknowledgement

This Contract does not contain federal funds.

1.36 Conflict of Interest Affidavit and Disclosure

Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (Attachment I) and submit it with their Proposal. All Offerors are advised that if a Contract is awarded as a result of this solicitation, the Contractor’s personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to Attachment I Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

1.37 Non-Disclosure Agreement

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

1.38 HIPAA - Business Associate Agreement

A Business Associate Agreement is not required.

1.39 Nonvisual Access

By submitting a Proposal, the Offeror warrants that the information technology offered under the Proposal: (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The Offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than five percent (5%). For purposes of this solicitation and resulting Contract, the phrase "equivalent access" means the ability to receive, use, and manipulate information and to operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

The Maryland IT Nonvisual Access standards can be found at: www.doit.maryland.gov, keyword: NVA.

1.40 Mercury and Products That Contain Mercury

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

1.41 Veteran-Owned Small Business Enterprise Goal

There is no Veteran-Owned Small Business Enterprise (VSBE) participation goal for this procurement.

1.42 Location of the Performance of Services Disclosure

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

1.43 ~~Department of Human (DHR) Hiring Agreement~~ Department of Human Services (DHS) Hiring Agreement

This solicitation does not require a DHS ~~DHR~~ Hiring Agreement.

1.44 Small Business Reserve (SBR) Procurement

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

SECTION 2 – MINIMUM QUALIFICATIONS

2.1 Offeror Minimum Qualifications

- 2.1.1 Each Offeror shall clearly demonstrate and document within its Technical Proposal that as of the Proposal Due Date, the Offeror meets the following Minimum Qualifications. Required documentation shall be provided in Tab D as outlined in RFP Section 4.4.2.5 Minimum Qualifications Documentation. The Offeror's Executive Summary shall include reference to the page number(s) in the Proposal where such evidence can be found. **The Offeror shall submit verifiable references to demonstrate that it meets all of the following minimum qualifications.**
- 2.1.2 An Offeror shall, for the three (3) years immediately preceding the date of Proposal submission, have simultaneously and continuously provided daily delivery of Pharmacy Services for **all three (3)** of the following circumstances:
- 2.2.1.1 Within at least one (1) correctional system [defined as a single unified organization for the incarceration of individuals charged with or convicted of a criminal act comprised of a minimum of six (6) geographically separate prison, or jail, or criminal detention center locations (facilities, institutions, etc.) that is operated by or for a single government entity in the United States or Canada]. For purposes of this minimum qualification, "government entity" means any city, township, county, parish, state, province, or federal district or territory with a population of at least 50,000 residents.
- 2.2.1.2 For a total average daily population of at least 10,000 prisoners at least eighteen (18) years of age, without regard to how many of these prisoners actually require Legend and/or Non-Legend pharmaceuticals or medical supplies. The Offeror may meet the requirement of 10,000 total prisoners by aggregating the average daily population of all prisons, jails, or criminal detention centers where it provides Pharmacy Services regardless of whether or not each facility is part of a correctional system.
- 2.2.1.3 To a single prison, jail, criminal detention center, physical facility or single institution housing a minimum average daily population of 1,500 prisoners at least eighteen (18) years of age without regard to how many of these prisoners actually require Legend and/or Non-Legend pharmaceuticals or medical supplies.
- 2.1.3 Meeting these minimum requirements does not guarantee that the Offeror will be deemed responsible, have its Proposal deemed reasonably susceptible of being selected for award, or have its Proposal determined to be the Most Advantageous Proposal.
- 2.1.4 The experience of various personnel of the Offeror while employed by entities or organizations other than the Offeror shall not be considered in determining whether the minimum qualifications are met by the Offeror.

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SECTION 3 – SCOPE OF WORK

3.1 Background and Purpose

3.1.1 The Contract is one component of the overall Inmate healthcare program which consists of separate contracts which resulted from procurement solicitations with three (3) other private vendors, including Medical, Mental Health, ~~Dental~~ and **Dental, as well as the potential** 340B Covered Entity (Other Healthcare Contractors). The Contractor is responsible for being familiar with each of the aforementioned contracts. The solicitations for each of the **existing** Other Healthcare Contracts are available here:

- <http://dbm.maryland.gov/proc-contracts/Pages/contract-library/inmateMentalHealth.aspx>
- <http://dbm.maryland.gov/proc-contracts/Pages/contract-library/Inmate-Dental.aspx>
- <http://dbm.maryland.gov/proc-contracts/Pages/contract-library/DPSCS/InmateMedHealthCare.aspx>
- <http://dpscs.maryland.gov/publicservs/procurement/MedicalServices.shtml>
- ~~Attachment Z – Bon Secours Contract~~

3.1.2 The Contractor shall provide Pharmacy Services to the facilities listed in Attachment R.

3.1.3 The Contractor shall process orders from each of the Other Healthcare Contractors. During CY16 the total number of fills for the Department was approximately 1,015,942.

3.1.4 The number of Inmates cannot be projected definitively for future years. The number of Inmates listed in Attachment Q is an Average Daily Population provided for informational purposes only. It shall not be construed as a guarantee of minimum or maximum number of Inmates.

3.1.5 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 in Attachment R and Attachment S. The Contractor shall conform its delivery of services, staffing, statistical and other types of reporting to the most current list of facilities and locations (Attachment R) configuration provided by the CM. The CM will apprise the Contractor of any changes in DPSCS deliveries. The Youth Detention Center (YDC) is expected to be operational and Contractor shall provide services as described in this RFP to YDC beginning in or about September 2017.

3.2 Scope of Work - Requirements

3.2.1 The Contractor shall timely package, dispense, and deliver to facility locations identified in Attachment R, Pharmaceuticals and Supplies as approved or ordered and in the specified quantities as prescribed by Other Healthcare Contractors, and the Department's 340B Covered Entity (**if applicable**), in compliance with all applicable federal and State laws and regulations. The Contractor shall fill prescription orders received via fax as well as through an electronic ordering system.

3.2.2 The Department seeks to maximize the stability of the delivery of pharmacy services under this Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption for inmates and staff. Therefore, the continuity of pharmacy services during the Contractor's transition in to providing pharmacy services to DPSCS is of the utmost importance. **The Contractor shall conduct an inventory of the current/standing DPSCS Pharmaceutical and Supply inventory housed in the facilities and current pharmacy vendor warehouse or other locations and provide the results to the CMO and the DPSCS Contract Monitor in writing prior to the Go-Live Date.** Upon Contract Commencement, the Contractor shall be responsible for start-up transition services as detailed in its finalized transition plan. As of the Go-Live Date, the Contractor shall be responsible for implementing the complete provision of pharmacy services as described in the Contract.

3.2.2.1 The State anticipates allowing for a four (4) month transition-in period.

3.2.2.2 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 Contract “Go Live” date. In addition, within five (5) days after Contract Commencement (see RFP Section 1.4), the Contractor shall provide the Contract Monitor with documentation that the Contractor has established a software relationship with NextGen which only requires initiation. There will be a Start Up Period prior to the “Go Live” date, related to implementation of a number of pharmacy interfaces. During this time, the Contractor will establish connectivity and test the interfaces.

3.2.3 The Contractor shall purchase and dispense the most cost effective Pharmaceuticals and Supplies irrespective of brand and generic labeling.

3.2.4 **The Department may implement a 340B drug purchasing program sometime during the Contract term. If such a program is implemented, The the** Contractor shall participate in ~~a~~ **the** 340B drug purchasing program with the 340B Covered Entity under contract with the Department in accordance with Section 3.2.31. For any and all drugs purchased through the 340B program no additional fees may be charged beyond what is included in Attachment F – Financial Proposal Form.

3.2.5 Subject to the approval of the CM, the Contractor shall implement a bi-directional data feed or interface with the existing EMR system (NextGen 5.6.9.12) to accept medication orders and facilitate appropriate medication documentation.

3.2.5.1 This bi-directional data feed or interface shall include patient demographic information, medication orders, discontinued orders, and allergy lists, and shall be built to Health Level 7 (HL7) standards for privacy. HL7 refers to the seventh level of the International Organization for Standardization (ISO) seven-layer communications model for Open System Interconnection (OSI). It is the protocol for which all health related interfaces shall transmit data.

3.2.5.2 This bi-directional data feed or interface shall include but not be limited to licenses, interfaces, implementation, on-going troubleshooting, and 24x7 helpdesk and support.

3.2.5.3 The Department ~~anticipates issuing~~ issued an RFP in FY18 for a comprehensive Electronic Health Record to include an eMAR component. The Contractor shall have the same responsibilities for any successor eMAR system implemented during the term of the Contract as for the existing eMAR. There will be a transition from the existing Electronic Health Record NextGen to the new one. That transition could take 18 to 24 months. The Contractor shall interface with the Department’s new electronic health record regarding the electronic ordering of medications at some time during this contract period.

3.2.6 The Contractor shall have a process for splitting pills when cost effective and the criteria for determining whether a medication can be appropriately split. The Contractor shall adhere to the process, list of pills, and criteria as presented in the Offeror’s proposal.

3.2.7 The Contractor shall screen orders for drug interactions, allergies, duplicated therapies, excessive dosage, and early refills.

3.2.8 The Contractor shall have a reliable mechanism, to include a written process, approved by the P&T Committee for reporting drug interactions or other ordering errors back to the ordering Clinician within 24 hours.

3.2.9 The Contractor shall implement all environmental and inventory controls recommended by the applicable drug manufacturer.

- 3.2.10 The Contractor shall monitor its inventory of drugs and maintain sufficient supplies of such drugs to meet the daily needs of the Inmates.
- 3.2.11 The Contractor shall keep records of drugs, poisons, and narcotics as required by the Board of Pharmacy, and all federal and State laws.
- 3.2.12 The Contractor shall provide the capability of automatic refills that do not require Other Healthcare Contractor's input to generate the auto refills.
- 3.2.13 The Contractor shall provide pre-printed MARs for all medications and patient information sheets in English and other foreign languages, as directed by the CM, and submit the pre-printed MARs and patient information sheets to the Other Healthcare Contractors on a monthly basis by the 20th day of the subsequent month.
- 3.2.14 ~~The Contractor shall fill medication orders for a maximum of 120 days in 30 day blister packages.~~ **Patient medications shall be obtained from the Pharmacy Contractor unless exceptional conditions exist as outlined in Chapter 3 Section S of the DPSCS Office of Clinical Services/Inmate Health Pharmacy Services Manual. Medications shall be supplied (whenever possible) in "blister" card packaging on an individual patient prescription basis, in a maximum quantity of a thirty (30) day supply, unless otherwise specified by contract. Some medications will be dispensed in bulk bottles when repackaging is limited by stability.**

3.2.14.1 All medication orders entered into the EMR will be automatically transmitted to the Pharmacy Contractor via the EMR-Pharmacy Interface.

3.2.14.2 Medication orders for stable, chronic conditions may be written for 120 days. The 120 day order length is to provide an extra 30 days of medication coverage for patients in the event that their 90 day chronic care visit medication renewal is delayed.

3.2.14.3 DPSCS generates thousands of profile orders each month in addition to the quantities of fills shown on the Financial Proposal Form. No quantities shall be dispensed for the profile orders. However, Contractor shall receive the transmitted profile orders and enter them into the inmate's pharmacy record in the Contractor's system.

- 3.2.15 The Contractor shall provide an automatic fax or eMAR confirmation to the prescribing Other Healthcare Contractor upon receipt of all requests for medication(s).
- 3.2.16 The Contractor shall prepare discharge, transfer, court, medical, and parole medications and package them separately as directed by Other Healthcare Contractors, as specified in the DPSCS Pharmacy Services Manual (Attachment X-3).
- 3.2.17 **Staffing and Management**

3.2.17.1 The Contractor shall provide five (5) full-time equivalent (FTE) Clinical Pharm.D.s, licensed by the Maryland Board of Pharmacy, during the term of the Contract.

- A. The Contractor Clinical Pharm.D.s shall be On-site 40 hours per week at various DPSCS facilities, as directed by the DPSCS CM or CMO.
- B. Each Clinical Pharm.D. will primarily be covering a specific region or specified facilities within a region, consulting with Clinicians and patients as needed regarding the best pharmacy intervention available, the most cost-effective treatment (providing education on generic, clinically equivalent, and less costly medications), assisting with difficult-to-manage medical and mental health cases, performing rounds in the infirmaries within the facilities, and assisting with disease management. Contractor Clinical Pharm.D.s will also be required to chair and participate in the P&T meetings in their respective region(s).

- C. Although primarily assigned to perform services within a designated region or specified facilities within a region, as appropriate Clinical Pharm.D.s may consult with Clinicians from other facilities or perform any other activity typically performed by another Contractor Clinical Pharm.D.

3.2.17.2 Expected location of five (5) Clinical Pharm.D.s

- A. ~~Four (4)~~ **One (1)** Contractor Clinical Pharm.D.s shall be located in **each of the following five (5)** service delivery areas **(as identified below)** ~~in Attachment R~~, although the Department retains the authority to modify these locations and regions at its discretion: ~~One (1) Contractor Clinical Pharm.D. shall be assigned to each of the following service delivery areas:~~

- i. Baltimore Complex (1) **~ Pre-Trial and Sentencing**
- ii. Western Region (1)
- iii. Eastern Region (1)
- iv. Jessup **Region** (1)
- v. **Jessup Region Hub (1) ~ Re-entry/ Discharge medication; HIV/HCV transfer medication tracking; usage of 340B medication (if the 340B program is implemented)**

- B. In addition, **the** one (1) Clinical Pharm.D. ~~shall be~~ located in Jessup **(Re-entry, see Section 3.2.17.2 A.v. above)** ~~and shall be~~ specifically tasked with the following:

- i. Monitoring **and report generation** of all HIV, HCV and system-wide discharge medications, **including HCV medication intra-facility transfer**;
- ii. Facilitate purchasing and monitoring of all 340B Program drugs **(if the 340B program is implemented)**; and
- iii. Monitoring medications for those inmates transported to Jessup **Region Hub** from the Western and the Eastern Regions for the following:
 - Re-entry Inmates who will be returning to their housing in Central Maryland;
 - Those Inmates who have court dates in Baltimore; and **have medications transported**;
 - Those Inmates who have **specialty care**/medical appointments/treatments/procedures in Baltimore **community hospitals, including those on HCV medications arranging drop off and pick up of those medications supplied; and**
 - **Mental Health and Medical Re-entry coordinator meeting attendance and discharge medication report completion.**

3.2.17.3 In addition to the Clinical Liaison, it is expected that all remaining Clinical Pharm.D.s will also attend the quarterly Statewide P&T Committee meetings.

3.2.17.4 The Contractor shall maintain an updated On-call Clinical Pharm.D. contact list to be shared with Other Healthcare Contractors. This contact list shall identify the On-call Clinical Pharm.D. by name and include phone numbers and email addresses.

3.2.17.5 Contractor's Program Manager

- A. The Contractor shall have a Contractor's Program Manager, which shall be other than one of the On-site Clinical Pharm.D.s.

- B. The Contractor's Program Manager shall be the Contractor's main point-of-contact for any contract matters raised by the DPSCS Contract Monitor.
- ~~C. Although it is expected that the Contractor's Program Manager will be located Off site; upon request, the Department will consider providing space On site for the Contractor's Program Manager, either primarily or part time. A~~
- D. The Program Manager shall have, at a minimum, a master's degree in health administration or other health fields, or an MBA. a bachelor's degree (preferably in any health-related field or in healthcare management). However, a master's degree in any health-related field or in healthcare management is also preferred. It is preferred that this individual have correctional pharmacy management experience with multiple sites/correctional populations of 10,000 or greater inmates.**
- E. The Program Manager shall be based in the State of Maryland and work full-time in the State. The Program Manager's time shall be dedicated exclusively to the DPSCS Pharmacy Services Contract. The Contractor's Program Manager shall be accessible to participate in any in-person meeting, as required under the contract, at the direction of the DPSCS CMO. In-person accessibility of the Contractor's Program Manager is critical to the success of this contract. The interactions of the Contractor's Program Manager extend to the Other Healthcare Contractors, as well as attendance at all facility regional Medical Advisory Council (MAC) meetings.**
- F. The Contractor's Program Manager shall have at least three (3) years of experience in contract management (preferably pharmacy management) that is documented with one or more references. Experience with correctional pharmacy management at multiple sites with populations of 10,000 or greater inmates is preferred.**
- G. DPSCS expects the Contractor's Program Manager to be actively involved on a daily basis with the provision of Pharmacy Services, including being physically present for all meetings called by DPSCS, to include but is not limited to; e.g. Wardens MAC Meetings, patient care concerns meetings, death reviews, EHR meetings related to bi-directional medication orders; and medication audit processes. The Contractor's Program Manager and Clinical Liaison are expected to provide a high-contact, high-touch service on a continuous basis, and to engage with the Other Healthcare Contractors throughout the regular course of business of contract performance. DPSCS also expects the Contractor's Program Manager to be available by phone 24/7/365 for emergencies, as well as on-site as needed for daily operational issues regarding site facilities statewide, internal auditing contract issues, and any after-hours crisis or additional facility requests regarding problems. The Contractor's Program Manager shall also designate/identify personnel to contact in times of short term absence, vacation, or sick leave. If the timeframe shall be greater than two (2) weeks, the Contractor's Program Manager must also provide a list of personnel contact names in the priority order of contact.**

3.2.17.6 The Contractor shall retain any other staff and management as required to fulfill the obligations of the Contract and will retain such staffing as necessary to meet all obligations under this Contract and the Agency's Manual of Policies and Procedures throughout the term of the Contract.

