

# DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES



## INVITATION FOR BIDS (IFB)

SOLICITATION NO. DPSCS Q0015010

Issue Date: November 3, 2014

### **Substance Abuse Treatment Services**

#### NOTICE

A Prospective Bidder that has received this document from the Department of Public Safety or Department of Budget & Management 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 IFB, should immediately contact the Procurement Officer and provide the Prospective Bidder's name and mailing address so that addenda to the IFB or other communications can be sent to the Prospective Bidder.

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

**STATE OF MARYLAND  
NOTICE TO VENDORS**

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

**Title: Substance Abuse Treatment Services**  
**Solicitation No: DPSCS Q0015010**

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

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

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

REMARKS:

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

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

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

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

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

**Invitation for Bids:** Substance Abuse Treatment Services

**Solicitation Number:** DPSCS Q0015010

**IFB Issue Date:** November 3, 2014

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

**Procurement Officer:** Patti Tracey  
Department of Budget & Management  
Office of the Secretary  
Division of Procurement Policy  
45 Calvert Street, Room 148  
Annapolis, MD 21401  
Phone: 410-260-7918 Fax: 410-974-3274  
e-mail: [Patti.Tracey@Maryland.gov](mailto:Patti.Tracey@Maryland.gov)

**Bids are to be sent to:** Department of Budget & Management  
45 Calvert St., Room 148, Annapolis, MD 21401  
Attention: Patti Tracey

**Pre-Bid Conference:** November 10, 2014 10:00 AM Local Time  
MDOT Headquarters  
7201 Corporate Center Drive  
Hanover, MD 21076  
TSO Conference Room – Richard Trainor

**Closing Date and Time:** December 17, 2014 2:00 PM Local Time

**Public Bid Opening:** December 17, 2014 at 2:30 PM at  
45 Calvert Street Room 147  
Annapolis, MD 21401

**MBE Subcontracting Goal:** 10 %

**VSBE Subcontracting Goal:** 0 %

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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 issuing this Invitation for Bids (IFB) to provide substance abuse treatment services in five (5) separate correctional facilities.
- 1.1.2 It is the State's intention to obtain services, as specified in this IFB, from a Contract between the selected Bidder and the State. The anticipated duration of services to be provided under this Contract is approximately two (2) and a half years through June 30, 2017, with two (2) two-year options. See Section 1.4 for more information.
- 1.1.3 The Department intends to make a single award as a result of this IFB.
- 1.1.4 Bidders, either directly or through their subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Bidder (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

### **1.2 Abbreviations and Definitions**

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

- a. **ADAA**- Alcohol and Drug Abuse Administration. The governing body of the Maryland Department of Mental Health and Hygiene that provides planning, regulation, fiscal management, and technical assistance to State programs providing substance abuse services.
- b. **Addictions Treatment Protocol (ATP)**- A six (6) month addictions treatment program based on cognitive behavioral interventions, provided by Certified Addictions counselors who work for DPSCS for those inmates scoring a 1, 2 or 3 on the Treatment Assignment Protocol (TAP). See Attachment Y – TAP Version III DOC 8-6-2012 – Final.
- c. **Administrative Assistant** – an employee of the Contractor or subcontractor who provides administrative clerical duties for the Contractor's substance abuse treatment program in each facility.
- d. **Agency**- The unit of State government procuring services.
- e. **ARP** – Administrative Remedy Procedure. This is a formal way to resolve complaints or problem that an inmate has been unable to resolve informally.
- f. **Assessment**- The process of administering and interpreting specified clinical instruments to measure level of need and suitability for substance abuse treatment.
- g. **Bid** – A statement of price offered by a Bidder in response to an IFB.
- h. **Bidder** - An entity that submits a Bid in response to this IFB.
- i. **BOPC** – Board of Professional Counselors and Therapists in the State of Maryland.
- j. **BPW** – Board of Public Works.
- k. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of "Normal State Business Hours" below).

- l. Case Manager-** A DPSCS employee who is responsible for assigning inmates to programs and activities. The case management department will assign inmates to be assessed based upon established eligibility criteria.
- m. Certified Therapeutic Community Training** – training required by the Department in which the trainer providing the training must be certified by one of the following professional organizations: Treatment Communities of America (TCA)(formerly Therapeutic Communities of America); World Federation of Therapeutic Communities; Substance Abuse Mental Health Services Administration (SAMHSA); or National Institute on Drug Abuse (NIDA).
- n. CMCF-** Central Maryland Correctional Facility. One of the five (5) locations in which substance abuse treatment services will be provided. This is a minimum security facility for males.
- o. COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us). It should be understood that any reference to regulation or statute is as amended.
- p. COMAR 10.47.01-** Department of Health and Mental Hygiene Regulations concerning substance abuse treatment services.
- q. Commitment Unit** – The unit within the Department of Public Safety and Correctional Services-Operations section responsible for calculating inmates’ diminution credits.
- r. Contract** – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment A** and will incorporate the entire IFB, including any amendments, addenda, and all/or indicated portions of the selected Bidder’s Bid.
- s. Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
- t. Contract Manager (CM)** –The State representative for this Contract who is primarily responsible for Contract administration functions, including: issuing written direction; invoice approval; monitoring compliance with the terms and conditions of the Contract; monitoring MBE and VSBE compliance; and achieving completion of the Contract within budget, on time, and within scope.
- u. Contractor** – The selected Bidder that is awarded a Contract by the State.
- v. Contractor’s staff** – Personnel utilized by the Contractor including the Contractor’s employees, sub-Contractors, sub-Contractors’ employees, and any specialists and consultants used by the Contractor.
- w. Contract Administrator** – means the representative appointed by the Contractor who is responsible for the daily management and administrative functions of the Contract at the various facility locations from the Contractor’s perspective.
- x. Correctional-based substance abuse treatment program** – A substance abuse treatment program provided within the confines of any federal, state or local correctional facility. See COMAR 10.47.03.03 through 10.47.03.07.
- y. Counselor-** For purposes of this RFP, means an employee with academic training and/or professional experience in the treatment of substance abuse disorders. Counselors shall meet requirements identified in Section 3.5.10.
- z. Department or DPSCS** – The Maryland Department of Public Safety and Correctional Services.



- aa. Direct Treatment Staff** – All Contractor staff who perform services on-site and have contact with Participants.
- bb. DHMH** – The Maryland Department of Health and Mental Hygiene.
- cc. eMM** – eMaryland Marketplace (see IFB Section 1.8).
- dd. Issuing Office-** Department of Public Safety and Correctional Services.
- ee. Invitation for Bids (IFB)** – This Invitation for Bids solicitation issued by the Department of Public Safety and Correctional Services, Solicitation Number (Q0015010) dated November 3, 2014, including any addenda.
- ff. Key Personnel** –employees of the Contractor or subcontractor(s) identified in Section 4.4.7 as being essential to the performance of the Contract and to which the Substitution of Personnel provision set forth in Section 1.23 shall apply. Key Personnel shall include the Contract Administrator, Program Director, and Clinical Supervisors.
- gg. Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- hh. LSI-R-** The Level of Service Inventory-Revised assessment is a quantitative survey of offender attributes and offender situations relevant for making decisions about levels of supervision and treatment. The instrument’s applications include assisting in the allocation of resources, helping to make probation and placement decisions, making appropriate security level classifications, and assessing treatment progress. The Department may determine during the term of the Contract that the LSI-R assessment tool will be used. See Attachment RR.
- ii. MCI-W-** Maryland Correctional Institution for Women. One of the five (5) locations in which substance abuse treatment services will be provided. This is a multi-level security facility for females.
- jj. MCTC-** Maryland Correctional Training Center. One of the five (5) locations in which substance abuse treatment services will be provided. This facility is a medium security institution for males.
- kk. 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.
- ll. Modified Therapeutic Community (TC) Program-** Six (6) month substance abuse treatment programs provided within a correctional facility by the Contractor. The programs are based upon Cognitive Behavioral Interventions and Social Learning Theory and address criminality in addition to substance abuse.
- mm. Module-** Structured, psycho-educational treatment groups in specific content/skill areas. Modules generally utilize a cognitive behavioral format and include role-playing and homework assignments.
- nn. MTC-** Metropolitan Transition Center. One of the five (5) locations in which substance abuse treatment services will be provided. This is a multi-level security facility for males.
- oo. Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.
- pp. Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date

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

- qq. OCMS-** refers to the Offender Case Management System, a web-based system designed to capture information on inmates to assist DPSCS staff in making management decisions on inmates sentenced to a facility.
- rr. On-site** – means physically on the premises of one of the five Department’s facilities where a TC program is located.
- ss. Other Healthcare Contractors** - means any or all of the entities under contract with the Department for the specialized delivery of Medical, Mental Health or Pharmacy services to inmates under the jurisdiction of the Department. These Other Healthcare Contractors may be individually referred to in the RFP as the Medical Contractor, Mental Health Contractor and Pharmacy Contractor.
- tt. Participants** – means inmates participating in the modified Therapeutic Communities (TC) within one of the five (5) locations where substance abuse treatment being provided.
- uu. PATX-** Patuxent Institution. One of the five (5) locations in which substance abuse treatment services will be provided. This is a multi-level security facility for males.
- vv. Permanent Employee** – means staff of the Contractor that are anticipated to be employed for more than 30 days and that are expected to work on-site as any part of their work assignment. Permanent Employees includes any staff of the Contractor which typically works in or from an administrative office, including a district, regional or home office, which is expected to make on-site visitations.  
  
Any Contractor staff member that does not fit within the above definition of Permanent Employees shall be considered a “Non-Permanent Employee.”
- ww. Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment A), including being the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
- xx. Residential Substance Abuse Treatment Program (RSAT)** – Any in-patient treatment program, short or long-term, of any intensity level. See COMAR 10.47.02.06 – 10.47.02.09.
- yy. SAMIS** – Substance Abuse Management Information System –of the Maryland Alcohol & Drug Abuse Administration used to track information on treatment, admissions and discharges.
- zz. SMART System-** The Statewide Maryland Automated Record Tracking (SMART) system is a web-based tool that provides a consent-driven client tracking system for state agencies and private treatment providers. Used by treatment providers and drug courts as a management information system SMART enables a comprehensive approach for collecting substance abuse treatment data, tracking drug court client services, and analyzing program data thereby monitoring and reporting on the performance and progress of treatment providers and drug courts throughout the state. Additional information is available at: <http://www.igsr.umd.edu/SMART/about.php> and [http://adaa.dhmf.maryland.gov/Documents/content\\_documents/SMARTMANUAL/SMART\\_MANUAL\\_REVISED.pdf](http://adaa.dhmf.maryland.gov/Documents/content_documents/SMARTMANUAL/SMART_MANUAL_REVISED.pdf).

**aaa. State** – The State of Maryland.

- bbb. StateStat** –A data-based performance-measurement and management tool for state government.
- ccc. Static capacity** – The maximum amount of bed space available for substance abuse treatment in each facility. The amount of bed space available is not foreseen to change throughout this Contract.
- ddd. TAP-** Treatment Assignment Protocol. The assessment currently used by the Department of Public Safety and Correctional Services to place inmates into substance abuse treatment services. See Attachment Y.
- eee. Total Bid Price** - The Bidder’s total price for services in response to this solicitation, included in the Bid in Attachment F – Bid Form, and used in determining the recommended awardee (see IFB Section 1.15).
- fff. Veteran-owned Small Business Enterprise (VSBE)** – a business that is verified by the Center for Veterans Enterprise of the U.S. Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

**1.3 Contract Type**

The Contract resulting from this solicitation shall be a Fixed-Unit Price Contract (i.e., Labor Hour) of an Indefinite Quantity for Substance Abuse Treatment Services pursuant to COMAR 21.06.03.05A(1).

**1.4 Contract Duration**

- 1.4.1 The Contract resulting from this solicitation shall commence as of the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required (“Contract Commencement”). It is anticipated that the Contract will commence on or about January 15, 2015.
- 1.4.2 The period of time from the date of Contract Commencement through the Go-Live Date (see Section 1.2 definition and Section 1.4.3) will be the Contract “Start-up Period.” During the Start-up Period 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, anticipated to be on or about February 1, 2015, or a later date as contained in a Notice to Proceed (see Section 1.2 definition), 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 Contract Commencement to the Go-Live Date (the Start-Up period as described in Section 1.4.2) approximately two and a half years from the Go-Live Date to June 30, 2017 for the provision of all services required by the Contract and the requirements of this solicitation. This contract may be extended for two (2) periods of two years each at the sole discretion of the Department and at the prices quoted in the Financial Proposal Form for Option Years.
- 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 (see Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

## 1.5 Procurement Officer

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

Patti Tracey  
Procurement Officer  
Department of Budget & Management  
Office of the Secretary  
Division of Procurement & Policy  
45 Calvert Street, Room 148  
Annapolis, MD 21401  
Phone Number: 410.260.7918  
Fax Number: 410.974.3274  
E-mail: [Patti.Tracey@maryland.gov](mailto:Patti.Tracey@maryland.gov)

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

## 1.6 Contract Manager

The Contract Manager is:

Delores (Zola) Rowlette  
Contract Manager  
Department of Public Safety and Correctional Services  
6776 Reisterstown Rd. Suite 315-06  
Batimore, MD 21215  
Phone Number: 410-585-3533  
Fax Number: 410-764-5112  
E-mail: [dnrowlette@dpscs.state.md.us](mailto:dnrowlette@dpscs.state.md.us)

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

## 1.7 Pre-Bid Conference

A Pre-Bid Conference (the Conference) will be held on November 10, 2014, beginning at 10:00 AM Local Time, at MDOT Headquarters, 7201 Corporate Center Drive, Hanover, MD 21076 TSO Conference Room – Richard Trainor. All prospective Bidders are encouraged to attend in order to facilitate better preparation of their Bids.

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

In order to assure adequate seating and other accommodations at the Conference, please e-mail, mail, or fax to 410-974-3274 the Pre-Bid Conference Response Form to the attention of the Procurement Officer no later than 4:00 p.m. Local Time on November 6, 2014. The Pre-Bid Conference Response Form is included as **Attachment E** to this IFB. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer no later than November 5, 2014. The Department will make a reasonable effort to provide such special accommodation.

### SITE VISIT

All Bidders who wish to participate in site visits shall provide the Procurement Officer with their Name, Social Security Number and birth date by Wednesday, November 5, 2014 in order to attend the site visits. No substitutions will be permitted on the day of the tour and there will be NO appeals if a visitor is denied entrance. This information will enable Security Staff in the facility to do a brief background check that will allow them to issue a one-day pass for the tour.

A Security Operations Unit (SOU) Point of Contact will meet with the Bidders and the facility's Point of Contact (POC) at the main entrance at each facility at the designated time. Each facility will have the POC and at least one escort officer to take the vendors on the tour.

Site visits shall be coordinated and scheduled by the Procurement Officer at the following locations:

1. Metropolitan Transition Center (MTC) located at 954 Forrest Street, Baltimore, Maryland  
Wednesday, November 12, 2014 @ 9:00 AM (Local Time)
2. Central Maryland Correctional Facility (CMCF) located at 7301 Buttercup Road, Sykesville, Maryland  
Wednesday, November 12, 2014 @ 11:30 AM (Local Time)
3. Patuxent Institution (Patuxent) located at 7555 Waterloo Road, Jessup, Maryland  
Wednesday, November 12, 2014 @ 1:30 PM (Local Time)
4. Maryland Correctional Institution for Women (MCI-W) located at 7943 Brockbridge Road, Jessup, Maryland  
Wednesday, November 12, 2014 @ 2:30 PM (Local Time)
5. Maryland Correctional Training Center (MCTC), Including RCI and MCIH located at 18800 Roxbury Road, Hagerstown, Maryland  
Thursday, November 13, 2014 @ 9:00 AM (Local Time)

Site visits will not be used to answer questions about the IFB; rather the purpose of the site visit is to familiarize potential Bidders with the geography and physical layout of the facilities. Questions about the IFB should be submitted to the Procurement Officer are detailed in Section 1.9 below.

In order to ensure adequate preparation and accommodations for the site visits and tours, it is requested that no more than two (2) representatives for each potential Bidder attend.

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

1. No communication devices (cell phones, beepers, Blackberries, computers, etc.) will be admitted to any Facility. The same applies to any weapons or cameras.
2. No purses, bags, lunches, briefcases, or other carry-in materials more than a pad of paper and a writing instrument will be permitted in any Facility. (Time will not permit visitors to apply for and get a locker for these items during the brief time vendor representatives will be on site).
3. There will be no clothing items made from denim worn in the facilities.
4. Other forbidden clothing items include open-toed shoes, sleeveless blouses not covered by a jacket, underwire bras (visitors WILL be asked to remove them so they should be avoided), shorts, tee-shirts, and jeans of any material.
5. No sundries can be taken into the facilities including tobacco, soda, water, other drinks, gum, candy, and snacks. If it is necessary to have some sort of food because of a medical condition, it must be carried in a clear plastic baggie for inspection by security on arrival at the Facility.