3.2.17.7 The Contractor shall ensure that there is no interruption in services due to any Contractor Clinical Pharm.D. or Contractor's staff vacancies, vacations, trainings, or any other situation resulting in insufficient personnel to complete services named throughout the RFP and the Contract.

3.2.17.8 The Contractor shall generate a monthly facility staffing schedule for every facility, 10 days prior to the start of the next service month. The monthly schedule which must be submitted to, and approved by the Department Contract Monitor shall reflect required hours for every position at every facility. The Department's ACOMs (Area Contract Operations

Managers) shall be able to make entries into the system for approval or disapproval of schedule changes. The staffing schedules shall be added to the document management system.

3.2.17.9 Unless otherwise indicated, all positions are full time at 40 hours per week minimum.

3.2.17.10 The Clinical Liaison shall be based in the State of Maryland and work full-time in the State. The Clinical Liaison's time shall be dedicated exclusively to the DPSCS Pharmacy Services Contract. The Clinical Liaison shall be accessible to participate in any in-person meeting, as required under the contract, at the direction of the DPSCS CMO. In-person accessibility of the Contractor's Clinical Liaison is critical to the success of this contract.

3.2.17.10.1 The Contractor's Clinical Liaison shall also designate/identify personnel to contact in times of short term absence, vacation, or sick leave. If the timeframe shall be greater than two (2) weeks, the Contractor's Clinical Liaison must also provide a list of personnel contact names in the priority order of contact. In addition, notification to the DPSCS CMO shall be provided in advance of the staff who will not be available onsite if the absence is a planned leave within 30 days of the leave date. A coverage plan shall be submitted for review and approval to the DPSCS CMO/CNO.

3.2.17.11 The Contractor shall, within ninety (90) days of the Go-Live date as contained in the written Notice to Proceed, submit its official staffing plan to the DPSCS CMO to identify the Contractor Program Manager, Contractor Clinical Liaison, and five (5) Clinical Pharm.Ds. who are on staff and committed to providing the required services under the contract as of the Go-Live date.

3.2.17.12 It is the responsibility of the Contractor to ensure the continuity of care of all inmates already on HCV/Hepatitis C (HepC) medication(s). If an inmate already on HCV/Hepatitis C medication(s) is hospitalized, the HCV/Hepatitis C medication(s) from DPSCS facility stock must be delivered to the hospital pharmacy by a Contractor Clinical Pharm.D for an official recording of a pharmacist to pharmacist medication exchange. Likewise, when the inmate is discharged from the hospital, any existing HCV/Hepatitis C medication(s) must be retrieved from the hospital pharmacy by a Contractor Clinical Pharm.D for an official recording of a pharmacist to pharmacist medication exchange in order to return the existing HCV/Hepatitis C medication(s) to its DPSCS facility stock. The hospital pharmacy will not accept a medication exchange (delivery or retrieval) by a correctional officer or courier.

Within the last two years of the current contract, this circumstance has occurred approximately four (4) times.

3.2.17.13 High Cost Medications

Medications provided to a hospital entity to be dispensed and administered by hospital pharmacy personnel are currently limited to HCV/HepC. However, the Contractor shall include the utilization of other high cost medications throughout the duration of the contract as identified by the DPSCS CMO and the P&T Committee.

3.2.18 Formulary and Non-Formulary Medication

3.2.18.1 The Contractor shall, under the direction of the CMO, with input from the DPSCS Directors of Mental Health, Nursing and Psychology, and the University of Maryland Medical System Dental Consultant develop a Formulary which shall be in full compliance with all relevant standards.

3.2.18.2 Formulary

- A. The final authority with regard to the Formulary, its related processes and operating procedures, and the medications contained therein, rests with the CMO.
- B. The Formulary shall be adequate to provide Inmates with medications that meet clinical needs and generally accepted medical standards.
- C. The Formulary shall be reviewed and updated by the P&T Committee meeting no less than quarterly each year.

3.2.18.3 Non-Formulary

- A. The Contractor upon receipt of a Non-Formulary medication request shall notify the ~~Medical Contractor~~ **the appropriate Other Healthcare Contractor** via the Non-Formulary medical approval/denial process determined by the P&T Committee.
- B. If a Clinician prescribes a Non-Formulary medication, the request shall be reviewed by the Contractor Clinical Pharm.D. to determine if there is a clinically equivalent Formulary medication. If the Contractor Clinical Pharm.D. determines that a clinically equivalent Formulary medication is available, the Formulary medication is to be supplied, even if a prescribing Other Healthcare Contractor has noted “Dispense as written,” unless the ~~Medical Contractor’s~~ **the appropriate Other Healthcare Contractor’s** Statewide Medical Director or the CMO agrees, in a given circumstance, that the prescribed Non-Formulary medication shall be provided.
 - i. Upon determining that there is a Formulary equivalent for the requested medication, the Contractor’s Clinical Pharm.D. shall contact the prescribing Other Healthcare Contractor and explain why prescribing the Formulary equivalent is an appropriate substitute in terms of clinical effectiveness and cost savings to the Department. The Contractor’s Clinical Pharm.D. shall also explain that if the Other Healthcare Contractor continues to insist that the prescription be filled as written that the Contractor’s Clinical Pharm.D. **must contact the Other Healthcare Contractor’s statewide Director to discuss the concern.** ~~is barred under the Contract from filling the order as written without the approval of the CMO.~~
 - ii. If the Contractor Clinical Pharm.D. and prescribing Other Healthcare Contractor disagree as to the use of a Formulary equivalent, the Clinical Pharm.D. shall contact ~~the Medical Contractor’s~~ **the appropriate Other Healthcare Contractor’s** Statewide Medical/**Mental Health** Director to explain why the Formulary equivalent should be used. If the **Other Healthcare Contractor’s** Statewide Medical/**Mental Health** Director is not convinced to require the prescribing Other Healthcare Contractor to change the prescription to the recommended Formulary equivalent, the Clinical Pharm.D. shall appeal to the CMO, who will determine the appropriate course of action.
 - C. The Clinical Pharm.D. shall initiate any required discussion with the prescribing Other Healthcare Contractor and, if necessary, ~~the Medical~~ **the appropriate Other Healthcare** Contractor’s Statewide Medical/**Mental Health** Director, and any subsequent appeal to the CMO, well before the time that the prescribed medication is required to be delivered.
 - D. If the prescribing Other Healthcare Contractor or an appropriate alternate is unavailable despite conscientious communication attempts, the Contractor’s Clinical Pharm.D. is to contact the Regional Medical Director or if unavailable, ~~Medical Contractor’s~~ **the appropriate Other Healthcare Contractor’s** Statewide Medical Director, or a designee for permission to **discuss the recommendation to substitute the Formulary equivalent.** If ~~the Medical Contractor’s~~ **the appropriate Other Healthcare Contractor’s** Statewide ~~Medical~~ Director or designee is unavailable despite conscientious communication attempts, the Clinical Pharm.D. shall contact the CMO for permission to use the Formulary equivalent. If, despite conscientious communication attempts, the Clinical Pharm.D. cannot reach anyone authorized to permit the substitution of a Formulary equivalent within the timeframe needed to comply with the delivery times, the Contractor shall fill the order as written within the required time period for a minimum of 72 hours until a definitive decision is reached by the parties involved.

- E. A report shall be submitted to the CMO concerning the disposition of any request for a Non-Formulary medication as part of the monthly reporting **to include any designated by the appropriate Other Healthcare Contractors or the CMO.**
- i. A monthly report shall be submitted by the 10th of the following month summarizing each occasion during the preceding month when a Non-Formulary medication was dispensed because a Contractor Clinical Pharm.D. determined that there was no Formulary equivalent for the Clinician ordered medication. **This will be done by facility, prescriber, SDA, and inmate name and number.**
 - ii. In any instance when after discussion with a Clinical Pharmacist, a Prescriber has disagreed with the recommendation for the use of a Formulary equivalent in lieu of the prescribed drug it shall be reported **by the 10th day each month, by prescriber to the CMO.** ~~within 72 hours of the occurrence.~~ This report shall include:
 - (a). the **prescriber disagreeing, additional** persons contacted or that attempts were made to contact; **to include the CMO, Regional Pharm.D. and the appropriate Other Healthcare Contractors;**
 - (b). the day(s) and time(s) of the day each was contacted or that attempts were made to contact;
 - (c). how each contact, or contact attempt was made; e.g., phone, email, page;
 - (d). the suggested Formulary equivalent and the rationale for using the equivalent; **the final disposition; whether sustained, approved, appealed to the CMO, or 72-hour fill; and**
 - (e) **Appeals to the CMO; whether the disposition was denied or approved.** ~~if the Medical Contractor's Statewide Medical Director is not convinced to require the prescribing Other Healthcare Contractor to change the prescription to the recommended Formulary equivalent, the Clinical Pharm.D. shall appeal to the CMO, who will determine the appropriate course of action.~~

3.2.19 Statewide Quarterly P&T Committee

3.2.19.1 With the DPSCS CMO, the Clinical Liaison will co-chair the Statewide Quarterly P&T Committee, which shall be responsible for additions and deletions to the DPSCS Formulary, monitoring usage of Pharmaceuticals and Supplies including psychotropic medications, and identifying prescribing patterns of Clinicians.

3.2.19.2 The Committee shall be led by the Contractor's Clinical **Liaison** ~~Pharmacy Liaison~~, and shall include representatives from all Other Healthcare Contractors of inmate health services. Final authority over therapeutic decisions rests with the CMO.

3.2.19.3 The Contractor will be responsible for:

- Making approved additions and deletions to the Formulary;
- Publishing of the Formulary quarterly for submission into the EMR;
- Managing Formulary documents;
- Converting dispensing to current items and stocking new Formulary items;
- Processing returns of excess stock of old Formulary items once the Formulary has changed;
- Preparing quarterly reports (see Attachment U) to demonstrate compliance; and

- Providing reports of savings to DPSCS when changes are implemented and completed on time, quarterly for each drug class.

3.2.19.4 The Clinical Liaison shall attend all scheduled contract monitoring meetings or any meeting when their attendance is requested by DPSCS management staff.

3.2.19.5 The Contractor shall be responsible for monitoring the usage of Pharmaceuticals and Supplies through submission of the monthly DUR (see Attachment X-8).

3.2.19.6 The Contractor shall also prepare written minutes of all P&T Committee meetings (both regional and statewide) which must be signed by the Clinical Pharm.D. and submitted within ten (10) Business Days following each meeting for approval and co-signature of the CMO or designee (see Attachment X-5).

3.2.19.7 Regional P&T Committees

- A. The Contractor's Clinical Pharm.D. in the service delivery area (Attachment R) shall attend and co-chair monthly Regional P&T Subcommittee meetings to be held in each of the regions 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.
- B. The monthly Regional P&T Committee meeting shall be led by the Regional Medical Director and co-chaired by the Pharmacy Contractor and shall include representatives of the Agency and representatives from all Other Healthcare Contractors. Monthly Regional P&T Committee meetings may be conducted at the Department's option by video or teleconferencing.

3.2.19.8 Upon request, Contractor shall provide training for new drug classes. This training must be coordinated with the Other Healthcare Contractors. Occasionally, the CMO will participate with regard to specific drug class alerts.

3.2.20 Generic Medication

3.2.20.1 The Contractor must provide generic substitutes if and when they become available for a brand. The Contractor shall report, in writing, to the CMO and P&T Committee the reason(s) for any unavailability; within 30 days, propose a plan target date for provision of the generic or acceptable alternative; and develop a written implementation plan including costs to convert.

3.2.20.2 Unless otherwise specified by the P&T Committee, the Contractor shall automatically substitute generic drugs when available and a brand name drug is not specified as required on the prescription. In the event a substitution medication is challenged by an Other Healthcare Contractor, the CMO and the Contractor Clinical Pharm.D. will review, and the final decision will be issued by the CMO.

- i. If the Contractor Clinical Pharm.D. and prescribing Other Healthcare Contractor disagree as to the use of a Formulary equivalent, the Clinical Pharm.D. is to contact the Medical Contractor's Statewide Medical Director to explain why the Formulary equivalent should be used. If the Medical Contractor's Statewide Medical Director is not convinced to require the prescribing Other Healthcare Contractor to change the prescription to the recommended Formulary equivalent, the Clinical Pharm.D. shall appeal to the CMO, who will determine the appropriate course of action

3.2.20.3 Legend medications or other preapproved bioequivalent substitutes shall be offered at the same Actual Acquisition Cost as the prescribed generic product when generic medication is out of stock unless the medication is on the ASHP or FDA national shortage list. These medications shall be identified in the monthly reporting package along with the reasons for their inclusion.

3.2.20.4 In the event that the Contractor becomes aware that the Pharmaceuticals and Supplies pricing has increased or decreased significantly such that it would have a material cost impact on the specific drug class, Contractor shall alert the CMO within five (5) Business Days of such occurrence.

3.2.20.5 On a monthly basis, the Contractor shall review the drugs that have gone generic and provide an information and utilization report to the P&T Committee of the utilization of the brand medication and the utilization of the generic equivalent to document the transition of the medication.

3.2.20.6 The Contractor shall review new generic medications that have been added to the formulary and report on those medications at each quarterly Statewide P&T Committee Meeting to ensure the best generic savings possible to pass along to DPSCS.

3.2.21 Barcode Scanning Medication Order and Receipt Verification System

3.2.21.1 Contractor shall provide, with the approval of the CMO, an automated medication order and receipt verification system that uses barcode scanning equipment to:

- A. Verify each order as it is placed into the shipping container for each facility; and
- B. Record receipt of such orders when each shipping container arrives at its designated facility.

3.2.21.2 Contractor shall provide barcode interfacing software at no additional charge to the State.

3.2.21.3 As of the start of the Contract, DPSCS will own 55 Honeywell Voyager USB Scanners which will be spread across the various DPSCS facilities (see Attachment V).

3.2.21.4 With each delivery of medications to each facility the Contractor shall note as part of the delivery/barcode process:

- A. Drugs/supplies that were substituted for another drug because the originally prescribed drug was not available;
- B. Ordered drugs that were not available for which no substitute was authorized;
- C. The reason for the non-availability;
- D. The action that was taken to try to obtain any non-available, non-substitutable drug; and
- E. The expected date when the drug will be delivered, if reasonably ascertainable.

3.2.21.5 Prior to the Go-Live Date the Contractor shall conduct an inventory of barcode scanners and DPSCS will reconcile this with the DPSCS barcode inventory. Any missing barcode scanners identified by the reconciliation will be replaced by DPSCS. In addition, the Contractor shall conduct a monthly inventory of barcode scanners and report any missing or inoperable barcode scanners to the Contract Monitor and either the Medical or Mental Health Contractor, as appropriate. Any missing or inoperable barcode scanners shall be replaced with Honeywell Voyager 1450G-2D omnidirectional area-imaging scanners (1D, PDF417, and 2D) including stand and USB cable by the Medical Contractor or the Mental Health Contractor, as appropriate.

3.2.22 Stock Medications

3.2.22.1 For certain medical conditions, as determined by Other Healthcare Contractors, medication must be started as quickly as possible. Such medications shall be taken from a limited stock supply of medication maintained at the correctional facilities. The Contractor shall provide medications to establish and maintain such limited stock to be stored in designated areas of facilities such as Medication Rooms, Dispensaries, and Infirmaries consistent with the DPSCS Pharmacy Services Manual (Attachment X-3).

3.2.22.2 The Contractor, in conjunction with the P&T Committee and as outlined in the DPSCS Pharmacy Services Manual (Attachment X-3), shall provide medications to establish and maintain par levels of stock medication, including, but not limited to, Emergency Medication Kits and Starter Medication Kits, and

Pharmaceuticals and Supplies at each facility and develop a stock inventory reporting process for review and discussion at the P&T Committee meetings regarding stock medication inventory and utilization.

3.2.22.3 The Contractor shall label all drugs and biologicals with cautionary instructions using auxiliary labels as required, describing drug reaction, interactions, cautions, etc.

3.2.22.4 All stock orders will have a DPSCS stock sign-out sheet attached to the packaging.

3.2.22.5 The Contractor shall utilize peel-off re-order labels for transmitting re-orders.

3.2.22.6 Any Legend and Non-legend stock medication ordered for Starter Medication Kits shall be dispensed in 3 to 7 day amounts as unit dose packaging.

3.2.22.7 A completed accountability sheet shall be returned to the Contractor (for reconciliation of doses) when stock is depleted. The drugs shall be recorded and restocked when medically appropriate and ordered by the Other Healthcare Contractors.

3.2.22.8 Documentation of controlled drugs stock medication shall be provided according to the DPSCS Pharmacy Services Manual (Attachment X-3) and State and federal regulations.

3.2.22.9 The Contractor shall account for and dispose of all controlled substances within the guidelines of all federal and State laws.

3.2.23 On-Site Emergency Medication Kits and Starter Medication Kits

3.2.23.1 The Contractor shall supply the medications that will be contained in Emergency Medication Kits and Starter Medication Kits in each Medication Room as per the DPSCS Pharmacy Service Manual (Attachment X-3). The contents of the Emergency Medication Kits and Starter Medication Kits will be reviewed at the quarterly P&T Committee meetings and modified as deemed appropriate. The Contractor shall modify the contents of the Emergency Medication Kits and Starter Medication Kits in accordance with the changes directed by the P&T Committee. The P&T Committee will communicate any changes to the contents of the Emergency Medication Kits and Starter Medication Kits via policy memos and directives until the revision is incorporated into an updated Pharmacy Services Manual.

3.2.23.2 The Medical Contractor shall inventory the Emergency Medication Kits and Starter Medication Kits monthly, or more frequently as necessary to maintain proper quantity levels, and shall monitor the expiration dates of both Medication Kits drugs on a monthly basis. The Other Healthcare Contractors shall notify the Contractor of any drugs set to expire within four (4) months of the date of inspections.

3.2.23.3 If those Emergency Medication Kit and Starter Medication Kit drugs noted as being within four (4) months of expiration are not used in the following months' time, i.e., within three (3) months prior to their expiration date, the Contractor shall immediately replace those drugs with fresh equivalent replacements, notify DPSCS of the replacement and issue a full credit for the returned drugs prior to the expiration of the drugs (see Section 3.2.30, Return & Disposal of Medications).

3.2.24 The Contractor shall designate an On-call Clinical Pharm.D.

3.2.24.1 The Contractor shall maintain an updated On-Call Clinical Pharm.D. contact list to be shared with Other Healthcare Contractors. This contact list shall identify the On-call Clinical Pharm.D. by name, and include phone numbers and email addresses.

3.2.25 Reporting Requirements

The Contractor shall meet all of the reporting requirements set forth in Attachment U.

3.2.26 Delivery of Medications

3.2.26.1 All medications ordered from the Contractor shall be dispensed and delivered by a delivery service pre-approved by the CMO to the appropriate location within the institution as identified in Attachment R, seven (7) days a week including Holidays, with no order cut-off time.

~~From the time an order is received by the Contractor, the required delivery is to be made within:~~

- ~~• 24 hours without a cut-off time, with the exception set forth below, and Urgent Medication Delivery requirements here in after set forth;~~
- ~~• For any prescription being requested for an Inmate housed at DPDS facilities listed in Attachment R, every 12 hours with no cut-off time.~~
- ~~• All medications deemed urgent by the Other Healthcare Contractors shall be delivered by the Contractor within 4 hours of the order being generated.~~

From the time an order is received by the Contractor, the required delivery is to be made:

- within 4 hours, with no cut-off time, for all medications deemed Urgent by the Other Healthcare Contractors;**
- within 12 hours medication with no cut-off time, for any prescription being requested for an inmate at any DPDS facility listed in Attachment R (no less than twice daily delivery, and in no event more than 12 hours from receipt of an order); and**
- within 24 hours, with no cut-off time, for all other medications (not Urgent or for DPDS inmates).**

3.2.26.2 The Contractor shall provide an emergency operations plan. The emergency plan shall detail how the Contractor will support DPSCS if the emergency is general in nature (including, but not limited to, blizzards, inclement weather, hurricanes); unique to DPSCS (including, but not limited to, riots, facility shut downs, mass injuries, electrical outages); and/or unique to the Contractor (including, but not limited to, courier call outs, shortages, electrical outage, computer system down). The emergency plan shall be finalized and provided to the DPSCS Contract Monitor, CMO, and CNO within 60 days of the Go-Live Date. The emergency management plan shall include a distinct plan for each region and each facility. **The Contractor shall adhere to the Department's Emergency Management Plans and processes as incorporated into Departmental Directives and Procedural Manuals. See RFP Section 3.2.34.2.**

3.2.26.3 The Contractor shall supply prescription medications in unit dose blister packs and nonprescription medications and supplies as applicable to each facility using Contractor supplied transportation/courier services.

3.2.26.4 All delivery costs are the responsibility of the Contractor including personnel costs, credentialing costs, drug screen, preservice training, finger prints and any fuel surcharges or additional shipping costs. The Contractor shall bear the risk of loss until the delivery is accepted by Other Healthcare Contractors at the locations in Attachment R.

3.2.26.5 It is understood that there will be times when ordered drugs are unavailable for delivery due to manufacturer or wholesaler shortages, or because the Contractor does not have a drug in stock as of the date of the order and cannot reasonably obtain it in sufficient time to meet the delivery time frames. When Contractor staff determines that an order for a specific drug cannot be fulfilled within the requested timeframe, the Contractor shall inform the ordering Clinician or an authorized alternate Clinician to determine if a substitute drug is acceptable, or if the drug originally requested should be back-ordered and delivered when available.

3.2.26.6 If Other Healthcare Contractors continue to order a back-ordered drug/supply for the same Inmate, the Contractor shall notify the appropriate Other Healthcare Contractors and CMO of the following:

- The non-available drug has no acceptable substitute;

- The non-available drug is not due to a manufacturer shortage of the drug; or
- If there is an acceptable substitute, recommend a pharmaceutical equivalent as an alternative.

3.2.26.7 Delivery of all medications must be made available 24/7 including Holidays. The Contractor shall be responsible for the delivery of all medications using Contractor-supplied courier services (not cabs, Uber, Lyft, or other car service), as approved by DPSCS.

3.2.27 Urgent Medication Delivery

3.2.27.1 Urgent Medication Delivery must be made available 24/7 including Holidays. The Contractor shall be responsible for the delivery of the Urgent Medication using Contractor-supplied courier services (not cabs, Uber, Lyft, or other car service), as approved by DPSCS.

3.2.27.2 As defined, the Contractor shall deliver all Urgent Medication Delivery orders within four (4) hours of the order being generated.

3.2.27.3 The Contractor shall identify/list local pharmacies to be used for Urgent Medication Delivery within each region within thirty (30) days of Contract Commencement. The use of local pharmacies by the pharmacy contractor is subject to approval by the CMO or designee. Local pharmacies shall only be used as a last resort in those instances when the Contractor cannot meet the four (4) hour medication delivery requirement from their facility, or for those instances when the medication is required to be administered in under four (4) hours because of clinical concerns.

3.2.27.4 For medications obtained through local pharmacies the Contractor shall not charge DPSCS more than 10% above what the Contractor would have charged for the medication (i.e., AAC less any proposed discount) if it had been provided through the Contractor's primary pharmaceutical supplier.

3.2.27.5 All delivery and courier fees associated with use of local pharmacies are the responsibility of the Contractor including any fuel surcharges or additional shipping costs.

3.2.27.6 The Contractor shall submit the following documentation on invoices for all Urgent Medication Deliveries:

- A. The due date and time of each Urgent Medication Delivery;
- B. The specific location where the Urgent Medication Delivery was made;
- C. The name and title of the person requesting the Urgent Medication Delivery;
- D. The name and title of the person receiving the Urgent Medication Delivery;
- E. The date and time when the Urgent Medication Delivery request was received; and
- F. The item(s) provided in the Urgent Medication Delivery.

3.2.27.7 For any Urgent Medication Delivery, the Contractor must submit an electronic monthly report (see Attachment W).

3.2.28 Methadone and Narcotics Medications

3.2.28.1 The Contractor shall audit and report monthly to the CMO, CNO, and the P&T Committee the Medical Contractor's documentation used to support verification of processes associated with narcotics, methadone storage requirements etc., (e.g., double locks, accurate counts with custody and the Medical Contractor, Drug Enforcement Administration (DEA) accepted forms of documentation for receipt and use of narcotics), are met. This audit shall include the Medical Contractor's narcotics logs to verify that such logs are being properly maintained and updated for each dose administered.

3.2.28.2 The Contractor shall work with the Medical Contractor, specifically to make sure any licensing component of the certification for this methadone maintenance program that may impact the pharmacy license or activity under the Contract is covered. The Contractor shall attend meetings for policy development and

with the DEA as requested, as well as participate in the certification survey to help answer questions. The Contractor shall alert DPSCS to any concerns related to the methadone detoxification and maintenance programs including an appropriately secured safe for methadone storage and licensing. The Contractor shall alert the department verbally immediately upon discovery followed up in writing within 5 Business Days to any suspected violation of any standard or guideline associated with the methadone maintenance program, detox, or narcotics program.

3.2.28.3 The Contractor Clinical Pharm.D. shall be present for audits conducted by external auditors regarding processes associated with methadone and other narcotics. Substitution of the Clinical Pharm.D. must be approved by the CMO no less than 7 Business Days prior to the audit.

3.2.29 Discharge Medications

3.2.29.1 For Inmates being released from custody, the Contractor shall provide a 30-day supply of discharge medications as prescribed for any chronic care disease, as defined in the Medical Contract (See <http://www.dbm.maryland.gov/proc-contracts/Pages/contract-library/DPSCS/InmateMedHealthCare.aspx>), medication bottles clearly designated as discharge medications within 10 Business Days of notification by the Medical Contractor of the discharge medications order. In addition, the Contractor will supply upon discharge order enough medication to complete the remaining course of any medications prescribed for short term acute illness up to a 14 day supply. e.g., antibiotics course of therapy, upper respiratory condition, injury medications. This medication should be provided as of the date specified by the Clinician, with the exception of narcotics, or tuberculin medications which are prescribed by the Department of Health and Mental Hygiene when indicated. A monthly discharge medication report identifying Inmate by name, a randomly generated State Identification Number (SID), release facility, prescribing Other Healthcare Contractor and medications shall be provided to the CMO and the Other Healthcare Contractors for review.

3.2.29.2 If the Contractor does not provide the prescribed supply of medications for an inmate being released within ten (10) days of the discharge medication order being received, liquidated damages (see Attachment T) will be assessed unless a specific barrier identified is reviewed and approved by the CMO or designee.

3.2.30 Return & Disposal of Medications

3.2.30.1 The Contractor shall provide a method for return and credit for all medications. Full credit shall be given to DPSCS for medications returned with at least three (3) months remaining before the expiration date in its original packaging, sealed and unopened, except for medications that are controlled substances or have deteriorated.

3.2.30.2 The Contractor shall provide written documentation via a monthly report of all medications returned for credit and disposal, document the credit by medication type and quantity, and include a justification if credit is not given (see Section 3.6, Payments/Invoicing/Auditing).

3.2.30.3 Pharmaceuticals and Supplies requiring refrigeration will not be submitted for return without prior agreement by the Contractor. **The Contractor shall provide a method for the return and credit for unused medications requiring refrigeration.**

3.2.30.4 The Contractor, in collaboration with the Other Healthcare Contractors, shall account for and dispose of all controlled substances within the guidelines of all federal and State Laws through a subcontract with a reverse distributor and alert the CMO, CNO, and Clinical Pharm.D. in writing regarding any discrepancies found related to controlled substances as soon as possible, not to exceed 48 hours.

- a. The TakeAway Medication Recovery System for DEA Reverse Distribution for Registrants is a DEA-compliant collection, return and destruction solution for DEA registrants' expired or unused controlled substances. The system includes prepaid return transportation, materials to package

for return, complete documentation of returned pharmaceuticals and proper disposal with online proof of destruction.

3.2.30.5 The Contractor, in collaboration with the Other Healthcare Contractors, shall accept for return and disposal all hazardous pharmaceuticals in accordance with State and federal law. The disposal of hazardous pharmaceuticals is excluded from the Medical Contractor's requirement to dispose of biohazardous or toxic waste, and is the responsibility of the Contractor.

3.2.30.6 The Contractor, in collaboration with the Other Healthcare Contractors, shall accept for return and disposal nonhazardous pharmaceuticals for which DPSCS is not entitled to any credit, and shall document receipt of the medications as stated above in Section 3.2.30.2.

3.2.31 Federal 340B Drug Pricing Program

PARTICIPATION IN FEDERAL 340B DRUG PRICING PROGRAM:

The Department has entered The Department may enter into a contract with ~~Bon Secours Hospital Baltimore, Inc., ("Bon Secours")~~, a "covered entity" qualified to participate in the Federal 340B Drug Pricing Program established under Section 340B of the Public Health Service Act, codified at 42 USC § 256b. The potential contract between the Department and the 340B Covered Entity (currently expected to be Bon Secours Hospital Baltimore, Inc.) (~~the Bon Secours Contract~~) ~~entitles~~ will entitle the Department to purchase pharmaceuticals through the 340B drug pricing program at significantly lower prices than general market prices; specifically drugs used to treat inmates infected with HIV and Hepatitis C. A copy of the draft Bon Secours Contract is attached and marked Attachment Z. If a contract between the Department and Bon Secours is finalized, ~~The~~ the Contractor agrees to submit an application under 340B to be approved to serve as the "Department-Approved 340B Contract Pharmacy" identified in the Bon Secours Contract. The Contractor shall additionally agree to enter into a separate contract with Bon Secours whereby it will act as the primary dispenser of 340B medications to Inmate Patients referred to Bon Secours by the Department to include:

- a) acting as the primary shipping address to receive all 340B medications ordered under a ship-to-bill arrangement;
- b) delivering the 340B medications ordered by the prescribing physician to the appropriate Department facility in the same manner as the non-340B medication deliveries;
- c) **If the 340B Program is implemented, the Contractor shall charge no more than the amount of the increased Monthly Management Fee proposed in its financial proposal for the associated administrative expenses.**

A copy of the draft contract that the Contractor shall execute with Bon Secours is hereby attached and marked Attachment Z-1.

When prescription drugs are ordered by the designated Bon Secours Medical Providers treating Inmate Patients referred by the Department, the Bon Secours Medical Providers shall enter the orders into the Bon Secours Electronic Medical Record (EMR). Inmate Patients shall receive a thirty (30)-day supply of drugs with up to eleven (11) refills, to be purchased by Bon Secours from a wholesaler and shipped to the Contractor. The Contractor will package, track, and deliver the dispensed prescriptions to the appropriate correctional facilities in accordance with the terms of this RFP.

The Contractor will, pursuant to the terms of that Contract:

- a. Dispense and deliver medications to locations designated by the Department, and in a manner prescribed by the Department.
- b. Generate computerized utilization review reports in a form and format subject to the approval of Bon Secours and the Department. The utilization review reports shall be comprehensive, including a monthly pharmacy services report with a rolling year of data (Cost of Medications broken down by Infectious Disease and by facility site, Inmate's name, age, SID number, gender, race; number of patient's medications by Infectious Disease; number of prescriptions per patient, etc.)
- c. Maintain documentation of Pharmacy Services performed under the Contract consistent with the requirements of the Maryland Board of Pharmacy and the 340B program. The Contractor shall provide copies of said records to the Department upon written request.
- d. Agree to exclude the drugs on the Excluded Drug List from the scope of the 340B program, as directed by the Contract Monitor.
- e. Shall coordinate and cooperate in any state and federal audit requirements applicable to the 340B program audits conducted by Health Resources and Services Administration ("HRSA"), a unit of the United States Department of Health and Human Services ("HHS"), and/or drug manufacturers, in accordance with 42 U.S.C. § 256b(a)(5)(C).
- f. Shall provide Early Refill Reports by the 10th of the following month for all early refills of 340B Program drugs for the prior month.
- g. Shall provide a 340B Drug Utilization Report by the 10th of the following month for the prior month.

3.2.32 Policies and Procedures

3.2.32.1 DPSCS must approve the policies and procedures of the Contractor pertaining to the delivery of services under the Contract prior to implementation.

3.2.32.2 Draft Contractor policies and procedures manuals that are fully consistent with Department policies and procedures shall be submitted to the CNO and CMO electronically no more than fourteen (14) days after Contract Commencement. The CMO and CNO shall have up to thirty (30) days to review the manuals and provide comments.

3.2.32.3 The Contractor shall make its approved and final policy and procedure manuals available no less than ten (10) days prior to the Go-Live Date. Distribution and/or availability of these manuals shall occur in a manner approved by the CMO or designee such that the information is readily available to all Staff and Staff is aware of the manner in which to access this information.

3.2.32.4 If final policies and procedures manuals with all required corrections are not available as required, Liquidated Damages as described in Attachment T will be assessed.

3.2.32.5 The Contractor shall ensure that its Staff abides by all DPSCS Policy and Procedure Manuals and approved Contractor policy and procedure manuals. If there are any conflicts or disputes between the Contractor's policies and procedures and those of the DPSCS, the CMO will consider such conflicts and disputes. The CMO's decision on any matters of policy and procedures will be final.

3.2.32.6 Policies and procedures shall take into account any restrictions or requirements placed on licensure by the respective licensing boards. The Contractor's policies and procedures shall meet ACA, NCCCH, and MCCS standards and applicable Maryland statutes, regulations, policies and guidelines.

3.2.32.7 The Contractor shall review and update its policies and procedures manuals at least once in every twelve (12) month period from the Go-Live Date.

3.2.32.8 A statement signed by the Contractor's Program Manager confirming that such a review has been conducted, along with any revisions, shall be submitted to the CNO and CMO 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. Such changes shall be approved by the CMO in writing prior to finalization.