All persons participating in a tour must carry a picture ID with them (such as a driver's license). Additionally, all persons visiting should be aware that they will be searched, including electronic screening.

Some of the locations will require the touring vendors to move their cars from Facility to Facility. It is recommended that vendors make plans to carpool as parking may be difficult at some locations, especially in the Baltimore area.

Directions to the DPSCS facilities can be found on the web at:

<http://dpscs.maryland.gov/locations/prisons.shtml>

## **1.8 eMarylandMarketplace**

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

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DPSCS website ([www.dpscs.state.md.us](http://www.dpscs.state.md.us)) and possibly other means for transmitting the IFB and associated materials, the solicitation and summary of the Pre-Bid Conference, Bidder questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM.

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

## **1.9 Questions**

Written questions from prospective Bidders will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. Questions to the Procurement Officer shall be submitted via e-mail to the following e-mail address: [Patti.Tracey@maryland.gov](mailto:Patti.Tracey@maryland.gov). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Bidders attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer (see above email address) in a timely manner prior to the Bid 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 Bid 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 IFB in sufficient time for the answer to be taken into consideration in the Bid.

## **1.10 Procurement Method**

This Contract will be awarded in accordance with the Competitive Sealed Bidding method under COMAR 21.05.02.

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

Bids, in the number and form set forth in Section 4.4 "Required Bid Submissions," must be received by the Procurement Officer at the address listed on the Key Information Summary Sheet, no later than 2:00 PM Local Time on December 17, 2014 in order to be considered.

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

Bids may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set for the opening.

**Bids may not be submitted by e-mail or facsimile.**

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

### **1.12 Multiple or Alternate Bids**

Multiple and/or alternate Bids will not be accepted.

### **1.13 Receipt, Opening and Recording of Bids**

- 1.13.1 Receipt. Upon receipt, each Bid and any timely modification(s) to a Bid shall be stored in a secure place until the time and date set for bid opening. Before Bid opening, the State may not disclose the identity of any Bidder.
- 1.13.2 Opening and Recording. Bids and timely modifications to Bids shall be opened publicly, at the time, date and place designated in the IFB. The name of each Bidder, the total Bid price, and such other information as is deemed appropriate shall be read aloud or otherwise made available.
- 1.13.3 The Bid Opening shall be December 17, 2014 at 2:30 PM at 45 Calvert Street, Room 147, Annapolis, MD 21401

### **1.14 Confidentiality of Bids**

The Bids shall be tabulated or a Bid abstract made. The opened Bids shall be available for public inspection at a reasonable time after Bid opening, but in any case before contract award, except to the extent the Bidder designates trade secrets or other proprietary data to be confidential as set forth in this solicitation. Material so designated as confidential shall accompany the Bid and shall be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid, including the Total Bid Price.

For requests for information made under the Public Information Act (PIA), the Procurement Officer shall examine the Bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by the Office of the Attorney General.

### **1.15 Award Basis**

The Contract shall be awarded to the responsible Bidder submitting a responsive Bid with the most favorable Total Bid Price (as referenced in COMAR 21.05.02.13) for providing the goods and services as specified in this IFB. The most favorable Total Bid Price will be the lowest price total on **Attachment F** - Bid Form.

### **1.16 Tie Bids**

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

### **1.17 Duration of Bid**

Bids submitted in response to this IFB are irrevocable for 120 days following the closing date of the Bids. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

### **1.18 Revisions to the IFB**

If it becomes necessary to revise this IFB before the due date for Bids, the Department shall endeavor to provide addenda to all prospective Bidders that were sent this IFB or which are otherwise known by the Procurement Officer to have obtained this IFB. In addition, addenda to the IFB will be posted on the Department's procurement web page and through eMM. It remains the responsibility of all prospective Bidders to check all applicable websites for any addenda issued prior to the submission of Bids.

Acknowledgment of the receipt of all addenda to this IFB issued before the Bid due date shall be included in the Transmittal Letter accompanying the Bidder's Bid. Failure to acknowledge receipt of an addendum does not relieve the Bidder from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Bid to be rejected as being non-responsive to the requirements of the IFB.

### **1.19 Cancellations**

The State reserves the right to cancel this IFB, or accept or reject any and all Bids, in whole or in part, received in response to this IFB.

### **1.20 Incurred Expenses**

The State will not be responsible for any costs incurred by any Bidder in preparing and submitting a Bid or in performing any other activities related to this solicitation.

### **1.21 Protest/Disputes**

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

### **1.22 Bidder Responsibilities**

The selected Bidder shall be responsible for rendering services for which it has been selected as required by this IFB. All subcontractors shall be identified and a complete description of their role relative to the Bid shall be included in the Bidder's Bid. 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 IFB (see Section 1.33 "Minority Business Enterprise Goals" and Section 1.41 "Veteran-Owned Small Business Enterprise Goals.").

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

### **1.23 Substitution of Personnel**

If the solicitation requires that a particular individual or personnel be designated by the Bidder to work on the Contract, any substitution of personnel after the Contract has commenced must be approved in writing by the Contract Manager prior to the substitution. If the Contractor substitutes personnel without the prior written approval of the Contract Manager, the Contract may be terminated for default which 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 Bid in response to this IFB, a Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this IFB and the Contract, attached herein as **Attachment A**. Any exceptions to this IFB or the Contract must be raised prior to Bid submission. **Changes to the solicitation, including the Bid Form or Contract, made by the Bidder may result in Bid rejection.**

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

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

#### **1.26 Contract Affidavit**

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

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

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

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

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

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

#### **1.29 False Statements**

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

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

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

- 1.29.2 A person may not aid or conspire with another person to commit an act under subsection (1) of this section.
- 1.29.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

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

By submitting a response to this solicitation, the Bidder/Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$100,000. The selected Bidder/Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at: [http://comptroller.marylandtaxes.com/Government\\_Services/State\\_Accounting\\_Information/Static\\_Files/APM/gadx-10.pdf](http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gadx-10.pdf)

### **1.31 Prompt Payment Policy**

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

### **1.32 Electronic Procurements Authorized**

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

- (b) any amendments;
- (c) pre-Bid/Proposal conference documents;
- (d) questions and responses;
- (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
- (f) notices of award selection or non-selection; and
- (g) the Procurement Officer's decision on any Bid protest or Contract claim.

2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:

- (a) ask questions regarding the solicitation;
- (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
- (c) submit a "No Bid/Proposal Response" to the solicitation.

3. The Procurement Officer, the Contract Manager, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Manger.

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

- 1. submission of initial Bids or Proposals;
- 2. filing of Bid Protests;
- 3. filing of Contract Claims;
- 4. submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
- 5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder/Offeror be provided in writing or hard copy.

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

**1.33 Minority Business Enterprise Goal and Subgoals**

**1.33.1 Establishment of Goal and Subgoals.**

An overall MBE subcontractor participation goal of ten (10) % of the total contract dollar amount has been established for this procurement.

There are no MBE subcontractor participation subgoals for this procurement.

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

- Attachment D-1A** MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule **(must be submitted with Bid/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

<b>Attachment D-4A</b>	Prime Contractor Paid/Unpaid MBE Invoice Report
<b>Attachment D-4B</b>	MBE Prime Contractor Report
<b>Attachment D-5</b>	Subcontractor/Contractor Unpaid MBE Invoice Report

- 1.33.3 A Bidder/Offeror shall include with its Bid/Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:
- (a) The Bidder/Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
  - (b) The Bidder/Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE Prime (including a Prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
  - (c) A Bidder/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 a Bidder/Offeror fails to submit a completed Attachment D-1A with the Bid/Proposal as required, the Procurement Officer shall determine that the Bid is non-responsive or the Proposal is not reasonably susceptible of being selected for award.***

- 1.33.4 Bidders/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 awardee or from the date of the actual award, whichever is earlier, the Bidder/Offeror must provide the following documentation to the Procurement Officer.
- (a) Outreach Efforts Compliance Statement (**Attachment D-2**).
  - (b) MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**).
  - (c) If the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.
  - (d) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

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

- 1.33.6 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:
- (a) **Attachment D-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report).
  - (b) **Attachment D- 4B** (MBE Prime Contractor Report, *if applicable*)
  - (c) **Attachment D-5** (MBE Subcontractor/Contractor Unpaid MBE Invoice Report).
- 1.33.8 A Bidder/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 awardee 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 Bidder/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 Bid/Proposal for order of precedence purposes (see Contract – **Attachment A**, Section 2.1).
- 1.33.10 The Bidder/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**, Section 32).
- 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:
- (a) Submit to the Department’s designated representative by the 10th of the month following the reporting period:
    - i. 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
    - ii. (If Applicable) An MBE Prime Contractor Report (**Attachment D-4B**) identifying an MBE Prime’s self-performing work to be counted towards the MBE participation goals.
  - (b) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit to the Department’s 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.

- (c) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, 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.
- (d) Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- (e) Upon completion of the Contract and before final payment and/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.

1.33.13 Contractor Assistance: Contractors requiring assistance in obtaining MBE Program information should contact the Governor's Office of Minority Affairs (GOMA), 6 St. Paul Street, Suite 1502, Baltimore, Maryland 21202 or phone 410 767-8232, Toll Free: 877 558-0998. GOMA's website address is <http://www.mdminoritybusiness.com/index.html>.

Contractors requiring assistance in locating certified MBEs are encouraged to search the MBE Directory on the Maryland Department of Transportation's (MDOT) website. Contractors can contact the MDOT, Minority Business Enterprise Office at 7201 Corporate Center Drive, P.O. Box 548, Hanover, MD 21076, or phone In State (410) 865-1142 or toll free 1-888-713-1414. MDOT's website is <http://www.mdot.state.md.us/>.

Contractors requiring assistance in completing the Department's MBE Forms should contact the MBE Office. The contact information is 6776 Reisterstown Road, Suite 208, Baltimore, Maryland 21215, phone 410-585-3743 or by email at [mbe@dpscs.state.md.us](mailto:mbe@dpscs.state.md.us).

## **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.

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

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 Bidder/Offeror must identify in its Bid/Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.

- If 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.**

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### **1.35 Federal Funding Acknowledgement**

This Contract is partially funded by the Residential Substance Abuse Treatment (RSAT) for State Prisoners Program, administered by the Bureau of Justice Assistance of the U.S. Department of Justice. The Contractor shall comply with all federal terms and conditions and perform reporting and any other compliance requirements as directed by the Contract Manager. See Attachment H.

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

Bidders/Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment I**) and submit it with their Bid/Proposal. All Bidders/Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful 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 Bidders/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 Bid/Proposal.

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

A HIPAA Business Associate Agreement is required for this procurement.

### **1.39 Nonvisual Access**

By submitting a Bid/Proposal, the Bidder/Offeror warrants that the information technology offered under the Bid/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 Bidder/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.

See COMAR 21.05.08.05 and [www.doit.maryland.gov](http://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 Goals**

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

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

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

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

This solicitation does not require a DHR Hiring Agreement.

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

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

### **1.45 Liquidated Damages**

1.45.1 It is critical to the success of the State’s programs that substance abuse treatment services be provided in accordance with the agreed upon schedules. It is also critical to the success of the State’s programs that the Contractor operates in an extremely reliable manner.

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, reporting and attendance of Contractor personnel for scheduled work and provision of services to the State agencies served by this Contract. 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 OO, Substance Abuse Treatment Liquidated Damages Table, and the Contractor agrees that in the event of any such failure of performance, the Contractor shall pay such amount as liquidated damages and not as a penalty. For amounts due the State as liquidated damages, the State, at its option, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item as further described in Attachment OO.

1.45.2 The Department will not assess or invoke liquidated damages for any occasion of Contract non-performance otherwise subject to liquidated damages if such nonperformance is determined by the DPSCS Contract Manager to have resulted from circumstances beyond the control of the Contractor.

1.45.3 For 90 days from the Go Live Date (See 1.4.3) the Department will not assess any of the liquidated damages described in Attachment OO.

1.45.4 The maximum period of time for which Liquidated Damages may be invoked shall be as follows:

1.45.4.1 One (1) month when the circumstances/information upon which the damages will be based are either continuously available for review by, or are reported monthly to, the DPSCS Contract Manager.

1.45.4.1.1 This one month period will apply for each new monthly report or newly available monthly information. i.e., based upon information provided or available for the month of February of a given Contract year liquidated damages, if warranted, may only be assessed for the month of January of that same Contract year. However, liquidated damages, if warranted, may again be assessed for the month of February of that same Contract year if information provided or available for the month of March of that same Contract year again evidences that the circumstance which triggered the assessment of liquidated damages in February still exists in March.

1.45.4.2 Three (3) months when the circumstance/information upon which the damages will be based is only provided or available on a quarterly or semi annual (6 months) basis.

1.45.4.3 Six (6) months when the circumstance/information upon which the damages will be based is only discovered via investigation of an ARP or other type of complaint, including a whistleblower type of complaint from current or former staff of the Contractor.

1.45.4.4 Unlimited for any situation when it is determined that required, applicable information has been intentionally falsified or omitted to conceal the failure of the Contractor to comply with Contract requirements.

1.45.5 Liquidated damages shall be assessed if the following occur (liquidated damages are outlined in Attachment OO):

- a. The Contractor fails to submit the DPSCS End of Month report (Attachment Q) as detailed in Section 3.14.2 A;

- b. The Contractor fails to submit the DPSCS TC Staff Roster (Attachment R), Monthly Facility Staffing Schedule (Attachment T), or Daily and Weekly Census Report (Attachment S) by the required due dates as detailed in Section 3.14.2 B & C;
- c. The Contractor's staff fails to wear required uniform as detailed in Section 3.8;
- d. The Contractor fails to submit any report less than a 97% level of accuracy detailed in Section 3.14.4 of the IFB;
- e. The Contractor fails to maintain a 96% staffing level as detailed in Section 3.5.16;
- f. The Contractor fails to maintain credentialing documentation on all Clinical Supervisors and Counselors as described in Section 3.5.7;
- g. The Contractor fails to provide appropriate representatives to serve on and attend all committee meetings as required by DPSCS as described in Section 3.14.5.2;
- h. The Contractor fails to provide clinically accurate file documentation on each Participant in treatment as per COMAR 10.47.01.08. See Section 3.4.20.1.
- i. The Contractor fails to provide equipment inventory reporting as required in Section 3.9;
- j. Failure of existing staff to attend in-service refresher training within 30 days of anniversary of employment date See Section 3.6.3.2;
- k. Failure of new Permanent Employee to attend up to 40 hours Security Orientation program before working on-site See Section 3.6.3.1;
- l. Failure of new Non-permanent Employees working on-site to attend a 30 minute basic security and general procedures orientation before working on-site See Section 3.6.5;
- m. Failure of the Contractor to implement and maintain CQI program as described in Section 3.15 and,
- n. Failure of the Contractor to address ARP, Grievances and Complaints in a timely manner as described in Section 3.10.
- o. The Contractor shall submit all required data to SMART completely and within seven (7) days of each Participant's admission with a minimum accuracy level of 99%. See Section 3.4.20.2 as per COMAR 10.47.03.07.

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## **SECTION 2 – MINIMUM QUALIFICATIONS**

### **2.1 Bidder Minimum Qualifications**

The Bidder must provide proof with its Bid that the following Minimum Qualifications has been met:

- 2.1.1 The Bidder shall have a minimum of three (3) years' experience managing a certified or accredited community and/or correctional-based substance abuse treatment program. As proof of meeting this minimum qualification, the Bidder shall provide with its Bid three (3) references able to attest to the Bidder's experience managing a certified or accredited community-based or correctional-based substance abuse treatment program.
- 2.1.2 The Bidder shall have one year of experience within the past five (5) years managing a certified Therapeutic Communities Program. As proof of meeting this minimum qualification, the Bidder shall provide with its Bid copies of certifications or accreditations from within the past five (5) years that the Bidder received from DHMH's Office of Health Care Quality (or equivalent certification or accreditation from the respective state agency or agencies of the state(s) in which the programs were conducted) for the substance abuse program(s) the Bidder managed. In addition, Bidders shall include at least one reference that includes the one year of experience in the past five (5) years managing a certified Therapeutic Communities Program.

The experience of various personnel of the Bidder while employed by entities or organizations other than the Bidder may not be considered in determining whether the minimum qualification is met by the Bidder.