3.2.32.9~~10~~ Contractor's policies and procedures shall include, but are not limited to, direction regarding the following:

- A. Administrative Matters
- B. Barcode Scanning Manual
- C. Medication Delivery (including handling of medications requiring refrigeration, access to institutions, marking of packages, etc.) and Inventory control
- D. Packaging of medications, including blister packaging and discharge medications
- E. Prescription processing
- F. Refills/**early refill**
- G. Medication dispensing and administration
- H. Methadone utilization
- I. Formulary adherence and requirements for variation
- J. Emergency medications
- K. P&T Committee processes
- L. Infectious disease
- M. Continuous Quality Improvement
- N. Emergency Management Plans
- O. **Monthly** Barcode Scanner and Medication Room Inspections
- P. Pharmaceutical and Supplies Inventory Control Process
- Q. Medical Records (when and how to make entries)
- R. Utilization Management and Peer review
- S. Risk Management and mortality review
- T. Personnel Policies and Procedures
- U. ARP (Administrative Remedy Procedure) and Grievance Process
- V. DPSCS Pharmacy Services Manual Peer Review Process of any Contractor Clinical Pharm.D.
- W. HIPAA requirements
- X. Non formulary process**
- Y. Potential 340B process, HCV, HIV, etc.**

3.2.32.11 No later than thirty (30) days after having been informed by the CMO of any new DPSCS directives, manuals, policies, protocols, and/or procedures, the Contractor shall make any necessary changes to its policies and procedures so that they are consistent with the changes made by DPSCS.

3.2.33 Equipment and Supplies

a. On-site Supplies and Equipment

DPSCS shall provide adequate storage for medications, including locked cabinets and adequate lighting. The Contractor shall ensure that drugs are stored in an orderly manner in cabinets, drawers, or carts of sufficient size to prevent crowding. All medications and other drugs, including treatment items, shall be stored in a locked cabinet or room, and inaccessible to patients and visitors.

b. Inspection of Equipment Provided by Other Healthcare Contractors

Contractor shall be responsible for monthly inspection of barcode scanners medication carts, crash carts, double lock safes for methadone storage, On-site refrigerators for medication storage and other On-site medication administration and storage equipment and report to the CNO and ACOM on the status of such equipment. Replacement of any lost, misplaced or non-functioning equipment shall be the responsibility of Other Healthcare Contractors.

3.2.34 Ongoing Contractual Compliance:

3.2.34.1 As of the Go-Live date, the Contractor shall be responsible for implementing the complete provision of Pharmacy Services as described in the RFP.

3.2.34.2 The Contractor must adhere to and maintain compliance, throughout the entire term of the Contract, with the following:

- A. All Consent Decrees and Memoranda of Agreement in force and effect, including but not limited to the Memorandum of Agreement between DPSCS and the Department of Justice with respect to DPDS (See Attachment X-9) and the final settlement agreement in the case of *Duvall v. Hogan* (See Attachment X-9); the Contractor must follow all processes and standard forms as required by any agreement or consent decree entered into by DPSCS;
- B. Applicable federal and State laws and regulations, including but not limited to those relating to the control of Pharmaceuticals and Supplies and those defining certification or licensing requirements and scope of occupational practice;
- C. Standards promulgated by the MCCC (see link for additional information: <http://dpscs.maryland.gov/publicinfo/publications/stanman.shtml>);
- D. Departmental protocols and directives, including but not limited to procedural manuals of the OIHS, 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;
- E. Health care standards of the NCCCHC, regardless of whether the institution is accredited; and
- F. Health care standards of the ACA, regardless of whether the institution is accredited.

3.2.34.3 The Contractor shall obtain and retain all federal and State licenses and certificates necessary to legally provide the pharmacy program or any of its sub-components contracted for in the name of DPSCS, and shall provide copies as requested by the CMO. The Contractor shall be responsible for the payment of any fees associated with licenses and/or certificates required by the licensing board or bureau and necessary for DPSCS programs to be maintained within the required timeframe, and to report all matters regarding licensure promptly to CMO.

3.2.35 Staff Qualifications and Credentials

3.2.35.1 The Contractor must submit to the CCHU and the ACOM for pre-employment approval, all required credentialing documentation prior to initiation of new employee orientation. The credentialing documentation and the approval by the CCHU and the ACOM will be posted in the folder for each Staff in Netdocuments, the Department's document management system.

3.2.35.2 The following documentation is the minimum documentation that must be submitted and retained by the Contractor for each Staff.

3.2.35.2.1 For all Staff:

- (1) Signed application;**
- (2) Verification of at least 3 professional references;**
- (3) Documentation of DPSCS pre-employment background check;**
- (4) Evidence of pre-hire drug screen (conducted by an independent third-party) with negative result;**

(5) Current CPR and AED certification. Proof of on-line education and certification is acceptable;

(6) PREA Certification; and

(7) All medical information required for Staff to meet minimal standards of health, such as Tuberculosis and Hepatitis B screening.

3.2.35.2.2 Additional credentials

(1) Verification of education, training, work history for the past five years, including name and title of person who verified employment and date on which verification occurred;

(2) Current license in Maryland;

(3) Current or previous Board certification or completion of a Pharmacy residency documentation

3.2.35.2.3 Additional requirements for all other Healthcare Professionals:

(1) Current license or certification to practice in Maryland

(4) Verification of secondary education and advanced degrees, masters, PHD etc.

3.2.35.3 All Staff will be subject to a pre-employment background criminal records check by the Department. All Staff must report to CCHU or a satellite location to submit fingerprints to the Department to complete the background check. This requirement applies to all Staff, including a person who was previously employed by the State, the Contractor, or Other Healthcare Contractors if there is a gap in employment. If the Contractor elects to conduct its own preliminary fingerprinting and criminal history check on prospective Staff, it shall be at the Contractor's expense. The Department will still perform its own official check at no cost to the Contractor. Criminal background checks may be required at any time while the Staff is assigned to perform services under this Contract.

3.2.35.4 All Staff will be subject to pre-employment drug testing and random drug testing during the term of the Contract. Positive drug test results will result in immediate termination of the Staff from the Contract. Tours of facilities for prospective employees shall be coordinated with the ACOM.

3.2.35.5 Proof of completion of required pre-employment training shall be included in the employee's credentialing folder.

3.2.35.6 No Staff is permitted to begin work in the facilities until all credentialing documentation has been received and approved and all background checks, drug testing, and orientation have been completed. Once all these processes are completed and posted in the document management system, the Contractor shall notify the ACOM for approval. The ACOM shall provide approval via email within 5 Business Days. Upon receipt of approval from the ACOM, the Contractor shall post approval to begin work in the employee's file in the document management system and shall include the ACOM email approval in the employee's file

3.2.35.7 All individuals who were employed as Staff under the prior Pharmacy Services Contract must complete the entire credentialing (including background checks and drug testing) process under the new Contract within 60 days of the Go-Live Date. The Contractor may request an extension for background checks and drug testing for these employees if there is documentation in the files from the current contract showing that the employees were subject to such checks and testing upon hiring. Such extension shall not exceed 90 days after the Go-Live Date and is subject to the approval of the DPSCS Contract Monitor.

3.2.35.8 The Contractor shall ensure that only qualified Healthcare Professionals will provide required services, as set forth in any 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 the health care services to be provided under the Contract.

3.2.35.9 The Contractor shall use the web-based document management system for the storage, retrieval, reporting and auditing capabilities for credentials of all of the Contractor's Staff. At a minimum, the Contractor shall include:

- (1) Current policies and procedures that define the credentialing;
- (2) All credentialing related documents; and
- (3) Prior to the performance of any services under the Contract and within five days after the renewal date of any credential, include evidence of all federal, state and local licenses, certificates, registrations, cooperative agreements and specialty board certifications or notices of eligibility for certification, that are legally required for any Staff.

3.2.36 Orientation and Training

3.2.36.1 The Contractor shall develop and maintain a comprehensive competency-based orientation program for new Staff and shall provide an annual refresher training program for all Staff. Training shall be in compliance with DPSCS, MCCS, NCCHC, and ACA standards, and the applicable practice requirements of any regulatory body with jurisdiction over the provision of health care services. The orientation program shall include, at a minimum, the following:

- (1) Alcohol and detoxification management CIWA/COW;
- (2) Basics of working in a prison setting;
- (3) Confidentiality;
- (4) CPR;
- (5) Departmental policies and procedures, including how to access these policies and procedures;
- (6) Documentation;
- (7) Electronic Patient Health Records;
- (8) Emergency response;
- (9) HIPAA;
- (10) Managing manipulative behavior;
- (11) Medication administration;
- (12) PREA; and
- (13) Suicide prevention.

3.2.36.2 The orientation plan shall be implemented by the Contractor as described in the Offeror's Technical Proposal and a final orientation plan and schedule shall be provided to the DPSCS Contract Monitor no later than the forty (40) days after Contract Commencement, and shall be updated no less than annually. The plan shall provide competency checklists evidencing successful completion of competency training, which shall be accessible in the credentialing files of all licensed personnel and of all personnel working under the license of professional personnel.

3.2.36.3 In accordance with MCCS requirements, signed paper logs of attendance for all orientation and training programs shall be maintained and available on request. Electronic copies of the logs shall be added to the document management system no later than thirty (30) days after the training.

3.2.36.4 All trainers shall possess the credentials, licenses, and/or certificates required by law and regulation to provide the training and continuing professional orientation.

3.2.36.5 For any training that does not exclusively apply to pharmaceutical services, the Contractor shall reserve 10% of the training spaces for personnel of the Other Healthcare Contractors. Contractor shall also permit Department staff, Other Healthcare Contractors' and subcontractor's Staff to attend its non-Contractor specific or non-confidential Orientation and In-Service training as space allows.

3.2.36.6 No later than thirty (30) days after having been notified by the DPSCS Contract Monitor, DPSCS Chief Medical Officer, or DPSCS DON of any new Department directives, manuals, policies,

protocols, and/or procedures, or within thirty (30) days of adopting modifications to its own policies, procedures, etc., the Contractor shall implement training to those Staff members that may be required to apply the new policies and those supervisors that may enforce the processes.

3.2.36.7 No later than thirty (30) days after Contract Commencement and monthly thereafter, the Contractor shall develop and maintain documentation and will add to the document management system the following:

- (1) Logs of Staff attendance and Other Healthcare Contractor Staff at Contractor orientation, training, and refresher training sessions;
- (2) Logs of Staff credentialing/license renewals;
- (3) In-Service training schedules;
- (4) Documentation of security training; and
- (5) Date of peer review completion.

3.2.36.8 The Contractor shall not be required to maintain a training database for Other Healthcare Contractors but shall include in its database all training provided to personnel of the Other Healthcare Contractors so that Contractor can evidence that it is meeting the 10% reservation requirement for training of personnel of Other Healthcare Contractors.

3.2.36.9 In order to attend training in lieu of working their normal hours, Contractor's Staff shall submit a written request to the appropriate Department manager (Chief Medical Officer for Clinicians; DON for Healthcare Professionals, and Contract Monitor for non-clinical managers) at least thirty (30) days in advance of the proposed training date. The request shall include: (1) the title or subject, date, time, and approximate duration of the training; (2) the position(s) covered by the request; (3) the amount of time authorized for the training, including reasonable travel time if the training is less than 8 hours; and (4) a plan for service delivery that addresses how services will continue to be provided during the absence of the Staff attending the training. No authorization will be granted until the Department is assured that all positions will be staffed or covered in a manner that will not interrupt services. As appropriate, the DPSCS Monitor/Director may approve the substitution of training for work duties. Requests submitted with less than thirty (30) days advance notice may be considered for approval.

Written permission for vacations or absences greater than 10 consecutive Business Days shall be submitted for approval to the CMO with a coverage schedule showing how coverage will be accomplished and contacts noted.

3.2.37 Multi-Vendor Meeting

A mandatory monthly Multi-Disciplinary Statewide Infection Control meeting shall be organized and chaired by the medical contractor's Director of Infection Control, and shall include the Pharmacy Contractor's Regional Pharm.D.s and Clinical Liaison who may be asked to participate in presentations or supply data and information regarding the pharmacy aspects of the topics.

3.2.38 Clinical Pharm.D.s shall participate in patient case conferences as requested.

3.3 Security Requirements

3.3.1 Employee Identification and Personnel Conduct

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

- 3.3.1.2 At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visual location at all times. The Contractor's personnel may be subject to physical search upon entering or exiting DPSCS facilities.
- 3.3.1.3 The Contractor, Contractor's personnel, agents and subcontractors shall know and follow all security regulations of DPSCS and its facilities, including but not limited to the Annotated Code of Maryland, Criminal Law Article, Title 9, Subtitle 4 applicable provisions of COMAR, departmental directives and facility Post Orders. Contractor's personnel, agents and subcontractors shall be subject to DPSCS Employee Standards of Conduct set forth in Departmental Directive DCD 50-2, as revised.
- 3.3.1.4 The State may, at its sole discretion, remove from or refuse admittance to any facility any person providing services under this Contract without incurring penalty or cost for exercising this right. Such removal from or refusal of admittance does not excuse Contractor's duty to timely perform the Contract.
- 3.3.1.5 The Contractor shall maintain the safekeeping and return of any State-issued ID badges as follows:
- A. Throughout the performance of the contract, the Contractor shall return each ID badge within 24 hours of each individual's last day of performing any work under the Contract;
 - B. The Contractor shall account for and return any remaining ID badges within 48 hours of expiration or termination of Contract. Failure to do so shall result in withholding of final payment; and
 - C. The Contractor shall report to DPSCS within 24 hours of discovery of the loss or theft of any ID badge.
- 3.3.1.6 Contractor's personnel, agents and subcontractors who will provide services within any facility shall undergo a security orientation conducted by each facility's Warden or designee. Each facility orientation will not exceed thirty-two (32) total hours and must be completed within ninety (90) days of each individual's start date.
- 3.3.1.7 No Staff may enter a Department facility or perform any Contract related duty On-site until the individual has taken mandatory DPSCS pre-service/security orientation and training which is generally 40 hours in duration and confirmed PREA training. Existing Staff of the current contractor who will continue employment with the Contractor need not repeat the training. Staff shall receive DPSCS approved refresher security training of approximately 8 hours at least annually.**
- 3.3.1.8 DPSCS generally has an average of 8-10 slots per month available for training for Contractor Staff. If a need arises for expedited training, DPSCS will facilitate the training. If the Contractor has Staff ready for training, but DPSCS has no training slots available, liquidated damages will not be assessed because the failure to fill a position is not caused by the Contractor. Contact the DPSCS DON to facilitate the availability of training slots.**
- 3.3.1.9 Individuals re-hired as Staff after a break in service must retake the required security orientation and training before entering a Department facility unless the return to service occurs in the same calendar year as the departure.**

3.3.2 Criminal Background Check

- 3.3.2.1 Any Contractor staff who goes inside of the facility to deliver medications (Contractor courier agents or delivery staff) must complete the pre-service contractor security training, finger printing, drug screening and be issued a DPSCS badge. Any disciplinary action taken by the Contractor on staff assigned to or related to the contract must be reported to the CM.

3.3.2.2 The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a full state and federal FBI background check and shall provide the CM with completed checks on all new employees prior to assignment. The Contractor may not assign an employee with a criminal record to work under this Contract unless prior written approval is obtained from the CM.

3.3.2.3 The failure of the Contractor's personnel, agents or subcontractors to comply with any provision of this section is sufficient grounds for DPSCS to immediately terminate this Contract for default.

3.3.3 Information Technology

For purposes of this solicitation and the resulting Contract:

- A. "Sensitive Data" means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes information about an individual that (1) can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of "personal information" under Md. Code Ann., Commercial Law Art. § 14-3501(d); or (4) falls within the definition of "personal information" under Md. Code Ann., State Gov't Art. § 10-1301(c).
- B. "Relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.
- C. The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and shall ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of this solicitation and resulting Contract.
- D. The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>. The State IT Security Policy may be revised from time to time. The Contractor and all subcontractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.

3.3.3.1 Information Security Requirements

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

- A. Establish separate production, test, and training environments for systems supporting the services provided under this Contract and ensure that production data is not replicated in the test and/or

training environment unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements.

- B. Apply hardware and software hardening procedures as recommended by the manufacturer to reduce the Contractor/subcontractor's systems' surface of vulnerability. The purpose of system hardening procedures is to eliminate as many security risks as possible. These procedures may include but are not limited to removal of unnecessary software, disabling or removing of unnecessary services, the removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor/subcontractor's system configuration files.
- C. Establish policies and procedures to implement and maintain mechanisms for regular internal vulnerability testing of operating system, application, and network devices supporting the services provided under this Contract. Such testing is intended to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the Contractor's and/or subcontractor's security policy. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. DPSCS shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- D. Where website hosting or Internet access is the service provided or part of the service provided, the Contractor and any relevant subcontractor(s) shall conduct regular external vulnerability testing. External vulnerability testing is an assessment designed to examine the Contractor's and subcontractor's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. DPSCS shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract. In addition to vulnerability testing, the Contractor and any relevant subcontractor(s) shall meet at a minimum, the requirements for Management, Operational and Technical Level Controls as outlined in the most current State of Maryland Department of Information Technology's Information Security Policy, (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>).
- E. Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation.
- F. Enforce strong user authentication and password control measures over the Contractor/subcontractor's systems supporting the services provided under this Contract to minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for unique ID, expiration, password length, complexity, history, and account lockout.
- G. Ensure State data under this service is not processed, transferred, or stored outside of the United States.
- H. Ensure that State data is not comingled with the Contractor's and subcontractor's other clients' data through the proper application of data compartmentalization security measures. This includes but is not limited to classifying data elements and controlling access to those elements based on the classification and the user's access or security level.