**Bidders not meeting the minimum qualifications shall be deemed non-responsible.**

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## SECTION 3 – SCOPE OF WORK

### **3.1 Background and Purpose**

3.1.1 The State is issuing this solicitation to obtain Substance Abuse Treatment Services for the following correctional facilities within the Department of Public Safety and Correctional Services:

1. The Central Maryland Correctional Facility (CMCF);
2. The Maryland Correctional Institution for Women (MCI-W);
3. The Maryland Correctional Training Center (MCTC);
4. The Metropolitan Transition Center (MTC); and
5. The Patuxent Institution (PATX).

The Contractor shall also provide self-help monitor services at the Maryland Correctional Training Center (including the pre-release annex Harold E. Donnel Building and Emergency Housing Unit (HED/EHU)), Roxbury Correctional Institute (RCI), and Maryland Correction Institute – Hagerstown (MCI-H) all located in Hagerstown, MD. Inmates participating in these self-help groups may or may not be TC Participants. See Section 3.7.

Within the scope of services, the Contractor will recognize Participants' and inmates', if applicable, needs for mental health services and other services such as educational and vocational training, social work, case management and religious services, and refer Participants to those services.

3.1.2 The Department's Substance Abuse Treatment programs operate as Modified Therapeutic Communities (TC). These are six (6) month cycle programs with new cycles beginning the first Wednesday of each month. The central philosophy embodied in the TC program is that substance abuse is often symptomatic of underlying psycho/social problems and cannot be effectively addressed by focusing solely on chemical dependency. The TC approach is designed to attend to all major aspects of the Participant's lifestyle, criminogenic thinking and behavior. The TC program's philosophy is based on several premises:

1. Drug/alcohol abuse and/or dependence is a disease that is associated with devastating psychosocial problems, including recurrent involvement with the criminal justice system.
2. There exists a clear and obvious relationship between drug/alcohol abuse/dependency and crime.
3. Substance abusing and/or dependent criminals who participate in prison-based treatment have a greater likelihood of success upon their release from prison.
4. Treatment does not have to be voluntary in order to be effective.
5. The focus of treatment using a TC model is global. It emphasizes the application of cognitive-behavioral techniques, modeling and behavior modification in order to develop a reasonable drug-free lifestyle.
6. The TC milieu allows for the development and demonstration of positive, pro-social attitudes and behaviors in response to the types of stressors, interactions, and rewards faced by the individual in the "real world."

3.1.3 The goal of the various TC programs is to enhance public safety through the treatment of substance abusing and/or dependent inmates. In stressing remediation, cognitive restructuring and the development of pro-social values, the programs provide the Participants with the skills needed to return to the community as drug-free, responsible, and productive members of society. Equally

important is each program's role in assessing the inmates' needs, upon release, for continued monitoring and support in the community in order to reduce the risks of recidivism and relapse.

- 3.1.4 In a correctional environment, compliance with COMAR 10.47.02.08 (Clinically Managed High Intensity Treatment Level III.5) and COMAR 10.47.03.07 (Correctional Level III.5) is critical. The traditional TC concept of peer-led and peer-enforced treatment and behaviors are not appropriate for this environment. However, program Participants will be housed together and, to the extent possible, separated from the rest of the inmate population at the institutions.
- 3.1.5 Dealing with a criminal justice population requires treatment programs suited in content and modality to this population. Contractors shall operate programs that conform to the "What Works" literature (National Institute on Drug Abuse "Principles of Drug Abuse Treatment for Criminal Justice Populations: A research-based Guide" NIH Publication No. 06-5316. Revised January 2012; American Correctional Association "Performance-Based Standards for Therapeutic Communities" Aug 2005; "Therapeutic Community Standards in Correctional Settings") [http://www.drugabuse.gov/sites/default/files/podat\\_cj\\_2012.pdf](http://www.drugabuse.gov/sites/default/files/podat_cj_2012.pdf).
- 3.1.6 The Contractor's programs shall achieve and maintain compliance with the Correctional Program Checklist (CPC, Latessa) and the standards of the Therapeutic Communities of America (TCA) and the World Federation of Therapeutic Communities (WFTC) [http://www.treatmentcommunitiesofamerica.org/index.php?option=com\\_content&view=article&id=5&Itemid=16](http://www.treatmentcommunitiesofamerica.org/index.php?option=com_content&view=article&id=5&Itemid=16). The philosophy of the Department is to operate "drug free" programs; however, it is possible that a Participant in these programs may be dually treated with a medication assisted therapy program within the Department.
- 3.1.7 The Department realizes that a prison environment is highly structured and does not simulate life in the community such as the inmate will confront upon release from incarceration. Thus, it is anticipated that program Participants will require further treatment following release to the community. Contractor shall conduct re-entry planning and provide referrals for community services, in collaboration with a multi-discipline team. The Contractor shall recommend the most appropriate community service providers for referral based upon the following criteria:
- a. The inmate's needs and level of care;
  - b. The anticipated place of residence of the inmate and means of transportation;
  - c. The availability of providers within the zip code of the inmate's anticipated residence or closed proximity;
  - d. In the event that the inmate is supervised by Department of Parole and Probation (DPP) upon release, the Department reserves the right to determine the appropriate community service provider;
  - e. After-care Counselors working with inmates being released to the community would follow the Grant Application RSAT Aftercare. See Attachment EE
  - f. Inmates not receiving after care services will receive a list of possible providers who meet the criteria above (i.e. can provide services that meets the assessed level of care within the zip code area where the inmate will reside).
- 3.1.8 In 1996, the DHMH and DPSCS submitted a *Report on Alcohol and Drug Treatment of Inmates* to the Maryland General Assembly. Based on a review of the national literature and existing Maryland efforts, findings from the report indicate:

- a. Successful alcohol and drug treatment of offenders is cost effective and results in significant public safety benefits.
- b. Incarceration provides an opportunity to reach a population that, most likely, would not otherwise enter alcohol and drug abuse treatment.
- c. Treatment is best targeted for the final phase of an inmate's sentence prior to the inmate's release.
- d. To successfully impact the alcohol and drug-involved offender, the institutional and community phases of treatment must be linked.
- e. A continuum of services is needed that includes community-based treatment linked with supervision rules/sanctions, regular urine testing, and a range of support services (e.g., education, mental health, employment).
- f. The longer that offenders stay in step-down phased treatment, the more likely they will succeed in terms of reduced crime, reduced drug usage, and increased employment.
- g. Prison-based therapeutic environments, with well-defined programmatic structures, administrative support, a self-contained facility within the prison, and appropriate aftercare represent the most successful approach for most alcohol and drug-involved offenders.
- h. Ongoing research and evaluation must be conducted, reviewed, and applied to ensure the most effective treatment strategies are being used and to simultaneously minimize correctional and health care costs related to the alcohol and drug-involved offender.

3.1.9 The Department's treatment philosophy focuses on successfully preparing offenders to return to their communities. As substance abuse treatment generally has been cited as a primary tool in combating criminal behavior, such programs are at the heart of a re-entry effort. Addictions counselors play a key role in the Department's substance abuse program. These counselors deliver group therapy akin to an outpatient program over a six-month program utilizing the Addiction Treatment Protocol (ATP) developed in-house, but based on a Federal cognitive model. In accordance with the findings set forth in Section 3.1.8, however, various intensities of treatment are required in order to be able to address the specific needs of the inmate. Thus, in addition to the group ATP treatment program, modified therapeutic communities are necessary for those inmates with more intensive substance abuse issues. At the MCTC TC program for instance, the TC program Participants and ATP Participants have joint graduation ceremonies. It is possible that a Participant could complete both programs at different times over the course of his or her incarceration.

3.1.10 The Department currently uses the Treatment Assignment Protocol (TAP) for assessments. The goal of the assessment process is to obtain a comprehensive picture of the inmate in a number of areas that include criminality, substance abuse, psychological issues, and social history. Administration, scoring and interpretation of any screening or assessment instrument are performed in accordance with the American Psychological Association's *Standards for Educational and Psychological Testing*. The Department, as of July 1, 2015, will have transitioned to use of the Level of Service Inventory-Revised (LSI-R) assessment (See Attachment RR), which includes a quantitative survey of offender attributes and offender situations relevant for making decisions about levels of supervision and treatment. The instrument's applications include assisting in the allocation of resources, helping to make probation and placement decisions, making appropriate security level classifications, and assessing treatment progress.

3.1.11 The Department has a separate contract for substance abuse treatment assessment services ("the Assessments contract"). The Assessments contractor performs substance abuse screenings and assessments on inmates across the majority of DPSCS institutions prior to an inmate entering either ATP or TC and provides interpretation of specified clinical instruments to measure the particular inmate's level of need and suitability for treatment. The Assessments contractor will provide the

substance abuse treatment Contractor with access to TCU DSII and TAP documents through a shared Department drive and specific scores through OCMS access. Accordingly, the Contractor will not routinely perform substance abuse screenings and assessments as part of its TC program services, however, the Contractor will have to perform those tasks identified in Section 3.4.12.1.1.2.

3.1.12 Eligible inmates are those inmates within 24 months of anticipated release who need intensive substance abuse treatment, as evidenced by a score of 3 or higher on the TCU DS II and a score of 3 or 4 on the TAP. They will be scored as low moderate, moderate, and moderate high risk using the Department's current risk instrument. Other criteria of eligibility are:

1. Maryland residency;
2. The inmate is not incarcerated for a life or life without parole sentence;
3. No outstanding warrants or detainers (specifically: no highest or high categories; no out of state, no unadjudicated felony charges/detainers or violation of Probation/Parole) appear on the inmate's record;
4. Shall be removed from segregations at least 30 days; unless found guilty of a 100 series infractions (with the exception of CDS) which then must be removed from segregation for 90 days; and
5. The inmate is not better suited by another DPSCS treatment program due to Mental Health instability, etc.

3.1.13 The Department has limited federal grant funds to provide aftercare services to inmates successfully completing the TC programs at CMCF, PATX and MCTC. Inmates who remain incarcerated following completion of the TC programs may receive these services for up to one (1) year or until released from incarceration, whichever time period is earlier. The Department will provide office or work space for Aftercare Counselors/Coordinators within the TC program units of these facilities. Inmates receiving aftercare services are not housed in the TC units, and receive aftercare services in other areas of the pre-release facilities.

## **3.2 General Provisions and Other Requirements**

3.2.1 Substance Abuse Treatment Services is a multi-disciplinary services system for the delivery of care represented by this IFB, together with the other contracts (Medical, Mental Health, Assessment, etc.) requires collaboration between Other Healthcare Contractors, sub-contractors, Custody, and the Department overseeing the Contract. In order to meet the total needs of the individual inmate in a timely, safe, and holistic manner, collegial relationships are to be fostered and maintained throughout the duration of the Contract.

3.2.2 An integrated system requires that there be collegial relationships between disciplines regardless of employer or contract holder. That integration extends to the Department and it is expected that the Contractor shall share information openly with the Department substance abuse treatment services management and staff to ensure the Department is aware of any and all positive progress, as well as any adverse situations that may arise throughout the term of the Contract. Accordingly, Contractor staff should be able to speak openly with Department representatives without filter or fear of retribution.

3.2.2.1 Success in the provision of substance abuse treatment services in a multi-disciplinary model in partnership with the Department is dependent on communication. As described within this IFB, the Department depends on regular meetings on an array of substantive issues to address

inmate needs. The Contractor shall provide appropriate representatives to serve on and attend all committee meetings as required by the Department. (See section 3.14.10.2).

3.2.3 The Department Contract Manager has the sole authority to order the Contractor to take specific actions that the Department deems administratively appropriate that are consistent with the terms of the Contract.

3.2.3.1 The Department Substance Abuse Director shall have full and final authority to direct any clinical action under the Contract.

3.2.3.2 The Department Contract Manager and Substance Abuse Director, at their discretion, may designate the DPSCS Deputy Secretary or other designee to utilize such authority as described above.

3.2.4 Any time a specific Department position is listed throughout the IFB (e.g. Contract Manager or Substance Abuse Treatment Services Director) such identification shall be construed to include a designee, which shall be identified in writing to the Contractor by the person holding the position. Such written identification will typically occur via email.

3.2.5 The Contractor must fully cooperate with the Department to implement the requirements of any Memorandum of Understanding (MOU) or Agreement entered into between the Department and any entity concerning the delivery of inmate substance abuse treatment services to include research projects.

### **3.3 Description of Facilities and Programs**

3.3.1 The Contractor shall provide services for TC programs in five (5) correctional institutions:

1. Central Maryland Correctional Facility (CMCF): A 255-bed static capacity modified TC for men, formerly known as Residential Substance Abuse Treatment (RSAT), located at 7301 Buttercup Road, Sykesville, Maryland.
2. Maryland Correctional Institution for Women (MCI-W): A 105-bed static capacity modified TC for women, formerly known as Women In Transition (WIT), located at 7943 Brockbridge Road, Jessup, MD.
3. Patuxent Institution (PATX): An 82-bed static capacity modified TC for men, formerly known as Regimented Offender Treatment Center (ROTC), located at 7555 Waterloo Road, Jessup, Maryland.
4. Maryland Correctional Training Center (MCTC): A 90-bed static capacity modified TC for men located at 18800 Roxbury Road, Hagerstown, Maryland.
5. Metropolitan Transition Center (MTC): A 74-bed static capacity modified TC for men, formerly known as the Intensive Treatment Program (ITP), located at 954 Forrest Street, Baltimore, Maryland.

3.3.2 **The Central Maryland Correctional Facility (CMCF) Program:**



The CMCF program serves inmates within 24 months of anticipated release who have histories of severe substance use as indicated by the Treatment Assignment Protocol (TAP)

This program was initiated in 1996. Since that time, the program has expanded and is an integral part of the Department of Public Safety and Correctional Services' (DPSCS) substance abuse continuum of care system. A static capacity of 255 beds is anticipated during the term of the contract.

The program is limited to individuals who qualify for a minimum-security classification which precludes the referral of a significant number of inmates.

### 3.3.3 **The Maryland Correctional Institution for Women (MCI-W) Program**

The MCI-W program was established to address the need at MCI-W for an intensive treatment program for female inmates. It is the successor program to the Friends/MCI-W Drug Treatment Project (the National Institute on Drug Abuse (NIDA) grant) that was funded as part of the NIDA Patuxent Women's Project from 1995 through May 1999.

A static capacity of 105 beds for female inmates is anticipated during the term of the contract. All inmates served by the MCI-W program are within 24 months of anticipated release and have severe substance abuse histories as indicated by the TAP.

MCI-W is a multi-level security facility for adult women. MCI-W receives all adult female inmates within DPSCS serving sentences from six (6) months to life.

The NIDA grant showed that treatable problems with recurring criminal behavior and substance abuse that involve personality disorders and other psychological dysfunctions are very common within the MCI-W population. The original NIDA grant showed that the application of a number of treatment principles led to a model that out-performed the traditional prison modified therapeutic community. The principles were:

1. A clear focus on public safety in considering all treatment decisions and on effective teamwork with other MCI-W departments.
2. Attunement to the particular needs of female inmates focusing on the unique pathways to crime that occur with women, trauma histories, and areas such as parenting and women's empowerment.
3. Assessment guided treatment planning and delivery, which tailors services to the inmate's history, motivational level, mental health issues and criminality.
4. Coordinated with other MCI-W departments a dual-diagnosis focus that simultaneously addresses symptoms of criminality, psychological dysfunction, and substance abuse.
5. An adequate intensity of treatment. The NIDA grant confirmed that the treatment effect in terms of reduced recidivism required a minimum of six months in treatment.
6. Motivation enhancement. Research has shown that the Motivation Enhancement Therapy paradigm leads more people into successful treatment episodes.
7. Separation of authority from clinical expertise for the purpose of encouraging the inmates to address authority issues.
8. Ongoing professional training.

This project provided empirical evidence that measurable improvement within the MCI-W sample could be obtained through applying a modified co-occurring disorder focus in treatment.

### **3.3.4 The Patuxent (PATX) Program:**

The PATX Program, previously known as the ROTC Program, was initially a six-week residential program component for the Correctional Options Program for both men and women. The target population was violators immediately returned from the community in need of a treatment infusion to address relapse. However, the Program has evolved to be populated primarily by inmates preparing for re-entry after an extended period of confinement. As a result, a program change extended the program to four (4) months. For this contractual period, the program will be six (6) months in length. The program serves only male inmates. A static capacity of 82 beds is anticipated during the term of the contract. All inmates served by the PATX program are within 24 months of an anticipated release (including but not limited to an anticipated favorable initial parole hearing or rehearing; restoration of good conduct credits upon completion of the program; mandatory release; delayed release; immediate release) and have severe substance abuse histories as indicated by the TAP.