- I. Apply data encryption to protect State data, especially Sensitive Data, from improper disclosure or alteration. Data encryption should be applied to State data in transit over networks, portable storage devices, and, where possible, State data at rest within the system, as well as to State data when archived for backup purposes. Encryption algorithms which are utilized for this purpose must comply with current Federal Information Processing Standards (FIPS), “Security Requirements for Cryptographic Modules”, FIPS PUB 140-2.

<http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.140-2.pdf>

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

- J. Enable appropriate logging parameters on systems supporting services provided under this Contract to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information security standards including the current State of Maryland Department of Information Security Policy:
<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
- K. Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform remediation, if required. DPSCS shall have the right to inspect these policies and procedures and the Contractor or subcontractor’s performance to confirm the effectiveness of these measures for the services being provided under this Contract.
- L. Ensure system and network environments are separated by properly configured and updated firewalls to preserve the protection and isolation of Sensitive Data from unauthorized access as well as the separation of production and non-production environments.
- M. Restrict network connections between trusted and untrusted networks by physically and/or logically isolating systems supporting the services being provided under the Contract from unsolicited and unauthenticated network traffic.
- N. Review at regular intervals the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
- O. Ensure that the Contractor’s and any subcontractor’s personnel shall not connect any of their own equipment to a State LAN/WAN without prior written approval by the State. The Contractor/subcontractor shall complete any necessary paperwork as directed and coordinated with the CM to obtain approval by the State to connect Contractor/subcontractor-owned equipment to a State LAN/WAN.

3.3.3.2 Contingency / Disaster Recovery Plans

- A. The Contractor and any relevant subcontractor(s) shall have robust contingency and disaster recovery plans in place to ensure that the services provided under this Contract will be maintained in the event of disruption to the Contractor/subcontractor’s operations (including, but not limited to, disruption to information technology systems), however caused.
- B. The contingency and disaster recovery plans must be designed to ensure that services under this Contract are restored after a disruption immediately in order to avoid unacceptable consequences due to the unavailability of services.
- C. The Contractor and any relevant subcontractor(s) shall test the contingency/disaster recovery plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one annual test shall include backup media restoration and failover / fallback operations.

- D. Such contingency and disaster recovery plans shall be available for DPSCS to inspect and to practically test at any reasonable time, and shall be subject to regular updating, revision, and testing throughout the term of the Contract.

3.3.3.3 Incident Response Requirement

- A. The Contractor shall notify the CM when any Contractor and/or subcontractor system that may access, process, or store State data or work product is subject to unintended access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.
- B. The Contractor shall notify the CM immediately upon discovery of the unintended access or attack by providing notice via electronic correspondence.
- C. The Contractor shall notify the CM immediately upon knowledge of a threat to the Contractor and/or subcontractor's systems as it pertains to the use, disclosure, and security of DPSCS Sensitive Data.
- D. If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide electronic notification to the CM immediately after the Contractor's discovery of such use or disclosure and, thereafter, all information the State requests concerning such unauthorized use or disclosure.
- E. The Contractor, immediately upon discovery, shall report to the CM any improper or non-authorized use or disclosure of Sensitive Data. The Contractor's report shall identify:
 - 1. The nature of the unauthorized use or disclosure;
 - 2. The Sensitive Data used or disclosed;
 - 3. Who made the unauthorized use or received the unauthorized disclosure;
 - 4. What the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and:
 - 5. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
 - 6. The Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- F. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.
- G. This Section shall survive expiration or termination of the Contract.

3.4 Insurance Requirements

- 3.4.1 The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, with a limit of \$1,000,000 per occurrence and \$3,000,000 aggregate.

- 3.4.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with a minimum limit of \$1,000,000 per claim and annual aggregate of \$3,000,000.
- 3.4.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and Personal Injury Protection limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.4.4 The Contractor shall maintain Crime Insurance to cover employee theft with minimum single loss limit of \$1,000,000 per loss, and a single loss retention not to exceed \$10,000.
- 3.4.5 Within five (5) Business Days of recommendation for Contract award, and before any work begins, the Contractor shall provide the Procurement Officer with current certificates of insurance, and shall update such certificates periodically, but no less than annually in multi-year contracts, as directed by the CM. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:
 - 3.4.5.1 Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
 - 3.4.5.2 Commercial General Liability
 - 3.4.5.3 Errors and Omissions / Professional Liability Insurance
 - 3.4.5.4 Automobile and/or Commercial Truck Insurance
 - 3.4.5.5 Crime Insurance
- 3.4.6 The "State of Maryland, its officers, employees and agents" shall be listed as an additional insured on any Commercial General Liability, Auto Liability, Professional/Cyber Liability, and excess liability or umbrella policies with the exception of Worker's Compensation Insurance, which is currently handled by the Chesapeake Employer's Insurance Company (formerly Injured Worker's Insurance Fund). All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the CM, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. In the event the CM receives a notice of non-renewal, the Contractor shall provide the CM with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.
- 3.4.7 The Contractor shall require that any subcontractors providing primary services (as opposed to non-critical, ancillary services) under this Contract obtain and maintain the same levels of insurance and shall provide the CM with the same documentation as is required of the Contractor.

3.5 Problem Escalation Procedure

- 3.5.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.
- 3.5.2 The Contractor shall provide contact information to the CM, as well as to other State personnel, as directed should the CM not be available.
- 3.5.3 The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract Year and within ten (10) Business Days after any change in circumstance which changes the

PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

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

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

3.6 Payments/Invoicing/Auditing

3.6.1 Payments

- 3.6.1.1 As described in the Financial Proposal Form (Attachment F), payments to the Contractor shall be based on the Actual Acquisition Cost (AAC) for Brand drugs minus the Fixed Discount for Brand drugs and the Actual Acquisition Cost (AAC) for Generic drugs minus the Fixed Discount for Generic drugs, plus a fixed Annual Management Fee for each respective Contract Year.
- 3.6.1.2 The Annual Management Fee will be paid in monthly increments equal to the total Annual Management Fee divided by twelve (12).
- 3.6.1.3 Payment of the monthly drug reimbursement invoice shall be for the AAC, as per the RFP, Legend and Non-Legend prescription orders, minus the Contractor's proposed Discount for Brand drugs and Discount for Generic drugs.
- 3.6.1.4 No compensation will be paid to the Contractor for any start-up activities it performs during the Start-up Period prior to the Go-Live Date.

3.6.2 Invoicing

- 3.6.2.1 The Contractor shall submit invoices once a month as described hereafter in this section. Invoices from the Contractor to the CM shall be submitted electronically, in the form and format requested by the CM.
- 3.6.2.2 Each invoice shall include the relevant purchase order number for the current Contract year, the Contractor's Federal Tax ID number and designation of the specific invoice for which the charge is to be attributed (i.e., Pharmaceuticals and Supplies, or Monthly Management Fee). Within the category of Pharmaceuticals and Supplies, each invoice must segregate Brand drugs from Generic drugs and

invoices must list the drugs in the same order they appear on the Pharmaceuticals & Supplies Tab of Attachment F – Financial Proposal Form.

3.6.2.3 The Contractor shall submit the following documentation on invoices for all Urgent Medication Deliveries:

- A. The due date and time of each Urgent Medication Delivery;
- B. The specific location where the Urgent Medication Delivery was made;
- C. The name and title of the person requesting the Urgent Medication Delivery;
- D. The name and title of the person receiving the Urgent Medication Delivery;
- E. The date and time when the Urgent Medication Delivery request was received; and
- F. The item(s) provided in the Urgent Medication Delivery.

3.6.2.4 The Contractor's Pharmaceuticals and Supplies invoices shall show the AAC minus discount proposed which was included in the Contractor's Financial Proposal (Attachment F). Each Pharmaceuticals and Supplies invoice must include the following supporting information at a minimum for each prescription:

- A. Inmate's Name
- B. Inmate's ID Number
- C. Prescriber
- D. Generic Code
- E. Other code if Non-Formulary
- F. Dosage Form
- G. Package Size
- H. National Drug Code identifier
- I. Quantity
- J. Unit of Measure price
- K. Date of order and date of fill
- L. Date dispensed
- M. Whether initial fill or refill
- N. Whether Urgent Delivery
- O. Prescription Number

3.6.2.5 Each monthly invoice shall reflect credits for all medications returned by medication type and quantity.

3.6.2.6 Medications prescribed through the 340B Program (i.e., from the 340B Covered Entity) shall not be invoiced to the State by the Contractor.

3.6.2.7 The final invoice for all services performed under this Contract shall be submitted no more than 31 days after the Contract end date.

3.6.2.8 The Contractor shall invoice DPSCS for the AAC at the time of dispensing, less any applicable discount, rather than the AAC at the end of the month, time of invoicing, etc.

3.6.3 Auditing

3.6.3.1 Every six (6) months or as frequently as deemed necessary by CM, the Contractor shall provide DPSCS electronic copies of any requested documentation necessary to verify that the AAC amounts billed to the State are equivalent to the AAC amounts paid by the Contractor. Such documentation may include manufacturer/wholesaler's invoices and Contractor's payment records which may consist of copies of cancelled checks and/or Contractor's bank statements showing electronic payment made to manufacturer/wholesaler. All documentation requested by the CM should be received within 10 Business Days of the request. The Contractor shall include an affidavit stating that

these invoices represent its AAC for each item. DPSCS will use these invoices to verify the AAC amounts billed by the Contractor.

- 3.6.3.2 Audits may be conducted as frequently as deemed necessary by DPSCS and may be conducted either by DPSCS internal audit staff or by an audit firm retained by DPSCS. Audits will be performed at location(s) determined by DPSCS, and may be performed on-site at the Contractor's office, at a DPSCS location, or at the location of DPSCS' retained audit firm.
- 3.6.3.3 If a verification or audit conducted reveals any price discrepancies between the AAC billed by the Contractor and what was identified as the AAC amount identified on the manufacturer/wholesaler's invoice or the amount paid by the Contractor, a cost adjustment may be made as a direct deduction to the next monthly drug reimbursement invoice equivalent to the amount of the discrepancy identified in the audit. Multiple instances of price discrepancies shall be grounds for termination of the contract for default. A single instance of fraudulent or intentional misrepresentation of AAC pricing shall be grounds for termination of the contract for default.
- 3.6.3.4 If any discrepancy is found during the initial verification or audit conducted as part of Section 3.6.3.1, the Department shall have the right to retain an independent audit firm to perform an audit engagement to verify that the appropriate AAC amounts have been billed to the State. The Contractor and any relevant subcontractor agrees to allow the independent audit firm to access its facility/ies and the applicable records for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement. The Department will invoice the Contractor for the expense of the audit(s), or deduct the cost from future payments to the Contractor.

3.7 MBE Reports

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

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

3.8 VSBE Reports

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

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

3.9 SOC 2 Type 2 Audit Report

This section applies to the Contractor and any relevant subcontractor who provides services for the Department's identified critical functions, handles Sensitive Data (see RFP § 3.3.3), and/or hosts any related implemented system for the State under the Contract. For purposes of this section, "relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.

The Contractor shall have an annual audit performed, by an independent audit firm of the Contractor's choosing, of the Contractor's and any relevant subcontractor's handling of Sensitive Data and the Department's critical functions, which are identified as maintenance of health records and shall address all areas relating to Information Technology security and operational processes (see RFP § 3.3.3.). These services provided by the Contractor and any relevant subcontractor that shall be covered by the audit will collectively be referred to as the "Information Functions and/or Processes." Such audits shall be performed in accordance with audit guidance: *Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2)* as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:

- 3.9.1 The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the "SOC 2 Audit" or "SOC 2 Report"). The initial SOC 2 Audit shall be scheduled and completed within a timeframe to be specified by the Contract Monitor. All subsequent SOC 2 Audits that are arranged after this initial audit shall be performed on an annual basis and submitted to the Contract Monitor by July 1 for the preceding calendar year.
- 3.9.2 The SOC 2 Audit shall report on the Contractor's and any relevant subcontractor's system(s) and the suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes to meet the requirements of the Contract, including the Security Requirements identified in § 3.3, relevant to the following trust principles: Security and Confidentiality, as defined in the aforementioned Guidance.
- 3.9.3 The audit scope of each year's SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Confidentiality, Processing Integrity, and/or Privacy) to accommodate any changes to the Contractor's and any relevant subcontractor's environment since the previous SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and/or Processes through modifications to the Contract, or due to changes in information technology or operational infrastructure implemented by the Contractor and/or subcontractor. The Contractor and any relevant subcontractor shall ensure that the audit scope of each year's SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- 3.9.4 The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the Contractor for the Information Functions and/or Processes for the services provided to the Department under the Contract. The Contractor shall ensure the audit includes all subcontractors operating in performance of the Contract.
- 3.9.5 All SOC 2 Audits, including those of the Contractor and any relevant subcontractor, shall be performed at no additional expense to the Department.
- 3.9.6 The Contractor and all relevant subcontractors shall promptly provide a complete copy of the final SOC 2 Report(s) to the Contract Monitor upon completion of each SOC 2 Audit engagement.
- 3.9.7 The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a documented corrective action plan which addresses each audit finding or exception contained in a

SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor and/or subcontractor(s) along with the date(s) when each remedial action is to be implemented.

- 3.9.8 If the Contractor, including any relevant subcontractor, currently has an annual information security assessment performed that includes the operations, systems, and repositories of the Information Functions and/or Processes being provided to the Department under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Department will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's and any relevant subcontractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).
- 3.9.9 If the Contractor and any relevant subcontractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in RFP § 3.9.1, the Department shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and/or Processes utilized or provided by the Contractor and any relevant subcontractor under the Contract. The Contractor and any relevant subcontractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The Department will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.
- 3.9.10 The Contractor acknowledges that, in the course of performance hereunder, the Contractor may receive personally identifiable information that may be restricted from disclosure under the Health Insurance Portability Act and Accountability Act (HIPAA) and/or the Family Educational Rights and Privacy Act (FERPA). Notwithstanding any other provision of this § 3.9, the Contractor will be responsible for all damages, fines and corrective action arising from disclosure of such information caused by such breach of its data security or confidentiality provisions hereunder.

3.9.11 The audit period covered by the first SOC 2 Type 2 Report shall include the Start-Up Period. See RFP Section 1.4.2.

3.10 Liquidated Damages

- 3.10.1 It is critical to the success of the State's programs that Pharmacy Services be maintained in accordance with agreed upon schedules. It is also critical to the success of the State's programs that the Contractor operates in an extremely reliable manner.
- 3.10.2 It would be impractical and extremely difficult to assess the actual damage sustained by the State in the event of delays or failures in service. The State and the Contractor, therefore, presume that in the event of any such failure to perform to certain standards, the amount of damages which will be sustained will be the amounts set forth in Attachment T, Liquidated Damages, and the Contractor agrees that in the event of any such failure, the Contractor shall pay such amounts as liquidated damages and not as a penalty. For amounts due the State as liquidated damages, the State, in its sole option, may deduct from any money payable to the Contractor or may bill the Contractor as a separate item as further described in Attachment T.
- 3.10.3 DPSCS will not assess or invoke liquidated damages for any occasion of Contract non-performance otherwise subject to liquidated damages if such non-performance is determined by the CM to have resulted from circumstances beyond the control of the Contractor.
- 3.10.4 For 60 days from the Contract's Go-Live Date, DPSCS will not assess any of the liquidated damages described in Attachment T.
- 3.10.5 Notwithstanding the use of Liquidated Damages (Attachment T), the State reserves the right to terminate the Contract and exercise all other rights and remedies provided in the Contract or by law.
- 3.10.6 Failure to timely submit a required report will result in a liquidated damage of \$100 per report.

3.11 End of Contract Transition

The Contractor shall cooperate in the orderly transition of services from the Contract awarded under this solicitation to any subsequent contract for similar services. The transition period shall begin ninety (90) days (or a different amount of days, at the Department's discretion) before the Contract end date, or the end date of any final exercised option or contract extension. The Contractor shall work toward a prompt, timely, and seamless transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of Contract.

The Contractor shall:

- 3.11.1 Provide reasonable access for the successor contractor to the Contractor Clinical Pharm.D.s no later than 60 days prior to the Contract end date. If less than 30 days of the Contract term remains as of the time a successor contract is awarded, the Contractor shall provide the successor Contractor access to its staff noted above in this section.
- 3.11.2 Conduct a final inventory of all Pharmaceuticals and Supplies and provide that inventory to the Contract Monitor, CMO, and CNO 30 days prior to the Contract end date.
- 3.11.3 Participate in any contract-ending physical inventory to ensure all State owned equipment purchased during the term of this contract is in working order.
- 3.11.4 Credit DPSCS on the final invoice for any returned unopened blister packs and unopened bottles and vaccines (things that have not been tampered with or labeled specifically). Inmate specific discharge medications cannot be returned.
- 3.11.5 Transfer any DPSCS-specific databases to the successor Contractor 30 days prior to the end of the final day of the contract.
- 3.11.6 As requested by the CM, provide appropriate representation at work initiation meetings between DPSCS and the successor Contractor to help ensure a smooth transition of services.
- 3.11.7 Ensure that all required records, reports, data, etc. are current and properly documented in the appropriate data base or file for use by the successor Contractor as of start of the successor contract.