### **3.3.5 The Maryland Correctional Training Center (MCTC) Program:**

The MCTC program is six (6) months in length and provides services to male inmates in a medium-security institution. A static capacity of 90 beds is anticipated during the term of the contract. All inmates served by the MCTC program are within 24 months of anticipated release and have severe substance abuse histories as indicated by the TAP.

### **3.3.6 The Metropolitan Transition Center (MTC) Program:**

The MTC program is six (6) months in length and provides services to male inmates in a medium-security institution. A static capacity of 74 beds is anticipated during the term of the contract. All inmates served by the MTC program are within 24 months of anticipated release and have severe substance abuse histories as indicated by the TAP.

### **3.3.7 Contractor's On-Site Space:**

The Department will make available suitable space within each facility for the positions identified on Sections 3.5.12 and 3.7.1. Suitable space is defined as an area that affords reasonable privacy and security and is configured to allow individual interviews. The Department cannot provide on-site office space or work areas for any other staff of the Contractor.

## **3.4 Scope of Work - Requirements**

The Contractor shall:

3.4.1 Obtain and maintain all required Federal and State licenses and certificates, and obtain program certification and meet all requirements of the ADAA Office of Healthcare Quality set forth in COMAR Title 10.47.03.05 for a correctional level III.5 Program. The TC programs shall be subject to regular surveys and audits by the ADAA. The Contractor shall apply for program certification within thirty (30) days of the Go-Live Date. The Contractor shall provide the Contract Manager with a copy of the application and proof of delivery to the Office of Healthcare Quality within forty-five (45) days of the Go-Live Date.

3.4.2 Pay any fees associated with licenses and/or certificates required by any licensing board or agency.

- 3.4.3 At a minimum, meet staffing requirements for all modified TC programs and provide all program services, including referral services, for a Correction Level III.5 Program in accordance with COMAR 10.47.03.07.
- 3.4.4 Provide a Total Milieu for each TC. A Total Milieu is the total environment surrounding the Therapeutic Community. It shall include morning, evening and community meetings to provide additional Participant contact. Examples include morning and evening house meetings; phased format; job assignments; seminars; group and individual counseling; homework; recreation; and personal time.
- 3.4.4.1 Ensure the Total Milieu offers, at minimum, the following common attributes which are considered standard for a TC:
- a. Central place of group meetings
  - b. Participants having a therapeutic role (e.g. leadership roles, progressive education)
  - c. Shared values and beliefs
  - d. Communalism- more like a boisterous family
  - e. Bringing private events out into the public
  - f. Maximize the sharing of information
  - g. Build a sense of cohesion and unity
  - h. Provide a forum for feedback
  - i. Sharing work that contributes to the daily life of the community- not work to keep the Participants busy through the use of a structure board
  - j. Building the community
  - k. Building an experience of social responsibility
  - l. Provide an environment for viewing patterns of interpersonal relationships
  - m. Peer support
  - n. Improved self-esteem
  - o. Development of mutual respect
  - p. Ensure everyone sees themselves and each other as vital parts of the whole
  - q. Simultaneous development of social responsibility along with personal responsibility
  - r. Environment includes display and demonstration of daily program schedule, structure boards, and supportive therapeutic posters
- 3.4.5 Utilize the Mental Health Screening Form- III (MHSF III) (See Attachment Z) and Motivation Assessment, University of Rhode Island Change Assessment (URICA) (See Attachment CC). The Department may direct the Contractor to introduce alternate or additional instrumentation. This information is to be entered into the Client Management Spreadsheet provided by the Department. The Department shall provide the Contractor with an additional Group Pre-test Survey to be utilized, See Attachment GG.

The Contractor must obtain the Contract Manager or Designee's approval prior to introducing any alternate or additional instrumentation for diagnostic, treatment planning or pre-post comparison purposes. The Contract Manager or Designee will consider alternate or additional instrumentation based on issues of best practices and the instrument's statistical properties.

- 3.4.6 Schedule treatment services in both daytime and early evening hours (8am-8pm) so as to accommodate each facility's schedule and to specifically:

- a. Allow CMCF PHASE I Participants and Participants being provided after-care services to attend or participate in Employment/Vocational/Educational Services (no other Participants enrolled in the TC programs within the Department may be in school or hold institutional job assignments);
  - b. Allow Participants to attend at least one primary religious activity per week; and
  - c. Permit Participants to participate in any other activities (meals, inmate count, health appointments, etc.) designated by the facility.
- 3.4.7 Accept referrals in all cases as directed by the Department including those from the Department's designated Centralized Program Coordinator for the TC Programs through the Offender Case Management System (OCMS).
- 3.4.8 For each six (6) month program, provide seven (7) – day admission cycles on a monthly basis beginning the first Wednesday of each month for each program,
- 3.4.9 Allow referrals and accommodate admissions into the Contractor's orientation program during the first seven (7) days of each new cycle. Each referral shall be provided with a full seven (7)-day admission process no matter which day of the seven (7)-day admission cycle the referral is accepted. All admission processes shall be completed within the first 14 days of each new cycle.
- 3.4.10 The Contractor shall:
- a. Provide and maintain a therapeutic environment utilizing proven and accepted cognitive-behavioral and behavior modification techniques.
  - b. Deliver services which stabilize the substance abusing and/or dependent Participant and address their remediation needs, while maintaining a drug-free environment. Emphasize the Participants' compliance with institutional rules and program parameters.
  - c. Ensure counselors monitor, address and document the on-going risks and needs of Participants enrolled in the program. Documentation shall be recorded in the Participant's clinical file as described in COMAR 10.47.02.08 and 10.47.03.07.
  - d. Institute re-entry preparation and include aftercare programming for those Participants who remain incarcerated after completion of the program to minimize the probability of relapse or recidivism. (See Section 3.4.14.1).
  - e. Operate the TC programs in compliance with the principles and procedures established in the "What Works" literature (See Section 3.1.5), as measured by the Correctional Program Checklist (CPC) audits.

**3.4.11 Therapeutic Community Program (TC):**

The TC Program shall include:

1. Individual and group therapy counseling;
2. Daily community meetings where goals and objectives are reviewed, conflicts are resolved, and positive reinforcements are conveyed;
3. Vocational and educational activities;
4. A curriculum aimed at changing cognition and behavior;
5. Specialized services addressing the unique needs of a female population (MCI-W only); and

6. The capacity to diagnose and address issues of trauma related to the female population (MCI-W only).

3.4.12 The Contractor shall operate each TC program cycle using three (3) defined phases: Phase I/Orientation, Phase II/Intensive Treatment and Phase III/Re-Entry.

3.4.12.1 Phase I/Orientation Phase – The Orientation Phase constitutes the first month of each Treatment Cycle. The Contractor shall ensure that each Participant understands the program’s structure and expectations, rules and procedures. As part of the Orientation Phase, the Contractor shall design and conduct Motivation Groups for the Participants to help each Participant work through his or her ambivalence about changing. The Contractor shall use active listening and gentle feedback techniques and use the guide, *Motivational Groups for Community Substance Abuse Programs* available at <http://people.uncw.edu/ogler/MI%20Groups%20for%20Com%20SA%20Prog.pdf>. The Contractor shall provide substance abuse education by utilizing Hazelden’s New Direction Drug and Alcohol Curriculum available at: [http://www.hazelden.org/OA\\_HTML/ibeCCtpItnDspRte.jsp?item=139110&sitex=10020:22372:US#prodDetails](http://www.hazelden.org/OA_HTML/ibeCCtpItnDspRte.jsp?item=139110&sitex=10020:22372:US#prodDetails)

As described in Section 3.4.8 and 3.4.9, the Contractor shall complete admission activities during the first fourteen (14) days of the program cycle as follows (depending on when the Participant begins the cycle):

3.4.12.1.1 The Contractor shall ensure that each Participant signs the required Treatment Consent form (a template created by the Contractor and approved by the Department) on the date they are admitted to the program. Forms must be completed prior to Participant receiving services.

3.4.12.1.2 Within the first seven (7) days of a Participant’s admission, the Contractor shall assign each Participant to its treatment team who will perform additional data collection and evaluation. The Contractor’s data collection and evaluation of each Participant shall include:

- a. A structured bio-psycho-social interview to gather pertinent demographic and clinical information related to criminal and substance abuse history.
- b. Completion of the Alcohol and Drug Abuse Administration’s (ADAA) *Substance Abuse Management Information System* (SAMIS) form.
- c. Completion of forms and entry of similar information into the *State of Maryland Automated Record Tracking* (SMART) System.

3.4.12.1.3 By the tenth (10<sup>th</sup>) day of the participant’s admission, the Contractor shall have developed an initial individualized treatment plan for each Participant. The Participant will then review and consent by signature to the treatment plan as required in Section 3.4.10(c) above.

3.4.13 Phase II/Intensive Treatment Phase – The Contractor shall conduct a four (4) month Intensive Treatment Phase during each treatment cycle. During this phase, the Contractor shall assign each Participant to various treatment groups based upon Participants’ needs or deficits.

- 3.4.13.1 The Contractor shall provide each Participant with a minimum thirty-six (36) hours per week of therapeutic activities required pursuant to COMAR 10.47.03.07(D)(3):
- a. At least 15 of these 36 hours shall include direct staff interactive face-to-face services that consist of individual (one session per week) and group therapy, and certain seminars specified by the Contract Manager. A schedule documenting the 15 and 36 hour requirements as well as the required curriculums shall be submitted to the Contract Manager for approval thirty (30) days from the Go-Live date.
  - b. The Contractor shall limit group size to no more than 15 Participants per group, with the exception of specific large group formats approved by the Department including morning and evening meetings, seminars, community and self-help groups, job assignment and treatment homework activities, .
  - c. Morning and evening meetings, and community and self-help groups, job assignment and treatment homework activities are not included within the minimum 15 hours, but will count towards the minimum 36 hours of therapeutic activities required.
  - d. The Contractor shall conduct modules using a cognitive-behavioral format and shall include role-playing and homework exercises based upon 30:30:30 models as described in the correctional program checklist in Section 3.1.6.
- 3.4.13.2 The Contractor's curriculum for treatment shall include the two primary cognitive approaches: ***cognitive skills training and cognitive restructuring***.
- a. *Cognitive skills* training addresses the premise that chemically-involved Participants have not adequately learned the thinking skills required to function as responsible, productive members of society.
  - b. *Cognitive restructuring* addresses the premise that chemically-involved Participants have learned maladaptive and destructive thinking patterns that promote criminal and drug abusing behavior. The Contractor shall emphasize the development of pro-social attitudes and thinking patterns that promote a drug-free lifestyle.
- 3.4.13.3 The Contractor shall deliver the following modules. It is the Contractor's responsibility to obtain and maintain the curricula and materials specified below:
1. Social & Family Issues Group: This group is designed to provide the Participant with an overview of many of the skills and strategies associated with successful interpersonal relationships, emphasizing communication strategies, self-esteem, and dealing with peer pressure as found in *Ideas for Better Communication (Targeted Intervention for Corrections* by Institute of Behavioral Research at Texas Christian University <http://ibr.tcu.edu/wp-content/uploads/sites/2/2013/09/TMA05Aug-CommCJ.pdf>
  2. Criminal Thinking: This group is designed as a cognitive Behavioral group that describes and provides examples of 52 common thinking errors that appear in the criminal justice population. Participants will review their own cognitive distorted thinking processes through thinking reports and small group role play activities as described in *Commitment to Change* Parts I through IX by Dr. Stanton Samenow as

3. Anger Management: Utilizing the *Cage Your Rage- An Inmate's Guide to Anger Control* by Cullen provided by Impact Publications programming, the group assists Participants in recognizing anger and aggressive behaviors. Primarily intended for large group didactic presentations with small group discussions. In addition, the Contractor shall utilize *Anger Management for Substance Abuse and Mental Health Clients* by SAMHSA. <http://www.impactpublications.com/cageyourrageprogram.aspx>  
<http://store.samhsa.gov/shin/content/SMA12-4210/SMA12-4210.pdf>
4. Victim Awareness & Impact Class: Based on a program developed in cooperation with MADD, the focus of the group is to help Participants understand the impact of their crimes on victims and communities. The classes are designed to address a wide variety of criminal behaviors. Primarily intended for large group didactic presentations with small group discussions. *Victim Impact: Listen and Learn*. Office of Victims of Crime through the Office of Justice Programs. [https://www.ovcttac.gov/victimimpact/presenters\\_toolbox.cfm](https://www.ovcttac.gov/victimimpact/presenters_toolbox.cfm)
5. HIV Education: This class consists of 2-3 groups that are designed to teach Participants about the transmission and health implications of HIV. Primarily designed for a large group format. *Common Sense Ideas for HIV Prevention and Sexual Health* by Institute of Behavioral Research at Texas Christian University. <http://ibr.tcu.edu/wp-content/uploads/sites/2/2013/09/TMA05Aug-hiv.pdf>
6. Trauma Recovery:: A group-based intervention designed to facilitate trauma recovery among participants with histories of exposure to sexual and physical abuse. The group may utilize cognitive restructuring, psychoeducational, and/or skills-training techniques. The multiple-session group emphasizes the development of coping skills and social support. It addresses both short-term and long-term consequences of violent victimization, including mental health symptoms, especially posttraumatic stress disorder (PTSD) and depression, and substance abuse. The following curricula will be utilized at MCI-W (women): *A Woman's Journal: Helping Women Recover* by Stephanie Covington and *Seeking Safety* by Lisa Najavits. The following curricula will be utilized for the men's programs: *The Trauma Addictions Mental Health and Recovery Treatment Manual (TAMAR)* by Andrea Karfgh. Available through the National Association of State Mental Health Program Directors (www.NASMHPD.org).  
<http://www.wiley.com/WileyCDA/WileyTitle/productCd-0787995339.html>  
<https://www.treatment-innovations.org/ProductDetails.asp?ProductCode=4A>  
<http://www.nasmhpd.org/docs/publications/TAMAR/TAMAR-Introduction-TableofContents.pdf>
7. Pro-social skills development: A group to develop skills which contribute to being a productive member of society such as a concern about the rights, feelings, and overall welfare of others. Skills are learned through the use of role playing and view switching scenarios. *Cognitive-Behavioral Interventions for Substance Abuse* by Edward J. Latessa. <http://www.nationaltasc.org/wp->

8. Problem solving: A group that focuses on the internal processes that are currently present in an effort to solve problems. It teaches new ways to approach this process and also utilizes the group format to incorporate less self-dependence and the benefit of including others in the problem solving process. The group will utilize current scenarios the Participants encounter. *Cognitive-Behavioral Interventions for Substance Abuse* by Edward J. Latessa. <http://www.nationaltasc.org/wp-content/uploads/2013/05/Cognitive-Behavioral-Interventions-for-Substance-Abuse.pdf>
9. Communication skills and conflict resolution: A group that teaches verbal assertiveness skills enhanced by trust, cooperation, and collaboration. Once these skills are taught they are then utilized to assist with finding a peaceful solution to disagreements using negotiation and assertive communication. The group will utilize role playing exercises with real life scenarios. *Cognitive-Behavioral Interventions for Substance Abuse* by Edward J. Latessa. <http://www.nationaltasc.org/wp-content/uploads/2013/05/Cognitive-Behavioral-Interventions-for-Substance-Abuse.pdf>
10. Thinking for a Change: This group focuses on problem solving augmented by cognitive restructuring and social skills development. The format for this group is a prepackaged program developed by Bush, Glick, and Taymans (1997) for the National Institute of Corrections. Primarily intended for large group didactic presentations with small group discussions. <http://static.nicic.gov/Library/025057/default.html>

3.4.13.4 The Contractor shall provide specialty curricula to co-occurring Participants. Co-occurring Participants include Participants with a substance abuse issue as well as a DSM-V AXIS I or II diagnosis. The curricula utilized shall be *Substance Abuse Treatment for Persons with Co-occurring Disorders* provided by SAMHSA Tip #42. <http://store.samhsa.gov/shin/content//SMA13-3992/SMA13-3992.pdf>

3.4.13.4.1 The Contractor shall provide curricula to Participants with a history of distributing drugs that have not admitted substance abuse or have possession with intent to distribute (PWID) charges who have been mandated by their parole board to attend. Curricula must be approved by the Contract Manager prior to implementation.

3.4.13.4.2 The Department may require the Contractor to provide specialty curricula for Participants with gambling addictions. The Curricula must be approved by the Contract Manager prior to implementation.

3.4.14 Phase III/Re-Entry Phase – Prior to progressing each Participant to the final, Re-Entry Phase of the treatment cycle, the Contractor shall administer additional assessments to measure the Participant's level of motivation for change and degree of benefit from services provided.