Ensure that no records/documentation that DPSCS is required by accreditation, regulation, law, etc. to maintain in its possession are removed, altered or destroyed. This requirement specifically pertains to Contractor Staff credentialing, training, time worked, etc. records, as well as patient-related, equipment and supplies and inventory records, and any other aspects of the Contractor's performance under the Contract. In addition, electronic correspondence (e.g., e-mails) pertaining to Inmate patient care, litigation and Administrative Remedy Procedure (APRs) forms communicated between regional and statewide providers on the domain of either the Contractor or DPSCS remain the property of DPSCS.
- 3.11.8 Ensure that all required Contract close-out activities are timely and properly performed. Specifically, the Contractor shall ensure that:
 - A. The final invoice to DPSCS is submitted within 31 days following the end of the Contract.
 - B. All supplies, equipment, manuals, etc. owned by DPSCS are turned over to DPSCS as of the end of the Contract.
 - C. All source codes to software specifically developed for use under the Contract are turned over to the Contract Monitor or placed with an appropriate escrow agent.
- 3.11.9 In addition, DPSCS may:

- A. Withhold some or all of the final payment due to the Contractor;
- B. Assess Liquidated Damages if the Contractor does not:
 - i. Provide reasonable access to a successor contractor to its On-site Clinical Pharm.D.;
 - ii. Transfer DPSCS-specific databases, as required;
 - iii. Provide appropriate representation at work initiation meetings with a successor contractor;
 - iv. Properly document all required records, reports, data, etc., ensuring such documents are current;
 - v. Relinquish all supplies, equipment, manuals, etc., owned by DPSCS at the end of the Contract;
 - vi. Relinquish all source codes to software specifically developed for use under the Contract to the CM or place such source codes with an appropriate escrow agent;
- C. Note the Contractor's non-compliance with this requirement in the Contract file, which may be used in evaluating the Contractor's integrity and reliability if the Contractor should compete for the award of this contract in a future procurement;
- D. Provide a negative reference concerning the Contractor's performance under the Contract if other State agencies seek information concerning the Contractor's past performance, possibly negatively impacting the Contractor's ability to win other State contracts; and
- E. Provide a negative reference concerning the Contractor's performance under the Contract if entities other than Maryland State agencies seek information concerning the Contractor's past performance.

3.11.10 If at the end of the Contract it is known or likely that expenses resulting from a violation of any part thereof will continue after the Contract end date, all or part of the final payment due the Contractor may be withheld until such time as all expenses are paid, or until the total amount of the final payment has been used for such payments.

3.12 Non-Compete Clause Prohibition
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- 3.12.1 An objective of the Department is to maximize the retention of personnel working under this Contract whenever there is a transition of the Contract from one contractor to another. The retention of personnel helps minimize disruption due to a change in contractor, and maximizes the maintenance of Contract specific institutional knowledge accumulated by such personnel.
- 3.12.2 To help achieve this objective of staff retention the Contractor shall not require any of the Contractor Clinical Pharm.D.s performing services under this Contract to sign an employment contract containing a "Non-Compete" clause. Further, in the event the Contractor uses any of its existing personnel to work as a Contractor Clinical Pharm.D. or On-Call Clinical Pharmacist under this Contract and those personnel have previously entered into an employment contract with the Contractor which included a Non-Compete clause, the Contractor may not seek to enforce (shall grant a release from) such Non-Compete clause.
- 3.12.3 The Contractor must comply with this Non-Compete clause prohibition as affirmed in the Offeror's statement included in its technical proposal that it, as appropriate, either does not include a Non-Compete clause in employment contracts, or agrees not to enforce any such clause in the employment contract of any of its personnel that were in place prior to the assignment of such personnel to work under this Contract.
- 3.12.4 In the event the Department determines that in contravention to this Non-Compete clause prohibition the Contractor has invoked a Non-Compete clause to bar a Contractor Clinical Pharm.D. or On-call Clinical Pharm.D. from working for another employer, the Department, as a Liquidated Damage, shall deduct \$175,000 for each Contractor Clinical Pharm.D.

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SECTION 4 – PROPOSAL FORMAT

4.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

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

4.2 Proposals

4.2.1 Volume I – Technical Proposal, and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, email address, and telephone number of the Offeror be included on the outside of the packaging for each volume. Each Volume shall contain an unbound original, so identified, and seven (7) bound copies. Each Volume should be in 12 point font or larger. Unless the resulting package will be too unwieldy, DPSCS’s preference is for the two (2) sealed Volumes to be submitted together in a single package including a label bearing:

- The RFP title and number,
- Name and address of the Offeror, and
- Closing date and time for receipt of Proposals

4.2.2 An electronic non-encrypted version (on Compact Disk/CD, Digital Versatile Disc/DVD, or Universal Serial Bus/USB Flash/Thumb Drive) of Volume 1-Technical Proposal in Microsoft Word format must be enclosed with the original Volume I - Technical Proposal submission. An electronic version (on CD, DVD, or USB Flash Drive) of Volume II - Financial Proposal in Microsoft Word or Microsoft Excel format must be enclosed with the original Volume II - Financial Proposal submission. Each CD/DVD/USB Flash Drive must be labeled on the outside with the RFP title and number, name of the Offeror, and volume number. Each CD/DVD/USB Flash Drive must be packaged with the original copy of the appropriate Proposal (Technical or Financial).

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

4.2.4 Beginning with Tab B (see RFP § 4.4.2.3), all pages of both Proposal volumes shall be consecutively-numbered from beginning (Page 1) to end (Page “x”). The Title Page, Table of Contents, and any Claim of Confidentiality (Tabs A and A-1; see RFP § 4.4.2.1 and 4.4.2.2), should be numbered using small Roman numerals (ex. i, ii, iii, iv, v, etc).

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

4.3 Delivery

Offerors may either mail or hand-deliver Proposals.

4.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, DPSCS recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and

time of receipt can be verified by DPSCS. It could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit and an Offeror using first class mail will not be able to prove a timely delivery at the mailroom.

- 4.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, an Offeror is advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 4.3.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

4.4 Volume I – Technical Proposal

4.4(A) Personnel Identification Caveat:

As identified in RFP Section 4.4.2.7, the Offeror shall identify and submit individual resumes for its proposed Contractor Program Manager and Clinical Liaison. The Offeror shall also identify and submit individual resumes for each of its five (5) proposed Clinical Pharm.Ds., if available. If the specific identification and individual resumes for each of its five (5) proposed Clinical Pharm.Ds. is not available, Offerors are permitted to submit descriptive qualifications and explanations of the type of individual they will be seeking, and the manner in which they will recruit such staff; i.e. a recruitment plan. Moreover, as per technical proposal evaluation criterion in § 5.2.2 (Experience and Qualifications of Proposed Staff), more technical consideration will be given to Offerors that can and do provide resumes instead of descriptive qualifications/explanations and recruitment plans. As noted in RFP Section 1.23, substitution of previously identified Key Personnel must be approved by the DPSCS CMO prior to staff placement.

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

4.4.1 Format of Technical Proposal

Inside a sealed package described in Section 4.2 “Proposals,” the unbound original, seven (7) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 4.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 4.4.2.1 “Title and Table of Contents,” Section 4.4.2.2 “Claim of Confidentiality,” Section 4.4.2.3 “Transmittal Letter,” Section 4.4.2.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 3.2.1 Response . . .; “Section 3.2.2 Response . . .,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 5.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

4.4.2 The Technical Proposal shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:

4.4.2.1 Title Page and Table of Contents (Submit under TAB A)

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

4.4.2.2 Claim of Confidentiality (If applicable, submit under TAB A-1)

Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror’s Financial

Proposal. An explanation for each claim of confidentiality shall be included (see “Public Information Act Notice”). The entire Proposal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

4.4.2.3 Transmittal Letter (Submit under TAB B)

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

- A. Name and address of the Offeror;
- B. Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- C. Solicitation Title and Solicitation Number that the Proposal is in response to;
- D. Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- E. Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual’s Social Security Number (SSN);
- F. Offeror’s eMM number;
- G. Offeror’s MBE certification number (if applicable);
- H. Acceptance of all State RFP and Contract terms and conditions; if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.4.2.4); and
- I. Acknowledgement of all addenda to this RFP.

4.4.2.4 Executive Summary (Submit under TAB C)

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.” The Summary shall identify the Service Category(ies) and Region(s) for which the Offeror is proposing to provide services (if applicable).

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

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

4.4.2.5 Minimum Qualifications Documentation (If applicable, Submit under TAB D)

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

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

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

B. The Offeror shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific

methodology and techniques to be used by the Offeror in providing the required services as outlined in RFP Section 3, Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.

- C. The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.
- D. The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the DPSCS CM should problems arise under the Contract and explain how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in the RFP.
- E. Non-Compete Clause Prohibition:
Offerors shall acknowledge and confirm that they will comply with the requirement in § 3.12.
- F. The Offeror's proposal shall describe its process for splitting pills when cost effective and the criteria for determining whether a medication can be appropriately split. A listing of pills currently being split on a cost effective basis shall be clearly stated in the Offeror's proposal. Offeror's proposal shall also include its cost saving model(s) associated with pill splitting and several examples of models currently used in its cost effective pill splitting process.
- G. The Offeror's proposal shall describe its reliable mechanism, to include a written process, for reporting drug interactions or other ordering errors back to the ordering Clinician within 24 hours.
- H. The Offeror's proposal shall include an acknowledgement of the obligation and description of its ability to adhere to and maintain compliance throughout the term of the contract to each of the policies, laws, regulations, protocols, directives, and guidelines, etc. listed in Section 3.2.32.
- I. The Offeror's proposal shall include a transition plan which sets forth the plan by which it will be prepared to initiate the full range of services required by the RFP by the Go-Live Date. In particular, the plan shall describe how the offeror will provide, by the Go-Live Date, continuity of delivery of pharmacy services for medications, barcode scanner software, **and** discharge medications, ~~and 340B Program services~~. A finalized version of the plan shall be provided to the CMO and CM within ten (10) days following Notification of Recommendation for Contract Award. **Offeror(s) shall provide, as part of the transition plan, a description of the procedures it will put in place upon Contract Commencement to determine the current/standing Pharmaceutical and Supply inventory housed in the facilities and current pharmacy vendor warehouse or other locations prior to the Go-Live Date.**
- J. The Offeror's proposal shall include a detailed description of which barcode scanning software system it proposes to use.
- K. **The Offeror shall explain how its system and processes will ensure that DPSCS will be invoiced at the AAC at the time of dispensing. This explanation must include a description of how the Offeror's system updates the AAC pricing of Pharmaceuticals and Supplies, including how frequently, and how that relates to the price that DPSCS will be invoiced.**
- L. **The Offeror shall indicate whether it will provide credit for partial blister cards of returned medications. If the Offeror proposes to provide credit for partial blister cards of returned medications, the proposal shall contain a description of the proposed method for returning partial blister cards of returned medications for credit.**

- M. The Offeror shall describe its process for collaborating with the Other Healthcare Contractors, and specifically with the Medical Contractor to comply with the requirements in RFP Section 3.2.30.
- N. The Offeror's proposal shall include a transition plan which sets forth the plan by which it will be prepared to initiate the process of including 340B Program services. A finalized version of the plan shall be provided to the CMO and CM within ten (10) days of a written request.

4.4.2.7 Experience and Qualifications of Proposed Staff (Submit under TAB F)

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

The Offeror shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan. Except as allowed by RFP Section 4.4(A) Personnel Identification Caveat, the Offeror shall include individual resumes for the Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. [See the Personnel Identification Caveat included as § 4.4(A)] For the purposes of this RFP, the Key Personnel shall include but not be limited to the Clinical Liaison, Program Manager, and Pharm.D.s. The Offeror shall identify these positions as well as any other staff it considers to be Key Personnel. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.

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

4.4.2.8 Offeror Qualifications and Capabilities (Submit under TAB G)

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

- A. The number of years the Offeror has provided the similar services;
- B. The number of clients/customers and geographic locations that the Offeror currently serves;
- C. The number of inmates per geographic location that the Offeror currently serves;
- D. The number and type of facilities (e.g., jail, prison, pre-release centers, detention centers, etc.) and whether local, state, or federal that the Offeror currently serves;
- E. The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- F. The Offeror's process for resolving billing errors;
- G. An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror; and

H. Offeror must disclose and fully describe any affiliation(s) the Offeror has with drug wholesalers or manufacturers. If an Offeror is affiliated with a drug wholesaler or manufacturer, that Offeror must detail in its Proposal the exact nature of the relationship, including what steps have been taken and/or will be taken by the Offeror to prevent possible manipulation of the Acquisition Costs, as defined by RFP §1.2.1, that will be included in invoices submitted by the Offeror, as the Contractor.

I. A detailed description of the Offeror's experience with the provision of 340B pharmacy services.

4.4.2.9 References (Submit under TAB H)

At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. References used to meet any Offeror Minimum Qualifications (see Section 2) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided services within the past five (5) years and shall include the following information:

- A. Name of client organization;
- B. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- C. Value, type, duration, and description of services provided.

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

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

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

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

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

4.4.2.11 Financial Capability (Submit under TAB J)

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

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

- a. Dun and Bradstreet Rating;

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

4.4.2.12 Certificate of Insurance (Submit under TAB K)

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.4. See Section 5.6 for the required insurance certificate submission for the recommended Offeror.

4.4.2.13 Subcontractors (Submit under TAB L)

The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. See Sections 4.4.2.6 and 4.4.2.7 for additional Offeror requirements related to Subcontractors.

4.4.2.14 Legal Action Summary (Submit under TAB M)

This summary shall include:

- A. A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- B. A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- C. A description of any judgments against the Offeror within the past five (5) years, including the case name, court case docket number, and what the final ruling or determination was from the court; and
- D. In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.
- E. For purposes of this section, legal action includes any action in any state or federal court or any regulatory action by any governmental agency.**

4.4.2.15 Economic Benefit Factors (Submit under TAB N)

The Offeror shall submit with its Proposal narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of this contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered shall be consistent with the Offeror's Total Proposal Price from Attachment F, the Financial Proposal Form. See COMAR 21.05.03.03A(3).

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

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

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

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

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

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

- A. The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;
- B. The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels. If no new positions or subcontracts are anticipated as a result of this Contract, so state explicitly;
- C. Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
- D. Subcontract dollars committed to Maryland small businesses and MBEs; and
- E. Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

4.4.3 Additional Required Technical Submissions (Submit under TAB O)

4.4.3.1 The following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 4.4.2.

- A. Completed Proposal Affidavit (Attachment B)
- B. Completed Maryland Living Wage Requirements Affidavit of Agreement (Attachment G-1)

4.4.3.2 *If Required, the following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 4.4.2. *See appropriate RFP Section to determine whether the particular document is required for this procurement:

- A. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1A)
*see Section 1.33.

- B. Completed Federal Funds Attachment (Attachment H) *see Section 1.35.
- C. Completed Conflict of Interest Affidavit and Disclosure (Attachment I) *see Section 1.36.
- D. Completed Mercury Affidavit (Attachment L) *see Section 1.40.
- E. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule. (Attachment M-1) *see Section 1.41.
- F. Completed Location of the Performance of Services Disclosure (Attachment N) *see Section 1.42.

4.5 Volume II – Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 4.2 “Proposals,” the Offeror shall submit an original unbound copy, two (2) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in Attachment F.

With its financial proposal the Offeror shall submit a manufacturer’s or retailers’ invoice documenting the AAC paid for each of the Pharmaceuticals and Supplies on Attachment F. These invoices shall be organized in the same order as the listing on the Pharmaceuticals & Supplies Tab in Attachment F – Financial Proposal Form. **One electronic copy and one hard copy of the invoices shall be provided with the Financial Proposal.**

The Offeror shall submit an invoice for each unit price identified on the Attachment F. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

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

5.1 Evaluation Committee

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

5.2 Technical Proposal Evaluation Criteria

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

5.2.1 Offeror’s Technical Response to RFP Requirements and Work Plan (See RFP § 4.4.2.6)

The State prefers an Offeror’s response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done. Proposals which include limited responses to work requirements such as “concur” or “will comply” will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

5.2.2 Experience and Qualifications of Proposed Staff (See RFP § 4.4.2.7)

The State prefers that Offerors identify specific individuals with resumes, letters of commitment, etc. Assuming the identified personnel are deemed acceptable by the State, Offerors identifying specific individuals for Key Personnel will receive more technical consideration for this evaluation criterion than Offerors providing descriptive qualifications/explanations of desired characteristics of such personnel for recruitment purposes and a recruitment plan.