Note for CMCF Program ONLY: Based upon the assessment findings, DPSCS Case Management will assign Participants in this phase to institutional jobs. The Contractor shall schedule treatment activities during evening hours to accommodate these Participants' job assignments. Participation



in longer-term groups such as Thinking for a Change and Commitment to a Change shall continue. The Contractor shall report the reduced treatment hours in the second column for CMCF on each End of Month Report (See Attachment Q).

3.4.14.1 The Contractor shall design and conduct each of the following groups during the one month Re-Entry Phase, and ensure each Participant's participation in each group. The Contractor shall utilize the curricula specified below:

1. Transition Planning and Community Re-Entry Group: This group provides Participants with the resources available to them in the areas in which they will eventually reside upon leaving prison and is an opportunity to practice the skills and to integrate the material from the modules. Participants are expected to develop a comprehensive home plan. *Reentry Prerelease Program* published by Houghton Mifflin Harcourt (HMH). <http://www.hmhco.com/shop/education-curriculum/adult-education/reentry-prerelease-program/shop-now>
2. Employment Readiness: The program is intended to help Participants develop the skills necessary to find gainful employment upon their release from prison. Primarily intended for a small group format. *Reentry Prerelease Program* published by Houghton Mifflin Harcourt (HMH). <http://www.hmhco.com/shop/education-curriculum/adult-education/reentry-prerelease-program/shop-now>
3. Relapse Prevention: The group emphasizes the cognitive/behavioral model for relapse prevention. This group is designed for the Participant to identify and manage environmental cues and cognitive warning signs that may increase the likelihood of relapse. Primarily intended for large group didactic presentations with small group discussions. *Mistaken Beliefs About Relapse*, and *Staying Sober* including the *Recovery Education Modules (REM)* by Terrence Gorski as available at The Center of Applied Sciences (CANAPS) <http://www.relapse.org/custom/cart/edit.asp?p=80982>

3.4.15 Discharge –Prior to each Participant's completion of the program, the Contractor shall compile all available historic and progress information on the Participant. This information includes:

1. Pre-admission screening and assessment scores
2. Substance abuse/dependency history
3. Significant prior treatment history
4. Rating of group progress in assigned modules
5. Clinical observation ratings
6. Holistic recommendations for Community Follow-Up Care

3.4.15.1 The Contractor shall consolidate this information using a Certificate of Completion (designed by the Contractor and approved by DPSCS), Discharge Summary and Aftercare Service Plan (See Attachments LL and JJ).

3.4.15.2 Once this form is reviewed and approved by the Contractor's Clinical Supervisor or Program Director, the Contractor shall scan and upload it to the OCMS document system for availability by Case Managers and Parole and Probation Agents of the Department. The Contractor shall ensure that a copy is included in each Participant's client file.

- 3.4.15.3 In addition, the Contractor shall enter the information into the SMART/SAMIS or successor system. The Contractor shall finalize the re-entry phase with a completion ceremony, at the discretion of the facility, which may include family participation. A Participant who is discharged as unsuccessful at one program may be re-admitted at another program once the Department's admission criteria (See Section 3.1.12) has been met again. There are no limitations on the number of re-admissions a Participant may have; however, only the Department may choose to deny any re-admission.
- 3.4.16 Drug Testing – The Contractor shall establish and maintain a randomized schedule for urinalysis drug testing, coordinated with and observed by the Department's staff, which ensures a minimum test frequency of three (3) times per Participant, per six (6) month cycle. DPSCS will incur the cost of urinalysis using a separate urinalysis contractor. The Contractor may be request additional testing from DPSCS Custody for any cases of suspected drug use.
- 3.4.17 Post Testing – The Contractor shall assess treatment effectiveness by utilizing the MHSF III, the URICA and the Group Post-test Survey (See Attachments Z, CC and HH). Results shall be entered into the TC Client Management spreadsheet (Attachment V). In addition, the Contractor shall administer the Group Satisfaction Survey (Attachment II) and maintain on file for the Contract Manager.
- 3.4.18 The Contractor shall refer all Participants in need of mental health services to the Department's Mental Health Staff. A copy of the referral shall be placed in the Participant's client file. The Department shall make available to all Clinical Supervisors read-only access to the Department's electronic medical and psychological record. The Department will provide any necessary inmate release forms to permit such access by the Contractor.
- 3.4.19 The Department shall schedule inspections by a team trained in program assessment utilizing the Correctional Program Checklist (CPC) developed by Latessa, available at [http://ucjc.csw.utah.edu/?page\\_id=48](http://ucjc.csw.utah.edu/?page_id=48) to ensure the use of accepted and best practices. In the event any program deficits are noted, the Contractor shall provide a corrective action plan to the Contract Manager within fifteen (15) days of receipt of the final CPC report. This corrective action plan shall be in addition to any actions pursued under Section 3.17, Problem Escalation Procedure plan.
- 3.4.20 The Contractor shall ensure that each Participant has all intake data collected, including full TAP, SAMIS, SMART admission, and all other admission data within seven (7) calendar days of admission to the program as detailed in Sections 3.4.8 and 3.4.9.
- 3.4.20.1 The Contractor shall maintain each Participant's client file in accordance with COMAR 10.47.01.08 and 10.47.03.07 with a minimum accuracy level of 95%.
- 3.4.20.2 The Contractor shall submit all required data to SMART completely and within seven (7) days of each Participant's admission with a minimum accuracy level of 99%.
- 3.4.21 The Contractor shall perform all on-site services during hours of operation at all facilities from 8:00 a.m. until 8:00 p.m. (local time) Monday through Friday. Contractor's staff shall not be on-site on State holidays, Service Reduction Days, or any other days that State offices are closed.
- 3.4.22 The Contractor shall provide Aftercare Services at CMCF, MCI-W and MCTC using the Aftercare Counselor/Coordinators specified in Section 3.5.14. See Attachment EE for additional information.

3.4.22.1 The Contractor's Aftercare Counselor/Coordinators shall, at a minimum:

- a. Perform case management functions to ensure a smooth transition from the TC programs into the community, including consulting with Parole and Probation Agents who will assist in the development of discharge plans to be followed upon release to the community.
- b. Collaborate with community treatment providers to increase the likelihood of Participants' successful re-entry into the community, and reduce the risks of relapse and recidivism. The Aftercare Counselors/Coordinators will refer Participants to appropriate community resources and track the progress of Participants in the community.
- c. Monitor Participants' progress and community treatment retention for a minimum of one (1) year following release from incarceration.
- d. Function as a member of a multidisciplinary team which includes the Aftercare Counselor/Coordinator, the probation/parole agent, the community substance abuse treatment provider, and other service providers that may be working with the Participant.
- e. Approximately one (1) month prior to a Participant's completion of the TC program, the Aftercare Counselor/Coordinator will meet with the Participant and the TC treatment staff and develop an aftercare plan.
- f. Collaborate with community treatment providers to evaluate each Participant's treatment plan and ensure that it meets the needs of the offender. The individualized treatment plan will address educational and employment assistance, mental health treatment, healthcare, social support services, family outreach and counseling, and other fundamental life-maintenance issues as appropriate. The Aftercare Counselor/Coordinator will ensure that the parole or probation agent has a copy of the discharge plan and will include the agent as appropriate in the treatment process.
- g. Work with the parole or probation agent to provide follow up case management and ensure that the offender attends appointments scheduled with community treatment and service providers. Communication between the Aftercare Counselor/Coordinator, the parole/probation agent, and the community treatment provider is essential to monitoring the progress of the Participant for a minimum of one (1) year following release from incarceration.
- h. For those Participants not scheduled for immediate release, the Aftercare Counselor/Coordinator will work with the TC treatment staff to develop an initial aftercare plan for the Participant.

3.4.22.2 The Contractor shall provide Participants receiving aftercare services at CMCF, MCI-W, or MCTC waiting for release and/or transfer at least one (1) ninety-minute group session per week (not to exceed 15 Participants per group), and at least two (2) individual sessions per month. Individual sessions shall be at least fifteen (15) minutes duration but shall not exceed thirty (30) minutes per session.

- 3.4.22.3 The Contractor shall collect, maintain and report to the Department aftercare data (as specified in Attachments FF, NN and KK) that includes:
- a. Date of completion of residential program;
  - b. Dates of entry into the aftercare program and community treatment program (date of entry into community treatment program only at PATX and MTC);
  - c. Date of completion or exit (prior to completion) of the aftercare and/or community treatment programs;
  - d. Urinalysis drug testing results on a quarterly basis; and
  - e. Aggregate data of the number of Participants entering the aftercare programs, including average length of participation in aftercare, successful completion rates, number of Participants remaining drug-free during the aftercare programs, and recidivism data.
- 3.4.22.4 The Contractor shall enter the data elements set forth in COMAR 10.47.03.07 in the SMART database as directed by ADAA. The Contractor shall also enter data elements into OCMS as directed by the Contract Manager.
- 3.4.23 The Contractor shall provide a plan implementing safeguards to avoid any actual or potential conflict of interest when referring offenders to appropriate community resources and monitoring offender progress in the community. The Contract Manager shall review and approve the Contractor's plan prior to implementation.

### **3.5 Contractor Staffing and Timekeeping**

- 3.5.1 The Contractor shall provide the Contract Manager with all Federal, State and local licenses, certificates, registrations, cooperative agreements and specialty board certifications or notices of eligibility for certification, that are legally required by COMAR and/or the Maryland Board of Professional Counselors and Therapists for an employee or subcontractor:
- a. Prior to the performance of any services by that employee or subcontractor under the contract;
  - b. Within one month of the renewal date of the credential; and
  - c. No later than seven (7) days prior to a new employee's or subcontractor's proposed start date.
- 3.5.2 The Contractor shall enter (scan) the documents identified in Section 3.5.1 into the Office of Clinical Services' electronic document management system (NetDocuments™).
- 3.5.3 Within two weeks of Contract Commencement, the Contractor shall email the Contract Manager or designee the resumes and licenses of prospective employees for the Contractor and any subcontractors. The Contract Manager (or designee) shall review the submitted documentation and must approve all staff before they can begin employment. The Contract Manager will complete this review prior to the Go-Live Date. For any new future prospective employees, the Contract Manager must approve the resumes and licenses prior to those employees starting any work under the Contract.
- 3.5.4 All Contractor staff shall have the appropriate Maryland Board of Professional Counselors and Therapist licensure and/or certification for their position, prior to and during the performance of

services under this contract. If a staff worker does not have the appropriate certification and/or licensure, the Department may require that the staff worker be removed from and refused admittance to any Agency facility under this Contract, without incurring penalty or cost for exercising this right.

- 3.5.5 The Contractor shall provide Certified Therapeutic Community (See 1.2(1)) Training to every staff member within 60 calendar days of that staff member's performance of services in any institution under this Contract. The Contractor will also make the training available to any custody and support staff who work in collaboration with the TC.
- 3.5.6 The Contractor shall ensure that the patient to alcohol and drug counselor caseload ratio does not exceed 15 patients for one full-time alcohol and drug counselor. In order to adequately address the treatment needs of TC Participants in treatment, the Contractor is required to ensure that the complement of treatment staff include trainee, certified or licensed addictions counselors. In addition, these clinicians must be appropriately supervised per COMAR 10.58.07.
- 3.5.7 The Contractor shall ensure that any Program Director, Clinical Supervisor, and Counselors as defined in COMAR 10.47.01.02, shall meet the qualifications for the respective positions and possess, at a minimum, the necessary certification or licensure as set forth in COMAR 10.47.01.06.
- 3.5.8 To the extent this IFB imposes requirements for the qualifications of the Contractor's staff greater than the licensure requirements set forth in COMAR, the Contractor shall ensure its entire staff meet all requirements. In the event the Board of Professional Counselors and Therapists imposes greater requirements than those currently specified in COMAR (regardless of whether by amendment to COMAR or by providing informal guidance), and such requirements are greater than those set forth in this IFB, the Contractor's staff shall meet all requirements.
- 3.5.9 For the purposes of this contract, Contractor shall classify clinical staff into the following categories:
1. Counselors
  2. Clinical Supervisors
  3. Program Director
  4. Aftercare Counselors/Coordinators
- 3.5.10 The Contractor shall ensure Counselors and Aftercare Counselors/Coordinators possess, at a minimum, the following education, qualifications and certifications:
- (1) Certified Supervised Counselor-Alcohol and Drug (CSC-AD) Trainee: Associate's degree with Board Trainee Letter;
  - (2) CSC-AD: Associate's degree with Certification as a Board A/D Supervised Counselor;
  - (3) Certified Associate Counselor-Alcohol and Drug (CAC-AD) Trainee: Bachelor's degree with Board Trainee Letter; or
  - (4) CAC-AD: Bachelor's degree with Certification as a Board A/D Associate Counselor.
- 3.5.11 The Contractor shall ensure Clinical Supervisors and Program Directors possess, at a minimum, the following education, qualifications and certifications:
- (1) Certified Professional Counselor-Alcohol and Drug (CPC-AD): Master's degree with Certification as a Board A/D Professional Counselor;
  - (2) Licensed Clinical Alcohol and Drug Counselor (LCADC): Master's degree with Board licensure as a Clinical A/D Counselor; or

- (3) Licensed Clinical Professional Counselor (LCPC): Master's degree with Board licensure as a Licensed Clinical Professional Counselor and an Approved Supervisor Letter in A/D Counseling.

3.5.12 The Contractor shall provide the following staffing configuration:

1. CMCF

- a) 17 Full-time Counselors
- b) 1 Full-time Aftercare Counselor/Coordinator
- c) 2 Full-time Clinical Supervisors
- d) 1 Full-time Program Director
- e) 1 Full-time Administrative Assistant

2. MCI-W

- a) 7 Full-time Counselors
- b) 1 Full-time Aftercare Counselor/Coordinator
- c) 1 Full-time Clinical Supervisor
- d) 1 Full-time Administrative Assistant

3. PATX

- a) 6 Full-time Counselors
- b) 1 Full-time Clinical Supervisor
- c) 1 Full-time Administrative Assistant

4. MCTC

- a) 6 Full-time Counselors
- b) 1 Full-time Aftercare Counselor/Coordinator
- c) 1 Full-time Clinical Supervisor
- d) 1 Full-time Administrative Assistant

5. MTC

- a) 5 Full-time Counselors
- b) 1 Full-time Clinical Supervisor
- c) 1 Full-time Administrative Assistant

“Full-time” means eight (8) working hours per day, five (5) days per week. Travel time, meal breaks, smoking breaks, etc., are not included within the working hours.

3.5.13 The Contractor shall assign Counselors to perform, at a minimum, the following duties:

- a. Provide Group Therapy Counseling, Individual Counseling, Seminars and Morning and Evening Meetings;
- b. Participate in Community Meetings;
- c. Complete all required clinical charting documentation; and
- d. Participate in team case consults and reviews and complete discharge summaries.

3.5.14 The Contractor shall assign Aftercare Counselors/Coordinators at CMCF, MCI-W and MCTC as specified in Section 3.5.12 to perform, at a minimum, the following duties:

- a. Collaborate with community treatment providers to increase the likelihood of offender's successful re-entry into the community, and reduce the risks of relapse and recidivism. The Aftercare Counselors/Coordinators will refer offenders to appropriate community resources and track the progress of offenders in the community.
- b. Approximately one (1) month prior to a Participant's completion of the TC program, the Aftercare Counselor/Coordinator will meet with the Participant and the TC treatment staff and develop an aftercare plan.
- c. Work with the parole or probation agent to provide follow up case management and ensure that the offender attends appointments scheduled with community treatment and service providers. Communication between the Aftercare Counselor/Coordinator, the parole/probation agent, and the community treatment provider is essential to monitoring the progress of the offender for a minimum of one (1) year following release from incarceration.
- d. Collaborate with community treatment providers to evaluate each offender's treatment plan and ensure that it meets the needs of the offender. The individualized treatment plan will address educational and employment assistance, mental health treatment, healthcare, social support services, family outreach and counseling, and other fundamental life-maintenance issues as appropriate. The Aftercare Counselor/Coordinator will ensure that the parole or probation agent has a copy of the discharge plan and will include the agent as appropriate in the treatment process.
- e. Perform case management functions to ensure a smooth transition from the TC programs into the community, including consulting with Parole and Probation Agents who will assist in the development of discharge plans to be followed upon release to the community.
- f. Function as a member of a multidisciplinary team which includes the Aftercare Counselor/Coordinator, the probation/parole agent, the community substance abuse treatment provider, and other service providers that may be working with the offender.
- g. For those Participants not scheduled for immediate release, the Aftercare Counselor/Coordinator will work with the TC treatment staff to develop an initial aftercare plan for the offender.
- h. Monitor offender progress and community treatment retention for a minimum of one (1) year following release from incarceration.