5.2.3 Offeror Qualifications and Capabilities, including proposed Subcontractors (See RFP § 4.4.2.8 – 4.4.2.14)

5.2.4 Economic Benefit to State of Maryland (See RFP § 4.4.2.15)

5.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (see Section 5.5.2.4) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Financial Proposal Price within the stated guidelines set forth in this RFP and as submitted on Attachment F and F1 - Financial Proposal Form.

5.4 Reciprocal Preference

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

- The Maryland resident business is a responsible Offeror;

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

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

5.5 Selection Procedures

5.5.1 General

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

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

5.5.2 Selection Process Sequence

5.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1A) is included and is properly completed, if there is an MBE goal. In addition, a determination is made that the Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule (Attachment M-1) is included and is properly completed, if there is a VSBE goal. Finally, a determination is made that all Offeror Minimum Qualifications, if any (See RFP Section 2), have been satisfied.

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

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

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

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

5.5.3 Award Determination

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

5.6 Documents Required upon Notice of Recommendation for Contract Award

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

- A. Contract (Attachment A),
- B. Contract Affidavit (Attachment C),
- C. MBE Attachments D-2 and D-3A/B, within ten (10) Business Days, if applicable; *see Section 1.33,
- D. MBE Waiver Justification within ten (10) Business Days (see MBE Waiver Guidance and forms in Attachments D-1B and D-1C), if a waiver has been requested (if applicable; *see Section 1.33),
- E. Non-Disclosure Agreement (Attachment J), if applicable; *see Section 1.37,
- F. HIPAA Business Associate Agreement (Attachment K), if applicable; *see Section 1.38,
- G. VSBE Attachment M-2, if applicable *see Section 1.41,
- H. DHR Hiring Agreement, Attachment O, if applicable *see Section 1.43, and
- I. Copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.4 “Insurance Requirements,” listing the State as an additional insured, if applicable; *see Section 3.4.

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RFP ATTACHMENTS

ATTACHMENT A – Contract

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

ATTACHMENT B – Proposal Affidavit

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

ATTACHMENT C – Contract Affidavit

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

ATTACHMENT D – Minority Business Enterprise Forms

If required (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D-1 through D-5. Attachment D-1 must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed not reasonably susceptible of being selected for award and rejected. Within 10 Business Days of receiving notification of recommendation for Contract award, the Offeror must submit Attachments D-2 and D-3A/B.

ATTACHMENT E – Pre-Proposal Conference Response Form

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

ATTACHMENT F – Financial Proposal Instructions and Form

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

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

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

ATTACHMENT H – Federal Funds

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

ATTACHMENT I – Conflict of Interest Affidavit and Disclosure

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

ATTACHMENT J – Non-Disclosure Agreement

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

ATTACHMENT K – HIPAA Business Associate Agreement

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

ATTACHMENT L – Mercury Affidavit

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

ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms

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

ATTACHMENT N – Location of the Performance of Services Disclosure

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

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

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

ATTACHMENT P – COT/GAD X-10 Contractor Electronic Funds (EFTA) Registration Form

ATTACHMENT Q – Average Daily Population (ADP)

ATTACHMENT R – Pharmacy Delivery Locations with Facilities

ATTACHMENT S – Facility-by-Facility Medication Distribution Method Requirements

ATTACHMENT T – Liquidated Damage Table

ATTACHMENT U – List of Required Reports

ATTACHMENT V – Pharmacy Barcode Scan Facility Codes and Locations

ATTACHMENT W – Emergency Medication Orders

ATTACHMENTS X1 – X9 – Sample Reports

ATTACHMENT X-1 – Early Fills sample report

ATTACHMENT X-2 – HIV/HEPC Report

ATTACHMENT X-3 – Pharmacy Services Manual

ATTACHMENT X-4 – Sample Audit of Medication and Methadone Rooms

ATTACHMENT X-5 – P&T Meeting Minutes Sample

ATTACHMENT X-6 – Pharmacy ACA Outcome Measure Report (Pharmacy Discrepancy)

ATTACHMENT X-7 – Sample Pharmacy Patient and Disease Profile

ATTACHMENT X-8 – Drug Utilization

ATTACHMENT X-9 – Duvall vs. Hogan Consent Decree and Consent Decree Annotated

ATTACHMENT Y – Formulary Report

ATTACHMENT Z – Bon Secours Contract

ATTACHMENT Z-1 - Bon Secours Contract with the Contract Pharmacy

ATTACHMENT AA – Facility Tour Schedule

**DPSCS Pharmacy Services Contract
Solicitation No. Q0016025**

THIS CONTRACT (the “Contract”) is made this (“Xth”) day of (month), (year) by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the Department of Public Safety and Correctional Services.

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

1. Definitions

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract” means this agreement between (Contractor’s name) and the State of Maryland, acting through the Department of Public Safety and Correctional Services.
- 1.3 “Contract Monitor” means the following Department employee identified as the Contract Monitor:

Joseph Ezeh, MBA
Acting Director, Contract Administration
Department of Public Safety and Correctional Services
6776 Reisterstown Road
Suite 310
Baltimore, MD 2125
Phone: 410-585-3386; e-mail: Joseph.Ezeh@maryland.gov

- 1.4 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.5 “Department” means the Department of Public Safety and Correctional Services.
- 1.6 “Financial Proposal” means the Contractor’s Financial Proposal dated (Financial Proposal date).
- 1.7 “Procurement Officer” means the following Department employee identified as the Procurement Officer:

Rachel Cruse
Procurement Officer
45 Calvert Street, Room 134
Annapolis, MD 21401
Phone: 410-260-7430; e-mail: Rachel.Cruse@maryland.gov

- 1.8 “RFP” means the Request for Proposals for Pharmacy Services Solicitation # Q0016025, and any addenda thereto issued in writing by the State.
- 1.9 “State” means the State of Maryland.
- 1.10 “Technical Proposal” means the Contractor’s Technical Proposal dated (Technical Proposal date).

2. Scope of Contract

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

Exhibit A – The RFP

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

Exhibit C – The Proposal (Technical and Financial)

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance.

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. The Contract shall be for a period of approximately five (5) years from the Go-Live Date.
- 3.2 The State, at its sole option, has the unilateral right to extend the term of the Contract for one (1) two-year renewal option.
- 3.3 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal.
- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department 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 or Social Security Number for a Contractor who is an individual which is (Contractor's FEIN or SSN). Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall

be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.
- 4.5 Contractor's eMarylandMarketplace Contractor ID number is (Contractor's eMM number).

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Department's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract.

7. Patents, Copyrights, and Intellectual Property

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

8. Confidential or Proprietary Information and Documentation

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

9. Loss of Data

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

10. Indemnification

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

- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 10.3 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or 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.
- 10.6 This Section 10 shall survive termination of this Contract.

11. Non-Hiring of Employees

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

12. Disputes

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

13. Maryland Law

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

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified

individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

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

16. Non-availability of Funding

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

17. Termination for 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 shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

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

19. Delays and Extensions of Time

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

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

20. Suspension of Work

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

21. Pre-Existing Regulations

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

22. Financial Disclosure

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

23. Political Contribution Disclosure

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

24. Documents Retention and Inspection Clause

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

event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

25. Right to Audit

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or subcontractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the Contract services being performed for the State.
- 25.2 Upon three (3) Business Days' notice, the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy, at its own expense, any record related to the services performed and provided under this Contract.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the Department has the right to audit such subcontractor(s).
- 25.4 The Contractor and/or subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.
- 25.5 This Section shall survive expiration or termination of the Contract.

26. Compliance with Laws

The Contractor hereby represents and warrants that:

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

27. Cost and Price Certification

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

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

28. Subcontracting; Assignment

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

29. Liability

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

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

30. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, Contractors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, Contractors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, Contractors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including

the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- a. Not process further payments to the contractor until payment to the subcontractor is verified;
 - b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
 - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - e. Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:
- a. Retainage which had been withheld and is, by the terms of the Contract between the Contractor and subcontractor, due to be distributed to the subcontractor; and
 - b. An amount withheld because of issues arising out of a Contract or occurrence unrelated to the Contract under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- a. Affect the rights of the contracting parties under any other provision of law;
 - b. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
 - c. Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
 - 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 thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
 - c. If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the

Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

- d. If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- 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.

32. Living Wage

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

33. Use of Estimated Quantities

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

34. Contract Monitor and Procurement Officer

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

35. Notices

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

If to the State: Rachel Cruse
Procurement Officer
45 Calvert Street, Room 134
Annapolis, MD 21401
Phone: 410-260-7430
E-mail: Rachel.Cruse@maryland.gov

If to the Contractor: _____

36. Liquidated Damages

36.1 The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill,

detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

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

- 36.1.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): \$33.30 per day until the monthly report is submitted as required.
 - 36.1.2 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): \$116.54 per MBE subcontractor.
 - 36.1.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
 - 36.1.4 Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
 - 36.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$124.86 per day until the undisputed amount due to the subcontractor is paid.
- 36.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and to exercise any and all other rights or remedies which may be available under the Contract or which otherwise may be available at law or in equity.

37. Reserved.

38. Confidentiality of Health and Financial Information

The Contractor agrees to keep information obtained in the course of this contract confidential in compliance with all applicable State and federal law. The Contractor agrees further to comply with any applicable State and federal confidentiality requirements regarding collection, maintenance, and use of health and financial information. This includes, where appropriate, the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations at 45 C.F.R. Parts 160 and 164, and the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Department for information about its privacy practices in general or with respect to a particular individual, modifying information as may be

required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health and financial information.

39. Limited English Proficiency

The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and DPSCS Limited English Proficiency (LEP) Plan issued by the DPSCS Office of Equal Opportunity under Executive Director OEO.020.0032 (June 2016).

40. Miscellaneous

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

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

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

CONTRACTOR

STATE OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

By:

By: Stephen T. Moyer, Secretary
Or designee:

Date

Date

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

Assistant Attorney General

APPROVED BY BPW: _____ (Date) _____ (BPW Item #)

ATTACHMENT B – PROPOSAL AFFIDAVIT

A. AUTHORITY

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B.1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

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

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

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

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) ~~Been convicted under state or federal statute of:

 - (a) ~~A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or~~
 - (b) ~~Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;~~~~
- (2) ~~Been convicted of any criminal violation of a state or federal antitrust statute;~~
- (3) ~~Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;~~
- (4) ~~Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;~~
- (5) ~~Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;~~
- (6) ~~Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)–(5) above;~~
- (7) ~~Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;~~
- (8) ~~Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;~~
- (9) ~~Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:

 - (a) ~~§7201, Attempt to Evade or Defeat Tax;~~
 - (b) ~~§7203, Willful Failure to File Return, Supply Information, or Pay Tax;~~
 - (c) ~~§7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;~~
 - (d) ~~§7205, Fraud and False Statements, or~~
 - (e) ~~§7207, Fraudulent Returns, Statements, or Other Documents;~~~~
- (10) ~~Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;~~
- (11) ~~Been convicted of a violation of the Tax General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;~~
- (12) ~~Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

 - (a) ~~A court:

 - (i) ~~Made the finding; and~~~~~~

~~(ii) Decision became final; or~~

~~(b) The finding was:~~

~~(i) Made in a contested case under the Maryland Administrative Procedure Act; and~~

~~(ii) Not overturned on judicial review;~~

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

~~(a) A court:~~

~~(i) Made the finding; and~~

~~(ii) Decision became final; or~~

~~(b) The finding was:~~

~~(i) Made in a contested case under the Maryland Administrative Procedure Act; and~~

~~(ii) Not overturned on judicial review;~~

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

~~(a) A court:~~

~~(i) Made the finding; and~~

~~(ii) Decision became final; or~~

~~(b) The finding was:~~

~~(i) Made in a contested case under the Maryland Administrative Procedure Act; and~~

~~(ii) Not overturned on judicial review; or~~

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

_____.

~~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).~~

~~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):~~

~~G. SUBCONTRACT AFFIRMATION~~

~~I FURTHER AFFIRM THAT:~~

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

~~H. AFFIRMATION REGARDING COLLUSION~~

~~I FURTHER AFFIRM THAT:~~

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

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

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

~~I. CERTIFICATION OF TAX PAYMENT~~

~~I FURTHER AFFIRM THAT:~~

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

~~J. CONTINGENT FEES~~

~~I FURTHER AFFIRM THAT:~~

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

~~K. CERTIFICATION REGARDING INVESTMENTS IN IRAN~~

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

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

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

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

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

~~I FURTHER AFFIRM THAT:~~

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

~~M. I FURTHER AFFIRM THAT:~~

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

~~N. ACKNOWLEDGEMENT~~

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

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

~~Date: _____~~

~~By: _____ (print name of Authorized Representative and Affiant)~~

~~_____ (signature of Authorized Representative and Affiant)~~

~~SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL~~

Revised Attachment B - Proposal Affidavit

A. AUTHORITY

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

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

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

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

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

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

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

(ii) Not overturned on judicial review; or

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

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).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

- (1) The business was not established and does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
 - (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):
-
-

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

- (1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:
- (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
 - (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.
- (2) The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:
-

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

I FURTHER AFFIRM THAT:

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

M. PROHIBITING DISCRIMINATORY BOYCOTTS OF ISRAEL

I FURTHER AFFIRM THAT:

In preparing its bid/proposal on this project, the Bidder/Offeror has considered all bid/proposals submitted from qualified, potential subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any subcontractor, vendor, or supplier, refused to transact or terminated business activities, or taken other actions intended to limit commercial relations, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel and its territories. The Bidder/Offeror also has not retaliated against any person or other entity for reporting such refusal, termination, or commercially limiting actions. Without limiting any other provision of the solicitation for bid/proposals for this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the bid/proposal.

N. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the bid or bid/proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as

provided in 16 C.F.R. §260, that apply to claims about the environmental attributes of a product, package or service in connection with the marketing, offering for sale, or sale of such item or service.

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/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.

By: _____

Signature of Authorized Representative and Affiant

Printed Name: _____

Printed Name of Authorized Representative and Affiant

Title: _____

Title

Date: _____

Date

ATTACHMENT C – CONTRACT AFFIDAVIT

A. AUTHORITY

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID

Number: _____ Address: _____

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

Name and Department ID

Number: _____ Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental

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

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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

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

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

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

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

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

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

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

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

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

- (i) Abide by the terms of the statement; and

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____

By: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

**MBE ATTACHMENT D-1A
MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT
 & MBE PARTICIPATION SCHEDULE—INSTRUCTIONS**

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the Proposal. If the Offeror fails to accurately complete and submit this Affidavit and Schedule with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award.

1. ~~Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.~~
2. ~~MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract’s MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.~~
3. ~~MBE means a minority business enterprise that is certified by the Maryland Department of Transportation (“MDOT”). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including an MBE Prime, must be MDOT certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule.~~
4. ~~Please refer to the MDOT MBE Directory at www.mdot.state.md.us to determine if a firm is certified with the appropriate North American Industry Classification System (“NAICS”) Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit www.naics.com. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **WARNING:** If the firm’s NAICS Code is in **graduated status**, such services/products **may not be counted** for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term “Graduated” follows the Code in the MDOT MBE Directory.~~
5. ~~**Guidelines Regarding MBE Prime Self Performance:** Please note that when a certified MBE firm participates as a Prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty percent (50%) of the MBE participation goal (overall), including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.~~
 - ~~✓ In order to receive credit for self performance, an MBE Prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE Prime is self performing and include information regarding the work it will self perform.—~~
 - ~~✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE Prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.—~~
 - ~~✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime’s ability to~~

self perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.

- ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the Contract has subgoals, regardless of MBE Prime's ability to self perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to other MBEs for each of any remaining subgoals or request a waiver. As set forth in **Attachment D1-B Waiver Guidance**, the MBE Prime's ability to self perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
- ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to GOMA's website (www.goma.maryland.gov) for the MBE Prime Regulations Q&A for illustrative examples.

6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Contract that the certified MBE performs with its own workforce towards fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to mbe@mdot.state.md.us sufficiently prior to the submission due date.
9. Worksheet: The percentage of MBE participation, calculated using the percentage amounts for all of the MBE firms listed on the Participation Schedule **MUST** at least equal the MBE participation goal **and** subgoals (if applicable) set forth in the solicitation. If a Offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the Offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) or the Proposal will be determined to be not susceptible of being selected for award. You may wish to use the Subgoal summary below to assist in calculating the percentages and confirm that you have met the applicable MBE participation goal and subgoals, if any.

SUBGOALS (IF APPLICABLE)

_____ **TOTAL AFRICAN AMERICAN MBE PARTICIPATION:** _____ %

_____ **TOTAL ASIAN AMERICAN MBE PARTICIPATION:** _____ %

_____ **TOTAL HISPANIC AMERICAN MBE PARTICIPATION:** _____ %

_____ **TOTAL WOMEN OWNED MBE PARTICIPATION:** _____ %

OVERALL GOAL

_____ **TOTAL MBE PARTICIPATION (INCLUDE ALL CATEGORIES):** _____ %

MBE ATTACHMENT D-1A
MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT
& MBE PARTICIPATION SCHEDULE

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

In connection with the Proposal submitted in response to Solicitation No. Q0016025, I affirm the following:

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

I acknowledge and intend to meet IN FULL the overall certified Minority Business Enterprise (MBE) participation goal of 12% percent.