3.5.15 The Contractor shall assign Clinical Supervisors (no substitution by Counselors permitted) to perform, at a minimum, the following duties (Note that The Program Director may also perform Clinical Supervisor duties as needed as long as credentialed to do so):

- a. Supervise the group and individual counseling performed by Counselors.
- b. Review and document approval of clinical file documentation, discharge summaries and aftercare plans;
- c. Directly conduct community meetings;
- d. Participate in all case consultations;

- e. At all programs except CMCF, attend monthly warden and monthly program committee meetings. At CMCF, the Contractor's Program Director shall attend monthly warden and monthly program committee meetings.

3.5.16 The Contractor shall maintain a staffing level of at least 96% of the total staff required in this IFB and shall fill any vacancy within two weeks.

3.5.17 The Contractor is responsible for the actions and/or inactions of all of its staff and subcontractors providing services under this Contract. The Contractor shall inform the Contract Manager in writing of all disciplinary actions, within 24 hours of the action, including any counseling and legal action taken against any member of the Contractor's staff or subcontractor who provides any services under this Contract. The Contractor shall provide any documentation of the incident requested by the Department.

3.5.17.1 Personnel Ongoing Performance

The Contract Manager or Director of Substance Abuse Treatment Services may notify the Contractor that the performance of a member of Contractor's staff is less than what is necessary to meet the job requirements and position description for that job, regardless of staff level or length of service, and request that staff member to be replaced. Custody will also be notified to not permit that staff member(s) into the facility, if this occurs.

3.5.17.2 In the event the Contractor is directed by the Contract Manager or Director of Substance Abuse Treatment Services to replace Staff originally hired as a Key Personnel (See Section 1.2.(ee)) under the contract, the Contractor may request approval from the appropriate DPSCS Contract Manager or Director of Substance Abuse Treatment Services to keep that staff person employed under the contract, but placed in a lower level position. The Contract Manager will provide approval/disapproval of said request within 5 days.

3.5.18 The Contractor shall ensure that all Contractor staff sign in and sign out on forms provided by the Department whenever entering or leaving a work site. This sign in/sign out procedure is for site security purposes and shall not be used to verify hours of work performed.

3.5.19 The Contractor shall use the Biometric Time Keeping System (Kronos) being supplied by the Medical Contractor to keep track of the time worked of all on-site personnel. This system will be used to generate various staffing reports, including a report that provides hours worked versus hours required for every on-site position, by facility, by the 10<sup>th</sup> of the month following each service month. Via this system, the Contractor shall record any changes made to staff schedules or any changes made to employees' time and attendance records to determine abnormal behavior or potential liability issues. Department personnel as directed by the Contract Manager shall have searchable read-only access to the database via secure (password protected) internet or LAN connection.. The Contractor shall make available all staff for training on utilizing the biometric timekeeping system when training is provided by the Medical Contractor.

## **3.6 Staff Orientation and Training**

3.6.1 The Contractor shall:



3.6.1.1 Within no more than thirty (30) days after Contract Commencement, develop and maintain a present/past Contractor and subcontractors' employee(s) training database made accessible via secure (password protected) internet or LAN connection with searchable, read-only access. The Department's preference for this training database is NetDocuments™. The Contractor must obtain written permission from the DPSCS Contract Manager to use other than NetDocuments™.

Access to this training database shall be given to the Contract Manager, internal and external auditors, and other Department personnel designated by the Contract Manager. The contents of this database are to include the following:

3.6.1.1.1 Logs of Staff attendance at Contractor orientation, training and refresher training sessions.

3.6.1.1.2 Logs of Staff credentialing/license renewals.

3.6.1.1.3 In-Service Training Schedules

3.6.1.1.3.1 For any training provided to its staff and subcontractors, the Contractor shall reserve 10% of the training spaces for personnel of the Other Healthcare Contractors (See 3.6.1.5) and DPSCS Substance Abuse Treatment Staff at no cost to the Department. The Contractor shall enter all in-service training information for both its staff and staff of Other Healthcare Contractors into the Contractor's In-Service Training database.

3.6.1.2 Develop and maintain a comprehensive competency based orientation plan/program for new staff. The orientation program shall include a review of Departmental Policies and Procedures (P & P) and how to access Department P & P manuals, HIPAA and Patient Confidentiality training, CPR training, basics of working in a prison setting and a review of the limits of the scope of responsibility, which at a minimum will include the topics listed in Sections 3.6.1.2.3.

3.6.1.2.1 The complete plan and schedule shall be provided to the Contract Manager by the "Go Live Date – (See Section 1.4.2), and it shall be updated no less than annually. The plan shall provide competency check lists 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.

3.6.1.2.2 Logs of attendance shall be maintained for these programs and be available to the Contract Manager.

3.6.1.2.3 At a minimum within 30 days of new hire and within 30 days before or after the anniversary date of the initial competency training and refresher competency training shall be held in each of the following areas:

(1). Terms of this RFP, and interrelationships with Department non-custody and custody staff, and the staff of Other Healthcare Contractors

- (2). Working with the Inmate population, boundaries, and potential manipulation
- (3). Working with individuals with serious mental illness
- (4). Suicide prevention
- (5). Substance Abuse Treatment Services Operations Manual
- (6). Department Directives
- (7). Contractor Policies & Procedures
- (8). Certified Therapeutic Community Training
- (9). Best practices in provision of substance abuse treatment services
- (10). Scope of practice
- (11). Prison Rape Elimination Act (PREA)
- (12). Compliance with HIPPA and the confidentiality provisions of alcohol and drug abuse patient records set forth in 42 CFR Part 2.

3.6.1.3 Develop and implement orientation training for its staff covering subjects related to this IFB. Training shall be in compliance and consistent with Maryland Commission on Correctional Standards (MCCS), National Commission on Correctional Health Care (NCCHC) and American Correctional Association (ACA) standards, and the applicable practice requirements of any regulatory body with jurisdiction over the provision of these substance abuse services.

3.6.1.4 Implement refresher training on any revisions to directives, manuals, policies, protocols, and procedures and institute a program of annual refresher training. Logs of attendance shall be available for the Contract Manager to review within thirty (30) days of the event occurrence. (See 3.6.1.2.2)

3.6.1.4.1 No later than thirty (30) days after having been informed by the Contract Manager 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 provide training on the issue to all staff required to apply the processes, and to all supervisors that may enforce the processes. The Contractor shall provide a sign off sheet of receipt and understanding of all staff subject to the training requirements.

3.6.1.5 Permit Department staff and Other Healthcare Contractors' staff to attend its non-Contractor specific or non-confidential Orientation and In-Service training that does not exclusively deal with substance abuse treatment services as space allows.

3.6.1.6 Ensure that trainers possess the credentials, licenses and/or certificates required by law and regulation to provide the training services as mandated by law and regulation and as required to provide continuing professional orientation.

3.6.1.7 Populate the database (See § 3.6.1.1) and maintain On-site for each of its employees and those of its On-site sub-contractors, documentation that those persons have received the Orientation and in-service training required by the RFP.

3.6.2 To attend in-service training in lieu of working their normal hours, the following process shall apply:

- (a) The Contractor's staff must submit a written request to the Contract Manager.
- (b) The written request shall include:
  - The title or subject, date, time and approximate duration of the training;
  - The position(s) covered by the authorization;
  - The amount of time authorized for the training, including reasonable travel time if the training is less than 8 hours; and
  - A plan for service delivery that addresses, to the satisfaction of the Contract Manager (See (c), below), how services will continue to be provided during the absence of the personnel attending the training.
- (c) Submit the request to the Contract Manager at least thirty (30) days in advance of the proposed training date. However, special requests submitted with less than thirty (30) days advance notice may be considered for approval.

As appropriate, the Contract Manager may approve the substitution of training for work duties in writing prior to finalizing scheduling arrangements. No authorization will be granted until the Department is assured that all posts will be staffed or covered in a manner that will not interrupt services.

3.6.3 Within any individual institution to meet the standards of any certification, including but not limited to ACA, maintained in that institution, the Contractor shall require all staff to participate in mandatory Department orientation and training.

3.6.3.1 Security orientation and training for up to forty (40) hours within no more than forty (40) days after Contract Commencement for Permanent Employees of the Contractor or subcontractor(s).

On average there are 8–10 slots for training per month; however, if a need arises for an expedited clearance, DPSCS will facilitate the training. If the Contractor has personnel recruited and ready for training, but DPSCS has no training slots available, liquidated damages as described in Attachment OO, will not be assessed as permitted by Section 1.45 because the failure to staff a position is not caused by the Contractor.

3.6.3.1.1 Existing staff of the current contractor that will continue employment with the Contractor do not need to repeat the security orientation and training if there is documentation of the person's previous attendance at this training and any break in service does not exceed 40 days.

3.6.3.1.1.1 For any individual re-hired by the Contractor as a Permanent Employee (See Section 1.2 (vv)) after a greater than 40 day break in service, the individual may not enter a Department facility and perform any Contract related duty until the individual has retaken the required security orientation and training.

3.6.3.1.2 For any individual hired by the Contractor as a Permanent Employee, re-assigned from a Contractor location other than one that is part of the Department, etc., more than 40 days after Contract Commencement, including after the full delivery of Substance Abuse Treatment Services commences as of the Go-Live Date (See §1.4.2, 1.4.3), the individual may not enter a

Department facility and perform any Contract related duty until the individual has attended the required security orientation and training.

3.6.3.2 Refresher training each year within 30 days before or after the anniversary date of the initial training.

3.6.4 As part of the EHR training of Contractor staff (and subcontractor staff) who deliver substance abuse treatment services or have access to the EHR, provide documentation of the completion of HIPAA compliance training to the Contract Manager upon request, within 5 working days. (See Section 3.6.1.2.3)

3.6.5 Before being permitted to work at any Department facility, any Non- Permanent Employee (Section 1.2 (vv)) that has not previously received any formal orientation instruction must have a minimum of 30 minutes of basic orientation, which consists of security (e.g., emergency plans, Inmate movement, basic rules of the Institution) time keeping, etc. requirements. Any facility specific regulations may also be provided by the Institution's Administration as applicable. This requirement specifically applies to any staff that is a Non-Permanent Employee, personnel that are employed by the Contractor or a subcontractor, or an individual that acts as a subcontractor, consultant or specialist which have not previously worked at a facility, that the Contractor seeks to use to maintain required staffing levels due to staff absences or vacancies.

3.6.5.1 The basic orientation training described in Section 3.6 must be taken by Non-Permanent Employees within the first hour of commencement of work activity. Documentation that Non-Permanent Employees have received such training shall be recorded within 5 days of attendance in the database described in Section 3.6.1.1.

3.6.5.2 Any Non-Permanent Employee who has not entered a Department facility for more than 40 days, must repeat the required basic orientation training. In addition, a Non-Permanent Employee entering a facility where he/she has not worked in the past 40 days, will be required to be oriented on the specific regulations of that facility, if any.

3.6.5.3 No less than 20 days prior to the Go Live Date, the Contractor must provide a finalized version of this Non-Permanent Employee basic orientation training to the Contract Manager for review and approval, and make any revisions required by the Contract Manager.

3.6.6 With prior approval from the Contract Manager, the Contractor may bill its hourly rates quoted in its bid for state mandated or state conducted training for staff held during normal business hours. Also, with prior approval of the Contract Manager, the Contractor may bill its hourly rates quoted in its bid sheet for Contractor-led on-site training and meetings for staff attending such training or meetings. The Contractor will not be paid for any Contractor-led off-site training or meetings.

## **3.7 Self-Help Monitors Services**

3.7.1 The Contractor shall provide auxiliary staff counselors (known as Self-Help Monitors) to monitor self-help groups outside of the TC program, including but not limited to Alcoholics Anonymous (AA), Narcotics Anonymous (NA) and 12-Step. These self-help programs are held at MCTC (including the pre-release annex Harold E. Donnel Building and Emergency Housing Unit (HED/EHU)), Roxbury Correctional Institute (RCI), and Maryland Correction Institute –

Hagerstown (MCI-H) all located in Hagerstown, MD. Inmates participating in these self-help groups may or may not be TC Participants.

The Contractor shall provide 40 hours per week of Self-Help Monitor services at each of the three facilities noted above (120 total hours per week). The auxiliary staff shall be supervised by the MCTC TC Clinical Supervisor. The current types of groups at each facility are as follows:

- MCTC – 3 AA, 3 NA and 1 12-Step groups encompassing 140 inmates,
  - HED/EHU – 1 AA and 1 NA groups encompassing 30 inmates
- RCI – 3 AA and 3 NA groups encompassing 180 inmates
- MCI-H – 1 AA and 2 NA groups encompassing 92 inmates

Note: The Department anticipates adding additional self-help groups at MCI-H and may change the configuration of self-help groups at any of these facilities at any time with notice provided to the Contractor for any changes.

#### 3.7.2 Self-Help Monitors shall:

- Receive and respond to all inmate self-help requests;
- Maintain a template, provided by the Department, to track requests, wait lists and group placement (See Attachment MM Self-help Database);
- Attend and monitor all group meetings for the duration of the meeting including reporting any observed security and/or institutional concerns;
- Generate inmate passes to attend these groups through OCMS or other Departmental pass system;
- Create and distribute attendance certificates to those inmates displaying consistent attendance in groups. (i.e. 30-day, 90-day 6 months and/or yearly certificates);
- Liaison with community self-help groups to obtain guest speakers and sponsorship for an inmate being released into the community;
- Obtain literature from AA, NA and any other self-help groups as requested;
- Ensure each group operates consistently with outside community self-help groups to include registering each group with its corresponding World Services Organization or equivalent; and,
- Meet with the chairman and/or co-chairman of each group prior to each meeting to coordinate the assignments and format of the group meeting.

3.7.3 The Contractor shall ensure Self-Help Monitors possess, at a minimum, qualifications and certification as a Certified Supervised Counselor-Alcohol and Drug (CSC-AD) Trainee and Board Trainee Letter

### **3.8 Dress Code**

3.8.1 The Contractor's staff shall comply with the Department's Personal Appearance and Dress Standards for Non-Uniformed Employees set forth in DOC.050.0044. In addition to these standards, the Contractor shall require that all of its on-site staff (employees and subcontractors) wear a business-casual uniform (to include socks or stockings) consisting of appropriately-sized, but loose-fitting, tan or navy "khaki-style" pants or skirts, and collared "polo-style" shirts (any color). Skirts must cover the kneecaps at all times. The Contractor may impose additional restrictions or dress requirements for its staff in consultation with the Contract Manager. The

Contractor shall submit a written request to the Contract Manager for any needed exceptions or accommodations to the uniform requirement or Personal Appearance and Dress Standards on behalf of an individual employee or subcontractor.

- 3.8.2 It is the Contractor's or its staff's sole responsibility to provide and pay for the cost of the uniforms and any associated laundry services.
- 3.8.3 The Contractor shall ensure that all administrative, managerial and corporate personnel wear business attire when visiting any TC program site and comply with the Department's Personal Appearance and Dress Standards for Non-Uniformed Employees set forth in DOC.050.0044. The Department, at its sole discretion, may remove from or refuse admittance to any facility any member of Contractor's staff for non-compliance with the dress code. Such removal from or refusal of admittance does not excuse the Contractor's duty to timely perform the Contract. Such removal from or refusal of admittance may be in addition to, and not in lieu of, the liquidated damages provision set forth in Section 1.45.

### **3.9 Equipment Inventory and Supplies**

3.9.1 The Contractor shall provide all necessary office equipment and furnishings identified below, in new/mint condition by the Go-Live Date. All property shall become the sole property of the State:

1. CMCF

- i. One (1) television having a minimum screen size of 36 inches;
- ii. One (1) DVD/VHS player;
- iii. One (1) auto-feeding facsimile machine with scanning capabilities;
- iv. Presentation size easel;
- v. Twenty one (21) office desks;
- vi. Twenty one (21) office chairs;
- vii. Nine (9) 4 drawer locking file cabinets;

2. MCI-W

- i. One (1) television having a minimum screen size of 36 inches;
- ii. One (1) DVD/VHS player
- iii. One (1) auto-feeding facsimile machine with scanning capabilities;
- iv. Presentation size Easel
- v. Eight (8) office desks
- vi. Eight (8) office chairs
- vii. Four (4) 4 drawer locking file cabinets

3. PATX

- i. One (1) television having a minimum screen size of 36 inches;
- ii. One (1) DVD/VHS player
- iii. One (1) auto-feeding facsimile machine with scanning capabilities;
- iv. Presentation size Easel
- v. Eight (8) office desks
- vi. Eight (8) office chairs
- vii. Four (4) drawer locking file cabinets

4. MCTC

- i. One (1) television having a minimum screen size of 36 inches;

- ii. One (1) DVD/VHS player
- iii. One (1) auto-feeding facsimile machine with scanning capabilities;
- iv. Presentation size Easel
- v. Nine (9) office desks
- vi. Nine (9) office chairs
- vii. Four (4) 4 drawer locking file cabinets

5. MTC

- i. One (1) television having a minimum screen size of 36 inches;
- ii. One (1) DVD/VHS player
- iii. One (1) auto-feeding facsimile machine with scanning capabilities;
- iv. Presentation size Easel
- v. Eight (8) office desks
- vi. Eight (8) office chairs
- vii. Three (3) 4 drawer locking file cabinets

- 3.9.2 The Contractor shall provide, via lease or purchase, one (1) free-standing office copier (not home or personal size) for each facility (five (5) copiers total). The Contractor may retain ownership of the copiers if purchased. The Contractor shall be solely responsible for all costs associated with copier services, including lease agreements, maintenance, service, delivery and removal costs, paper and supplies.
- 3.9.3 The Contractor shall be responsible for maintaining a perpetual consolidated Inmate substance abuse equipment inventory and adhering to State regulations relating to inventory. In the event a piece of Equipment in the control of its staff cannot be located during inventory, the Department shall have the right to assess the Contractor actual damages for the replacement of the missing piece of equipment.
- 3.9.4 The Contractor shall adhere to the requirements set forth in the Department of General Services (DGS) Inventory Control Manual:  
<http://www.dgs.maryland.gov/ISSSD/InventoryControlManual.pdf>  
 Where the DGS Manual requires responsibilities (e.g. reporting) to DGS, the Contractor shall be responsible to DPSCS instead.
- 3.9.5 Whenever the Contractor purchases a piece of equipment it shall enter the equipment information into the perpetual consolidated Inmate substance abuse inventory and shall place State inventory numbers on the equipment consistent with the DGS Inventory Control Manual.
- 3.9.6 If it becomes necessary that any piece of equipment be transferred from one Department location to another, the Contractor will complete and submit to the designated Department inventory personnel the appropriate Transfer Form prior to moving the equipment and follow Department protocol for the transfer of that equipment. The Contractor shall also update the consolidated Inmate substance perpetual inventory to note the changed location of the equipment. The completion of and obtainment of signatures on all property transfer forms for only equipment under the Substance Abuse Treatment Contractor's control are done by the Substance Abuse Treatment Contractor and each facility's property officer.
- 3.9.7 The Contractor shall develop and maintain a consolidated Inmate substance abuse database of all equipment in use by its staff for the performance of the Contract. If any equipment is purchased by

the Contractor throughout the term of the Contract that equipment shall be added to the database. The maintenance and repair of all equipment being used by Contractor staff for the performance of this Contract shall be logged into the database. This database shall be made accessible via searchable read-only access to the DPSCS Contract Manager via secure (password protected) internet or LAN connection.

3.9.7.1 The following record keeping requirements shall be maintained for the equipment inventory:

- 1) Equipment description
- 2) Name of supplier and purchase order or other acquisition document number.
- 3) Acquisition cost and date, or equipment value of any lease / purchase determined in accordance with Department policy and date of lease initiation.
- 4) Physical location of item (Facility code + Room Number or Name)
- 5) Serial number, if any
- 6) State tag number
- 7) Equipment Condition

3.9.7.2 Within 20 days of the current contract's expiration date, Contractor staff shall participate in a complete physical inventory of all furniture and equipment available for use by the Contractor when it assumes responsibility for Contract activities. Appropriate staff of the Contractor will sign to acknowledge satisfaction with the contents of the inventory, along with the Contract Manager.

3.9.7.3 A complete consolidated Inmate healthcare physical inventory report for equipment within the control of the Contractor shall be submitted to the Department Contract Manager within the last thirty (30) days of each Contract Period; due no later than January 15th of each Contract year, in the form and format as requested by the Department. The annual inventory report shall include a completed and signed DPSCS Property Form by each facilities property officer.

3.9.7.4 Within 20 days of the end of the Contract, the Contractor shall assign appropriate Staff to participate in the physical inventory described in §3.9.7.2 but this time in the capacity of the current contractor. This inventory shall be conducted regardless of whether the Contractor is also awarded the successor contract to perform substance abuse treatment services.

3.9.8 The Contractor shall develop the physical inventory reports described in conjunction with the Department's Contract Manager as the Initial Physical Inventory Report, Annual Physical Inventory Report, and Final Physical Inventory Report.

### **3.10 Grievances, Administrative Remedy Procedures Complaints and other Complaints**

3.10.1 The Contractor shall investigate grievances and Administrative Remedy Procedures (ARP) complaints made by Participants and respond to the Department's OPS Administrative Unit ARP Coordinator or the Department's Inmate Grievance Office (IGO) for DPDS regarding any aspect of the substance abuse treatment service within ten (10) days after receipt of request.

3.10.2 The Contractor shall also investigate any other complaint made by Participants or persons of interest in coordination with the State's Substance Abuse Treatment staff. Complaints through the



Administrative Remedy Procedure (ARP) shall fully comply with the ARP directive and policy and its time restrictions. The Department will provide the Contractor with copies of this directive.

- 3.10.3 The Contractor shall consult with the Department's ARP Coordinator and with the Office of Program Services in completing the ARP process. The Contractor shall cooperate with the Inmate Grievance Officer of DPSCS and comply with the policies and directives for the Inmate Grievance Procedure.
- 3.10.4 The Department shall review and forward to the Contractor, any Participant correspondence or correspondence from any person of interest, relating to grievances, Administrative Remedy Procedure (ARP) complaints and any other complaints. The Contractor shall respond as directed in this Section 3.10.
- 3.10.5 Upon receipt, the Contractor shall forward a copy of any complaint about service to the Department's Inmate Correspondence Coordinator to determine whether a response is required.
- 3.10.6 The Contractor shall send a copy of its written response to a complaint to the Director of Substance Abuse Treatment Services.
- 3.10.7 Any time the Contractor's response is considered non-responsive by the Department's Inmate Correspondence Coordinator ( i.e. the response does not directly answer the question posed), it will be returned to the Contractor for re-investigation and a more appropriate response before being sent to the inquirer.
- 3.10.8 The Contractor shall track all correspondence relating to appeals, grievances, ARP complaints or any other complaint as described in this Section 3.10 in an Excel spreadsheet. The spreadsheet shall have searchable, read-only access to the Contract Manager and Director of Substance Abuse Treatment Services made accessible via secure (password protected) internet or LAN connection and include the following information:
  - a. Participant's name and identifying DOC number;
  - b. Institution or facility name where the Participant is located or housed;
  - c. ARP or Grievance case number;
  - d. Subject of complaint;
  - e. ARP date of receipt (DOR) from Participant;
  - f. ARP index date;
  - g. Date ARP received from DPSCS or DOC ARP Coordinator;
  - h. Date ARP received by the Contractor from the OPS Administrative Unit ARP Coordinator, ARP due date and completion date, and Notes field.
- 3.10.9 The Contractor shall comply with Department directives to take specified action with regard to a complaint.

## **3.11 Records**

- 3.11.1 Following termination or expiration of the Contract, the Contractor shall retain all records the greater of five (5) years or any applicable provision of law or statute of limitations.

3.11.2 For up to three (3) years following an participant's discharge from the TC, the Contractor shall maintain client files in a secure, on-site, HIPAA and 42 CFR Part 2 compliant storage space provided by the Department. Thereafter, the Contractor shall remove all files older than three (3) years and store in a secure, HIPAA and 42 CFR Part 2 compliant off-site location. The Contractor has sole responsibility for any costs it incurs for file removal or storage, as well as procuring a file that may be requested by the Department.

## 3.12 Security Requirements

### 3.12.1 Employee Identification and Personnel Conduct

- (a) At all times, at any facility subject to the Contract, the Contractor, Contractor's personnel, the subcontractor, and subcontractor's personnel shall adhere to State site requirements (which will be provided to the Contractor) including:
1. Being prepared to be escorted at all times;
  2. Providing information for badge issuance; and
  3. Wearing the badge in a visual location above waist at all times.

Additionally, personnel and their belongings may be subject to physical search upon entering or exiting the Department's facilities.

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. The Contractor's duty to timely perform the Contract is not excused by the State's exercise of its right to remove from or refused admittance to any facility of any person providing services under this Contract.

- (b) The Contractor shall ensure that each person who is an employee or agent of the Contractor or subcontractor displays 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.
- (c) The Contractor shall maintain the safekeeping and return of any State-issued ID badges as follows:
- i. 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;
  - ii. 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
  - iii. The Contractor shall report to DPSCS within 24 hours of discovery of the loss or theft of any ID badge.
- (d) The Contractor shall ensure that all personnel who will provide services within any facility undergo a Security Orientation conducted by each facility's Warden or designee. Each facility orientation will not exceed forty (40) total hours and must be completed within thirty (30) days of each individual's start date.

(e) Emergency Preparedness:

The Contractor shall participate in Institutional mock disaster and other types of drills no less than annually at each facility in collaboration with security staff. These drills may include such things as power outages, individual injuries, weather-related evacuation procedures, etc.

If in the opinion of the Director of Substance Abuse Treatment Services any drill evidenced a significant deficiency and unsatisfactory result, the medical portion of the mock disaster or other drill shall be re-conducted at the direction of the Director of Substance Abuse Treatment Services.

The Contractor shall document and critique the responses of its staff to disasters and disaster drills and shall develop corrective action plans as necessary to correct deficiencies within 24 hours of the completion of the disaster, drill or rehearsal.

### 3.12.2 Information Technology

- a. Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.
- b. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Manager to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN. The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State.
- c. The Contractor shall electronically submit sensitive data via a secure web based file transfer solution provided by DPSCS. This will provide end-to-end file encryption without end-user involvement or third party encryption programs. No additional charges or licensing will be required for authorized end users accessing the secure file transfer application from the Internet.

For reporting to the State and for other Contract IT issues, the Contractor shall ensure ongoing compatibility with the State IT systems. Current State specifications are:

- a. Microsoft Office 2007 or higher; and/or
- b. Adobe Acrobat 9.0 or higher

The Contractor is responsible for following HIPAA Privacy and Security Rules and maintaining reasonable and appropriate administrative, technical, and physical safeguards with regard to the sending and receiving of all information required under the Contract to be awarded under this IFB. The contractor must follow minimum necessary HIPAA requirements as defined by the U.S. Department of Health and Human Services at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveridentities/minimumnecessary.html>

Data formatting for transmission shall be by a comma-delimited text file. The Contractor should contact the Contract Manager to obtain any necessary information to ensure that systems and reporting processes maintain capability for State use and access. The Contract Manager shall notify the Contractor of any changes that affect these capabilities. If file transmission

specifications change, specific file layout specifications, as well as any additional file transfer processes, will be furnished by the State.

If normal data transmission is interrupted or not available for any reason, the Contractor shall ensure that all available data is secured on a CD-R disk and submitted to the Contract Manager by USPS overnight mail with signature confirmation. The data will be secured on the CD-R disk using the latest encryption technology available (Minimum of AES 128 encryption). The requirements for encrypting information will be updated periodically per the State's Guidelines and standards as referenced above. The Contractor shall immediately notify the Contract Manager of any such situation and shall provide the Contract Manager with information on the resumption of normal submission of data, as specified by the Contract Manager.

### **3.12.3 Criminal Background Check**

The Contractor shall obtain written permission from each individual assigned to work on the Contract permitting a criminal background check and submit the permission statements to the Contract Manager. Thereafter, the Department will obtain a criminal background check for each individual using a source of its choosing and may perform additional background checks at any time. This requirement applies to any potential employee of the Contractor, including a person who was employed by the State, the Contractor, Contractor Staff, or Other Healthcare Contractors that has a gap in employment of over 60 days. The Contract Manager reserves the right to reject any individual based upon the results of the background check.

### **3.12.4 Gifts**

The Contractor, and/or its employees, subcontractors or subcontractors' employees shall not accept from or give to a Participant or a State employee any money, services or other form of remuneration or gift as described in the Department's Standards of Personal Conduct 50-2.

### **3.12.5 Additional Charges**

The Contractor is solely responsible for any additional costs which the Contractor might incur as a result of the Department enforcing its security requirements.

### **3.12.6 Investigations**

The Contractor shall promptly and fully cooperate with any investigations of any type being conducted by the Department. Cooperation includes, but is not limited to, providing any requested statements, matter or records, physical evidence or records.

### **3.12.7 Termination of Contract for Security Violations**

The Contractor's noncompliance with any provision of this Section 3.12 is sufficient grounds for the Department to immediately terminate the Contract for default.

## **3.13 Contractor Use of Telephones and Utilities and Minimizing Waste**

3.13.1 The Department will provide the Contractor's onsite staff, as necessary, with such onsite telephone services, utilities service and office space as provided to Department employees.

- 3.13.2 The Contractor shall be responsible for the cost of any long distance telephone calls, including those to its own offices. The Contractor shall also encourage its onsite staff to conserve utilities, and minimize non-biological waste by conserving and recycling.
- 3.13.3 The Contractor shall have its own employees, the employees of its subcontractors and its Staff keep a log of all long distance calls made from Department phones and provide it to the Contract Manager monthly (See 3.14.2(E)). The log shall list the date, time, phone number, name of the party called and name of the person making the call. The Department will determine the cost of such calls and, at the option of the Contract Manager, either submit a bill to the Contractor for payment, or deduct the cost of long distance phone service from payments made to the Contractor, via an itemized offset against an invoice.

### **3.14 Data Tracking, Reports and Meetings**

- 3.14.1 The Contract Administrator shall be the sole point of contact for any requests made by the Contract Manager regarding reports, DPSCS system access requests and any other information technology (IT)-related issues. In addition, the Contract Administrator shall maintain a spreadsheet documenting any IT requests or issues, to be made available to the Contract Manager upon request.
- 3.14.1.1 SMART System database entries – The Contractor shall obtain all required consents and authorizations from each Participant using the SMART System’s eConsent function, and enter all required information into the SMART System database. The Contractor shall keep all information current in SMART. The Contractor shall enter all data accurately and completely within seven (7) days of each Participant’s admission. Personal, addiction, and history information as required by COMAR 10.47.03.07.
- 3.14.1.2 SAMIS – The State maintains monthly reporting for participation in substance abuse treatment. The Contractor shall complete a Substance Abuse Management Information System (SAMIS) report for each Participant, each month, and submit the reports electronically according to ADAA/SAMIS guidelines. The Contractor shall complete SAMIS reporting by entering each Participant’s assessment data into SMART. This includes the full data for the Participant’s assessment. The Contractor shall enter all data accurately and completely within seven (7) days of each Participant’s admission as calculated from the date of the Participant’s signed Treatment Consent Form.
- 3.14.1.3 The Contractor shall enter certain specified data into OCMS as directed by the Contract Manager. See Attachment PP -Offender Case Management System (OCMS) Assessment and Screening and Re-Entry Dashboards - Sample
- 3.14.1.4 TC Client Management Spreadsheet (See Attachment V) as described in Sections 3.4.5 and 3.4.17, which includes, but is not limited to:
- a. Name
  - b. SID/DOC number
  - c. SAMIS number
  - d. Cycle number
  - e. Race
  - f. Drug of choice
  - g. Date of Birth
  - h. Program Status
  - i. Referral Date
  - j. Active Date

- k. Removal Date
- l. Projected Release Date

3.14.1.5 Aftercare Client Management Spreadsheet (See Attachment KK), as described in Section 3.4.22 which includes, but not limited to:

- a. Name
- b. SID/DOC number
- c. SAMIS number
- d. Cycle number
- e. Race
- f. Drug of choice
- g. Date of Birth
- h. Program Status
- i. Referral Date
- j. Active Date
- k. Removal Date
- l. Projected Release Date

3.14.1.6 Information Technology Status Spreadsheet, shall be maintained as formatted in Attachment QQ which includes:

- a. Name and Facility
- b. Requests for DPSCS system access
- c. Help desk ticket numbers
- d. Open/closed issues
- e. Status of ticket

3.14.1.7 Self Help Database (See Attachment MM) shall be maintained, as described in Section 3.7.2, to include:

- a. Name
- b. DOC/SID number
- c. Group
- d. Date placed on waiting list
- e. Date placed into group
- f. Date removed from group
- g. Status
- h. Certificate tracking

3.14.2 The Contractor shall provide the following reports to the Contract Manager or designee:

A. DPSCS End of Month Report (See Attachment Q for sample report):

- 1) within five (5) calendar days of the beginning of each month;
- 2) in a format provided by the Contract Manager;
- 3) document that each Participant receives 15 hours of direct, staff-interactive service per week; and
- 4) include the following information:
  - a. location of service provision;
  - b. daily Census and average;

- c. highest daily census;
- d. admissions;
- e. completions;
- f. discharges & reasons;
- g. number of urinalysis performed and number positive;
- h. staff roster, current staffing & percentage;
- i. monthly and year to date staff turnover rates; and
- j. monthly direct and indirect service hour totals.