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

OR

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

2. ~~Additional MBE Documentation~~

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

- (a) Good Faith Efforts Documentation to Support Waiver Request (**~~Attachment D-1C~~**)
- (b) Outreach Efforts Compliance Statement (**~~Attachment D-2~~**);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (**~~Attachments D-3A/B~~**);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer in connection with the certified MBE participation goal and subgoals, if any.

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

3. ~~Information Provided to MBE firms~~

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

4. MBE Participation Schedule

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

Prime Contractor	Project Description	PROJECT/CONTRACT NUMBER

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

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

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

SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)

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

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

(Continue on separate page if needed)

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

Offeror Name _____ Signature of Authorized Representative
(PLEASE PRINT OR TYPE)

Address _____ Printed Name and Title

City, State and Zip Code _____ Date

~~SUBMIT THIS AFFIDAVIT WITH PROPOSAL~~

**REVISED MBE ATTACHMENT D-1A:
MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT
& MBE PARTICIPATION SCHEDULE**

PART 1--INSTRUCTIONS

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

1. ~~Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.~~
2. ~~MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.~~
3. ~~MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.~~
4. ~~Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **CAUTION:** If the firm's NAICS Code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term "Graduated" follows the Code in the MDOT MBE Directory.~~
5. ~~**Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty percent (50%) of the overall MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.~~

- ✓ ~~In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.~~
- ✓ ~~For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.~~
- ✓ ~~These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.~~
- ✓ ~~Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.~~
- ✓ ~~In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.~~
http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf

6. ~~Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.~~

7. ~~The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.~~

8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**

- ✓ ~~Regular Dealers: Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions. Generally, a Regular Dealer will be identified as a wholesaler or supplier in the MDOT Directory.~~
- ✓ ~~Manufacturers: A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.~~
- ✓ ~~Brokers: With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees,~~

or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.

- ✓ ~~Furnish and Install:~~ The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS Code(s) to furnish and install materials necessary for successful contract completion may be counted in full.

- ~~9. **Dually certified firms.** An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.~~

~~Example: A woman-owned Hispanic American (dually certified) firm may be used to fulfill the women-owned OR Hispanic American subgoal, but not both on the same contract.~~

10. CAUTION: The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2 for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).

11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to mbe@mdot.state.md.us sufficiently prior to the submission due date.

Subgoals (if applicable)

_____ Total African American MBE Participation: _____ %
_____ Total Asian American MBE Participation: _____ %
_____ Total Hispanic American MBE Participation: _____ %
_____ Total Women Owned MBE Participation: _____ %

Overall Goal

_____ Total MBE Participation (include all categories): _____ %

**PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT &
MBE PARTICIPATION SCHEDULE**

This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

In connection with the bid/proposal submitted in response to Solicitation No. Q0016025 I affirm the following:

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

I acknowledge and intend to meet IN FULL the overall certified Minority Business Enterprise (MBE) participation goal of ~~12%~~ percent of the total value of the Annual Management Fee portion only (aggregate of the Annual Management Fee paid on entire Contract as set forth in Attachment F), including all option years.

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 – MBE Participation Schedule in order to be considered for award.

OR

I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete PART 3, the MBE Participation Schedule for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award.

Additional MBE Documentation

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 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) Good Faith Efforts Documentation to Support Waiver Request (Attachment ___1C)
- (b) Outreach Efforts Compliance Statement (Attachment ___2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments ___3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

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

Information Provided to MBE firms

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

PART 3 – MBE PARTICIPATION SCHEDULE

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

Prime Contractor	Project Description	Project/Contract Number

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

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

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American Owned <input type="checkbox"/> Hispanic American Owned <input type="checkbox"/> Asian American Owned <input type="checkbox"/> Women Owned <input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Broker <input type="checkbox"/> Furnish and Install <input type="checkbox"/> Services <input type="checkbox"/> Other</p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p>Description of the Work to be performed with MBE prime's own forces: _____ _____ _____</p>
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SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American Owned <input type="checkbox"/> Hispanic American Owned <input type="checkbox"/> Asian American Owned <input type="checkbox"/> Women Owned <input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Broker <input type="checkbox"/> Furnish and Install <input type="checkbox"/> Services <input type="checkbox"/> Other</p> <p>Description of the Work to be Performed: _____ _____ _____</p>
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<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American Owned</p> <p><input type="checkbox"/> Hispanic American Owned</p> <p><input type="checkbox"/> Asian American Owned</p> <p><input type="checkbox"/> Women Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1 Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American Owned</p> <p><input type="checkbox"/> Hispanic American Owned</p> <p><input type="checkbox"/> Asian American Owned</p> <p><input type="checkbox"/> Women Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1 Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American Owned</p> <p><input type="checkbox"/> Hispanic American Owned</p> <p><input type="checkbox"/> Asian American Owned</p> <p><input type="checkbox"/> Women Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1 Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>

Continue on separate page if needed

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

Bidder/Offeror Name _____ Signature of Authorized Representative
(please print or type)

Address _____ Printed Name and Title

City, State and Zip Code _____ Date

~~Submit This Affidavit with Bid/Proposal~~

MBE ATTACHMENT D-1B
WAIVER GUIDANCE

~~guidance for documenting good faith efforts to meet MBE participation goals~~

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

~~I. — Definitions~~

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

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

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

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

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

II.——Types of Actions Agency will Consider

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

A. Identify Proposal Items as Work for MBE Firms

1. Identified Items of Work in Procurements

- (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
- (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

2. Identified Items of Work by Offerors

- (a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.
- (b) Where appropriate, Offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a Prime contractor to perform the work of a contract with its own organization does not relieve the Offeror of the responsibility to make Good Faith Efforts.

B. Identify MBE Firms to Solicit

1. MBE Firms Identified in Procurements

- (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
- (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

2. MBE Firms Identified by Offerors

- (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
- (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

C. Solicit MBEs

- 1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Offeror should:
 - (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;
 - (b) send the written solicitation by first class mail, facsimile, or email using contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; and
 - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)
- 2. "All" Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Offeror provides written solicitations.

- ~~3. "Electronic Means" includes, for example, information provided via a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Offeror must make the information available in a manner that is accessible to the interested MBE.~~
- ~~4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:

 - ~~(a) by telephone using the contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; or~~
 - ~~(b) in writing via a method that differs from the method used for the initial written solicitation.~~~~
- ~~5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:

 - ~~(a) attending any pre proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and~~
 - ~~(b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.~~~~

D. Negotiate With Interested MBE Firms

Offerors must negotiate in good faith with interested MBE Firms.

- ~~1. Evidence of negotiation includes, without limitation, the following:

 - ~~(a) the names, addresses, and telephone numbers of MBE Firms that were considered;~~
 - ~~(b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and~~
 - ~~(c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.~~~~
- ~~2. An Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.~~
- ~~3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a Offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:

 - ~~(a) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;~~
 - ~~(b) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;~~
 - ~~(c) percentage that the MBE subcontractor's quote represents of the overall contract amount;~~
 - ~~(d) number of MBE firms that the Offeror solicited for that portion of the work;~~
 - ~~(e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and~~
 - ~~(f) number of quotes received by the Offeror for that portion of the work.~~~~
- ~~4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.~~
- ~~5. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.~~

- ~~6. The “average of the other subcontractors’ quotes received” by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non MBE.~~
- ~~7. An Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm’s capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non MBE Firms quoting similar work.
 - ~~(a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.~~
 - ~~(b) The MBE Firm’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non union employee status) are not legitimate causes for the rejection or non solicitation of bids in the efforts to meet the project goal.~~~~

E. ~~Assisting Interested MBE Firms~~

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

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

III. ~~Other Considerations~~

~~In making a determination of Good Faith Efforts the decision maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and Non MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.~~

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

IV. ~~Documenting Good Faith Efforts~~

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

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

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

B. ~~Outreach/Solicitation/Negotiation~~

- ~~1. The record of the Offeror’s compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a).
(Complete Outreach Efforts Compliance Statement Attachment D-2).~~
- ~~2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:~~

- ~~(a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C-Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and~~
- ~~(b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.~~

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

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

~~**D. Other Documentation**~~

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

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

1. It is hereby certified that the firm of _____
_____ (Name of Minority firm)

located at _____
_____ (Number) _____ (Street)

_____ (City) _____ (State) _____ (Zip)

was offered an opportunity to bid on Solicitation No. _____

in _____ County by _____
_____ (Name of Prime Contractor's Firm)

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

Printed Name of MBE's Representative _____ **Title**

Signature of Minority Firm's MBE Representative _____ **Date**

MDOT Certification # _____ Telephone # _____

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

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

Signature of Prime Contractor _____ Title _____ Date _____

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

Prime Contractor	Project Description	Solicitation Number
_____	_____	_____

Parts 1, 2, and 3 must be included with this certificate along with all documents supporting your waiver request.

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

 Company Name _____ Signature of Representative _____

 Address _____ Printed Name and Title _____

 City, State and Zip Code _____ Date _____

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

Part 1—Identified items of work Offeror made available to MBE firms

Page of

Prime Contractor	Project Description	Solicitation Number
_____	_____	_____

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

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

Please check if Additional Sheets are attached.

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

Part 2—Identified MBE firms and record of solicitations

Page ___ of ___

Prime Contractor _____	Project Description _____	Solicitation Number _____
----------------------------------	-------------------------------------	-------------------------------------

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

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

Please check if Additional Sheets are attached.

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

Part 3 ~~Additional information regarding rejected MBE quotes~~

Page of

Prime Contractor	Project Description	Solicitation Number
_____	_____	_____

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

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

Please check if Additional Sheets are attached.

MBE ATTACHMENT D-2
OUTREACH EFFORTS COMPLIANCE STATEMENT

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

In conjunction with the Proposal submitted in response to Solicitation No. _____, I state the following:

1. Offeror identified subcontracting opportunities in these specific work categories:

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

3. Offeror made the following attempts to personally contact the solicited MDOT certified MBE firms:

4. **Please Check One:**

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

5. **Please Check One:**

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

Company Name _____ Signature of Representative

Address _____ Printed Name and Title

City, State and Zip Code _____ Date

MBE ATTACHMENT D-3A
MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION

~~Please complete and submit one form for each certified MBE firm listed on the MBE PARTICIPATION schedule (Attachment D-1A) within 10 Business Days of notification of apparent award. If the offeror fails to return this AFFIDAVIT within the required time, the Procurement Officer may determine that the proposal is not susceptible of being selected for Contract award.~~

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

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

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

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

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

MBE ATTACHMENT D-3B
MBE PRIME – PROJECT PARTICIPATION CERTIFICATION

~~Please complete and submit THIS form TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE firm HAS listed on the MBE PARTICIPATION schedule (Attachment D-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED within 10 Business Days of notification of apparent award. If the offeror fails to return this AFFIDAVIT within the required time, the Procurement Officer may determine that the proposal is not susceptible of being selected for Contract award.~~

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

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

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

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

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

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	Fax: _____	E-mail: _____																																					
MBE Subcontractor Name:		Contact Person:																																					
Phone:	Fax: _____																																						
Subcontractor Services Provided:																																							
List all payments made to MBE subcontractor named above during this reporting period: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice#</u></th> <th style="width: 50%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Paid: \$ _____</td> <td></td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Paid: \$ _____			List dates and amounts of any outstanding invoices: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice #</u></th> <th style="width: 50%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$ _____</td> <td></td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Unpaid: \$ _____		
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	<u>Invoice #</u>	<u>Amount</u>																																					
1.																																							
2.																																							
3.																																							
4.																																							
Total Dollars Unpaid: \$ _____																																							

- If more than one MBE subcontractor is used for this contract, you must use separate D-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment D-4B
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

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

Signature: _____ **Date:** _____

 (Required)

MBE ATTACHMENT D-4B
Minority Business Enterprise Participation
MBE Prime Contractor Self Performance Report

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

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

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

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

Contract Monitor: _____
Contracting Unit and Address: _____

Signature: _____ **Date:** _____
 _____ (Required)

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

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

MBE Subcontractor Name: _____																						
MDOT Certification #: _____																						
Contact Person: _____		E-mail: _____																				
Address: _____																						
City: _____	State: _____	ZIP: _____																				
Phone: _____	Fax: _____																					
Subcontractor Services Provided:																						
List all payments received from Prime Contractor during reporting period indicated above. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;"></th> <th style="width: 30%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1. <u>Invoice Amt</u> _____</td><td></td></tr> <tr><td>2. _____</td><td></td></tr> <tr><td>3. _____</td><td></td></tr> <tr><td>Total Dollars Paid: \$ _____</td><td></td></tr> </tbody> </table>			<u>Date</u>	1. <u>Invoice Amt</u> _____		2. _____		3. _____		Total Dollars Paid: \$ _____		List dates and amounts of any unpaid invoices over 30 days old. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;"></th> <th style="width: 30%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1. <u>Invoice Amt</u> _____</td><td></td></tr> <tr><td>2. _____</td><td></td></tr> <tr><td>3. _____</td><td></td></tr> <tr><td>Total Dollars Unpaid: \$ _____</td><td></td></tr> </tbody> </table>		<u>Date</u>	1. <u>Invoice Amt</u> _____		2. _____		3. _____		Total Dollars Unpaid: \$ _____	
	<u>Date</u>																					
1. <u>Invoice Amt</u> _____																						
2. _____																						
3. _____																						
Total Dollars Paid: \$ _____																						
	<u>Date</u>																					
1. <u>Invoice Amt</u> _____																						
2. _____																						
3. _____																						
Total Dollars Unpaid: \$ _____																						
Prime Contractor: _____		Contact Person: _____																				

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

Contract Monitor: _____
Contracting Unit and Address: _____

Signature: _____ **Date:** _____
 _____ (Required)

ATTACHMENTS D – REVISED MINORITY BUSINESS ENTERPRISE FORMS

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

This solicitation includes a Minority Business Enterprise (MBE) participation goal of seven (7)% percent and no subgoals.

ATTACHMENT E – PRE-PROPOSAL CONFERENCE RESPONSE FORM

**Solicitation Number Q0016025
Pharmacy Services**

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

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

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

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

Signature

Title

Name of Firm (please print)

ATTACHMENT F – FINANCIAL PROPOSAL FORM

See attached MS Excel Workbook for Attachment F – Financial Proposal Instructions and Financial Proposal Form.

Living Wage Requirements for Service Contracts

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

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

Maryland Living Wage Requirements Affidavit of Agreement

(submit with Bid/Proposal)

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract Is Exempt from the Living Wage Law

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

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

If the Contract Is a Living Wage Contract

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

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

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

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

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

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

ATTACHMENT H - FEDERAL FUNDS ATTACHMENT

This solicitation does not include a Federal Funds Attachment.

ATTACHMENT I – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

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

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

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

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

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

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

Date: _____ By: _____
(Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

ATTACHMENT J – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through the Department of Public Safety and Correctional Services (the “Department”), and _____ (the “Contractor”).

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the solicitation for Pharmacy Services Solicitation # Q0016025; and

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

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

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, Confidential Information means (1) any and all information provided by or made available by the State to the Contractor in connection with the Contract and (2) any and all Personally Identifiable Information (PII) (including but not limited to personal information as defined in Md. Ann. Code, State Govt. §10-1301) and Protected Health Information (PHI) that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT J-1. Contractor shall update ATTACHMENT J-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or who will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor’s Personnel or the Contractor’s former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).

6. Contractor shall, at its own expense, return to the Department all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract. Contractor shall complete and submit ATTACHMENT J-2 when returning the Confidential Information to the Department. At such time, Contractor shall also permanently delete any Confidential Information stored electronically by the Contractor.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel and subcontractors who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
 - a. This Agreement shall be governed by the laws of the State of Maryland;
 - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
 - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
 - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
 - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
 - f. The Recitals are not merely prefatory but are an integral part hereof; and
 - g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

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

Contractor: _____

Department of Public Safety and Correctional Services

By: _____ (SEAL)

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NON-DISCLOSURE AGREEMENT - ATTACHMENT J-1

**LIST OF CONTRACTOR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO
THE CONFIDENTIAL INFORMATION**

Printed Name and Address of Individual/Agent	Employee (E) or Agent (A)	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NON-DISCLOSURE AGREEMENT – ATTACHMENT J-2

CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and _____ (“Contractor”) dated _____, 20____ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT K – HIPAA BUSINESS ASSOCIATE AGREEMENT

This solicitation does not require a HIPAA Business Associate Agreement.

ATTACHMENT L – MERCURY AFFIDAVIT

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

ATTACHMENTS M – VETERAN-OWNED SMALL BUSINESS ENTERPRISE

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

ATTACHMENT N – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE

(submit with Bid/Proposal)

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

- 1. At the time of Bid/Proposal submission, the Bidder/Offeror and/or its proposed subcontractors:
 - ___ have plans
 - ___ have **no** plans

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

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

- a. Location(s) services will be performed:

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

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

Date: _____

Bidder/Offeror Name: _____

By: _____

Name: _____

Title: _____

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

ATTACHMENT O – ~~DHR~~ DHS HIRING AGREEMENT

This solicitation does not require a DHS ~~DHR~~ Hiring Agreement.