B. DPSCS TC Staff Roster (See Attachment R for sample report):

- 1) within five (5) calendar days of the beginning of each month;
- 2) in a format provided by the Contract Manager; and
- 3) include the following information:
  - a. staff by name and by Institution (positions);
  - b. professional title;
  - c. date hired;
  - d. employment end date;
  - e. time position vacant;
  - f. discharges & reasons;
  - g. license/certification date;
  - h. trainee status approved date; and
  - i. access to institutional drive information..

C. DPSCS Daily and Weekly Census Report (See Attachment S for sample report):

- 1) by 3:00 P.M. of the last business day of the week;
- 2) in a format provided by the Contract Manager;
- 3) show the weekly census level for that week; and
- 4) include the following information:
  - a. location of service provision;
  - b. weekly census; and
  - c. projected monthly completions.

D. Monthly Facility Staffing Schedule (MFSS) (See Attachment T):

- 1) no later than ten (10) days prior to the start of the next service month, or the closest workday thereto;
- 2) identify the employee or subcontractor by name; and
- 3) provide the anticipated schedule and work hours for every counselor, clinical supervisor and director providing services under the contract that month.

E. Long distance phone call log

- 1) by the 5<sup>th</sup> of each month for the previous month's long distance phone calls;
- 2) identify the employee or subcontractor who made the long distance call;
- 3) provide length of phone call and to whom

F. RSAT Performance Measurement Evaluation Form – Version 2 (Attachment NN) to be submitted to the Director of Substance Abuse Treatment Services by the 5<sup>th</sup> of the month for the preceding quarter. Data included in the report shall include:

- 1) Qualitative Questions
- 2) Program Characteristics
- 3) Aftercare Participant Data

G. HQ Drug Screening Tracking Submission Sheet (See Attachment BB) to be submitted to the Contract Manager simultaneously to any urinalysis request by the Counselors to include:

- 1) Site
- 2) Name
- 3) DOC/SID number
- 4) Requested test date

H. Maintain, record and submit DPSCS Monthly Treatment List Submissions (See Attachment U) to the Contract Manager by the 5<sup>th</sup> of the month for the previous month's activities to include:

- 1) Name
- 2) DOC/SID number
- 3) Admission Date
- 4) Discharge Date
- 5) Completion Date

I. Submit a physical inventory report as described in Section 3.9 to the Contract Manager annually no later than January 15<sup>th</sup> for the preceding year's physical inventory. The report shall include:

- 1) Equipment description
- 2) Name of supplier and purchase order or other acquisition document number.
- 3) Acquisition cost and date, or equipment value of any lease / purchase determined in accordance with Department policy and date of lease initiation.
- 4) Physical location of item (Facility code + Room Number or Name)
- 5) Serial number, if any
- 6) State tag number
- 7) Equipment Condition

3.14.3 The Contractor may file the reports electronically in a format designed by the Contract Manager or Designee. The format and content of the report may change at any time during the contract to meet the discretionary needs of DPSCS.

3.14.4 The Contractor shall complete the reports with a minimum 97% accuracy rate. Accuracy will be calculated by the Contract Manager by taking the number of total errors (regardless of type and reason) and dividing them by the total number of data points in a report.

3.14.5 Meetings:



- 3.14.5.1 Within three (3) Business Days of Contract Commencement and for up to sixty (60) days following Contract Commencement, the Contractor's Administrator shall be required to attend mandatory work initiation conferences, as frequently as weekly at the DPSCS' Reisterstown Rd. Office Complex, with the Department's Contract Manager and Substance Abuse Treatment staff. At the sole discretion of the Department, a meeting may be conducted via teleconference. The Contractor shall not bill or receive reimbursement for these conferences.
- 3.14.5.2 The Clinical Supervisors (or at CMCF the Program Director) shall attend monthly Warden's meetings and program committee meetings at each facility.
- 3.14.5.3 The Contractor's Administrator shall attend monthly Contract compliance meetings with the Department to discuss any Contract issues or concerns. The Contract Manager may at its discretion request that the clinical supervisors and Program Director attend the meetings. The Contractor shall be responsible for generating an agenda which shall be submitted to the Contract Manager at least five (5) Business Days prior to each meeting. The Contractor shall make all reasonable efforts to accommodate changes to the agenda requested by Department staff. The Contractor shall be responsible for taking all minutes/notes during this meeting or, upon specific written request by the DPSCS Contract Manager. A written copy of the minutes/notes shall be submitted to the Contract Manager within five (5) days of the meeting. The Contract Manager shall have up to five (5) days to review the minutes/notes and provide comments. The Final Minutes/Notes of the meeting shall be submitted to the Contract Manager, within two (2) business days of receipt of the comments. All final approved minutes shall be maintained in an electronic file, with searchable, secure (password protected) read-only access by designated Department personnel to all data.

### **3.15 Continuous Quality Improvement (CQI)**

- 3.15.1 The Contractor shall implement a CQI program and participate, as required by the Contract Manager in all quality improvement programs and any necessary accreditation activities described in this IFB, including any that arise after Contract Commencement.
- 3.15.2 The Contractor shall participate in a program for CQI that includes:
  - 3.15.2.1 Quarterly Statewide Committee meetings, chaired by the Contract Administrator, with all appropriate State and Contractor personnel including, but not limited to, the Contract Manager and Director of Substance Abuse Treatment Services and the Contractor's Clinical Supervisors and Program Director. In addition, any of the Contractor's sub-contractors may attend.

Such meetings will include updates on TC programs and other appropriate substance abuse topics in order to monitor the substance services provided; collect, trend and disseminate data; develop and monitor corrective action plans; and facilitate communication between disciplines that can lead to improved quality of care in the TC program.

3.15.2.2 As part of CQI, all incidents/accidents/errors listed below shall be reported to the Contract Manager within 24 hours of the occurrence on the DPSCS Security Incident Report (IR) form which includes such information as the incident or event, the date it occurred, how it was discovered, and any outcomes as a result of that event (good and/or bad). Incident reports shall not be considered as punitive or threatening and shall be used for education and CQI purposes. The current version of the form is accessible on the DPSCS website.

Reportable incidents/accidents/errors include but are not limited to:

- (1). Unexpected or unexplainable deaths,
- (2). All suicides, successful or attempted,
- (3). Assaults on Contractor staff,
- (4). Inmate assaults requiring medical treatment,
- (5). Emergency Responses necessary to maintain or resuscitate life, including 911 Events.
- (6). Injuries occurring as a part of work accidents, such as, but not limited staff falls, carpal tunnel syndrome, etc.
- (7). Exposures to infectious diseases,
- (8). Prophylaxis administration,
- (9). Security Breaches (e.g. lost keys, missing sharps or medications, contraband, etc.)
- (10). Treatment errors or missed treatments, missing documentation, and

If directed by the Contract Manager, within 10 days of the submission of the IR, the Contractor shall submit a Corrective Action Plan concerning prevention of re-occurrence.

3.15.3 The Contractor is responsible for taking minutes of Quarterly Statewide CQI meetings and providing to the Contract Manager within 5 Business Days of such meetings. Substance abuse related work plans and corrective action plans resulting from committee meetings, if any, shall be submitted within the timeframe directed by the Contract Manager or designees.

### **3.16 Insurance Requirements**

3.16.1 The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.

3.16.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per occurrence.

3.16.3 The Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.

3.16.4 Within five (5) Business Days of recommendation for Contract award, the Contractor shall provide the Contract Manager with current certificates of insurance, and shall update such certificates from time to time but no less than annually in multi-year contracts, as directed by the Contract Manager. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:

- a. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
- b. Commercial General Liability as required in Section 3.16.1
- c. Errors and Omissions/Professional Liability as required in Section 3.16.2
- e. Employee Theft Insurance as required in Section 3.16.3.

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

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

### **3.17 Problem Escalation Procedure (PEP)**

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

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

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

- a. The process for establishing the existence of a problem;
- b. The maximum duration that a problem may remain unresolved at each level in the Contractor's organization before automatically escalating the problem to a higher level for resolution;
- c. Circumstances in which the escalation will occur in less than the normal timeframe;
- d. The nature of feedback on resolution progress, including the frequency of feedback to be provided to the State;
- e. Identification of, and contact information for, progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;

- f. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- g. A process for updating and notifying the Contract Manager of any changes to the PEP.

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

### **3.18 Non-Compete Clause Prohibition**

The Department seeks to maximize the retention of personnel working under this Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and maximize maintenance of institutional knowledge accumulated by such personnel.

To help achieve this objective of staff retention, each Bidder shall agree that if awarded the Contract, the Bidder's employees and agents below the Clinical Supervisor and Program Director level working on the State contract shall be free to work for the contractor awarded the State contract notwithstanding any non-compete clauses to which the employee may be subject. The Bidder agrees not to enforce any non-compete restrictions against the State with regard to the Bidder's employees and agents below the Clinical Supervisor or Program Director level if a different vendor succeeds it in the performance of the Contract.

To evidence compliance with this Non-Compete clause prohibition each Bidder must include an affirmative statement in its Bid (See Section 4.4.9) that the Contractor agrees that its employees and agents below the Statewide level shall not be restricted from working with any successor contractor that is awarded the State contract.

In the event the Department determines that the Contractor or its agent has invoked a non-compete clause to discourage an employee below the Clinical Supervisor or Program Director level from agreeing to work for a successor contractor in violation of IFB requirements, the Department shall assess liquidated damages and deduct the equivalent of three month's salary for such employee from the final payment due the Contractor to compensate the Department for the value of lost Contract-specific knowledge. To ascertain the value of three month's salary the Department will use the hourly rate provided for the respective position in Attachment F of the Contractor's Bid times 540 hours.

### **3.19 Litigation**

3.19.1 For any incidence where litigation involving any activity under this Contract is filed directly with the Contractor, the Contractor shall promptly notify the Contract Manager and Director of Substance Abuse Treatment Services in writing. The notification shall include the court name, case number, counsel information (if any) and amount of claim.

Whenever there is any progress or activity involving the case, the Contractor shall notify the Contract Manager and Director of Substance Abuse Treatment Services to delineate:

1. Whether dispositive motions are pending;
2. Discovery proceeding;
3. Trial set (date);

4. Trial held;
5. Judgment rendered;
6. And/or appeal noted.

All rulings on dispositive motions, judgments and settlements, and the terms of any judgment or settlement shall also be reported, regardless of whether the named defendant is the corporate defendant, a corporate subcontractor, or an individual employed by the Contractor or a subcontractor if the suit arises from performance of the services under this IFB. For any claim filed with the Contractor, the Contractor shall cooperate with the Department with the defense of such claim. For any claim filed with the Department, the Department will notify the Contractor and will coordinate with the Contractor for any necessary information needed in the suit. The Contractor shall provide any required testimony, respond to subpoenas, or other assistance with litigation as may be requested by the Department.

3.19.2 The Contractor is advised that the Department is subject to a consent decree in *Carter v. Kamka*, 515 F. Supp. 825 (D. Md. 1980) under which the Department contracts with an independent Legal Services Provider (“Legal Services Provider”) to provide legal assistance to Participants. In accordance with the *Carter v. Kamka* consent decree, the Contractor may be requested to:

- a. provide employees of the Legal Services Provider access to institutional substance abuse treatment records, whether in electronic or hard copy form, of Participants who have executed releases authorizing the Legal Services Provider to review their records; and,
- b. deliver to the Legal Services Provider photocopies of inmate/Participant’s substance abuse treatment records specifically identified by the Legal Services Provider within fifteen (15) days of the photocopy request.

The copy reimbursement rate to be charged to the Legal Services Provider for photocopies requested may not exceed \$0.15 per page.

## **3.20 Invoicing**

### **3.20.1 General**

- (a) The Contractor shall sign and submit invoices for services to the Contract Manager. All invoices shall include the following information:
  - Contractor name;
  - Remittance address;
  - Federal taxpayer identification number (or if sole proprietorship, the individual’s social security number);
  - Invoice period;
  - Invoice date;
  - Invoice number
  - State assigned Contract number;
  - State assigned (Blanket) Purchase Order number(s);
  - Goods or services provided; and
  - Amount due.

Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

- (b) The Contractor must provide the Department with all required deliverables within the timeframe specified in the Contract. If the Contractor fails to do so or otherwise materially breaches the terms and conditions of the Contract, the Department reserves the right to reduce or withhold Contract payment until such time as the Contractor brings itself into full compliance with the Contract. Any action taken by the Department, or dispute of that action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.02.

### 3.20.2 Invoice Submission Schedule

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

- a. The Contractor may submit invoices for properly performed services by the 10th of the month following the month in which services were rendered.
- b. The Contractor shall bill only for actual hours worked and only at the hourly rate detailed in the Contractor's Bid.
- c. The Contractor shall include with its invoice the Report specified in Section 3.14.2 (D) which includes, by facility, the dates and number of hours each employee worked and that employee's position.
- d. The Department may refuse payment for any labor hours invoiced by the Contractor which cannot be verified by the Department.

### 3.21 MBE Reports

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

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

### 3.22 VSBE Reports

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

### 3.23 SOC 2 Type II Audit Report

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

### **3.24 Audits**

The Contractor shall be subject to audits at any time. In addition to ADAA audits and inspections, MBE compliance audits, and any other audits authorized by law, the Contract Manager will conduct program audits on, at minimum, a quarterly basis. The Contract Manager's audits may include, but are not limited to, review of open and closed files, interviews of Contractor's staff and DPSCS employees, inspection of the TC environment, and observation of counseling therapy groups and seminars. Audits shall be unannounced. The Contract Manager will provide a written report to the Contractor following the audit within five (5) Business Days.

### **3.25 End of Contract Transition**

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

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## **SECTION 4 – BID FORMAT**

### **4.1 One Part Submission**

Bidders shall submit one original, one copy, and one electronic version of their bid on electronic storage (CD or flash drive).

Bidders shall submit with their Bid all Minimum Qualification documentation required (see Section 2), and all Required Bid Submissions (see Section 4.4) in a single sealed package/envelope.

### **4.2 Labeling**

Each Bidder is required to label the sealed Bid. The Bid shall bear the IFB title and number, name and address of the Bidder, and closing date and time for receipt of the Bids.

### **4.3 Bid Price Form**

The Bid shall contain all price information in the format specified on the Bid Form (**Attachment F**). Complete the Bid Form only as provided in the Bid Pricing Instructions. Do not amend, alter, or leave blank any items on the Bid Form or include additional clarifying or contingent language on or attached to the Bid Form. If option years are included, Bidders must submit Bids for each option year. Failure to adhere to any of these instructions may result in the Bid being determined to be non-responsive and rejected by the Department.

### **4.4 Required Bid Submissions**

The Bidder shall submit the following with their Bid. A Tab as detailed below shall separate each section of the Bid as follows:

#### **4.4.1 Transmittal Letter (Submit under Tab A)**

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

- Name and address of the Bidder;
- Name, title, e-mail address, and telephone number of primary contact for the Bidder;
- Solicitation Title and Solicitation Number that the Bid is in response to;
- Signature, typed name, and title of an individual authorized to commit the Bidder to its Bid;
- Federal Employer Identification Number (FEIN) of the Bidder, or if a single individual, that individual's Social Security Number (SSN);
- Bidder's eMM number;
- Bidder's MBE certification number (if applicable);
- Acceptance of all State IFB and Contract terms and conditions (see Section 1.24); and
- Acknowledgement of all addenda to this IFB.

Any information which is claimed to be confidential is to be noted by reference and included after the Transmittal Letter. An explanation for each claim of confidentiality shall be included (see Section 1.14 "Confidentiality of Bids").



#### **4.4.2 Minimum Qualifications Documentation (Submit under Tab B)**

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

#### **4.4.3 Completed Bid Form Attachment F (Submit under Tab C)**

#### **4.4.4 Completed Required Attachments: Submit with original signatures (Submit under Tab D)**

- a. Completed Bid/Proposal Affidavit (**Attachment B**).
- b. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**).
- c. Completed Certification of Investment Activities in Iran (**Attachment N**).

#### **4.4.5 Additional Attachments \*If Required: Submit with original signatures, if required. (Submit under Tab E)**

- a. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) **\*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 Location of the Performance of Services Disclosure (**Attachment O**) **\*see Section 1.42**.

#### **4.4.6 References (Submit under Tab F)**

At least three (3) references are requested from customers who are capable of documenting the Bidder’s ability to provide the services specified in this IFB. References used to meet any Bidder Minimum Qualifications (see Section 2) may be used to meet this request. Each reference shall be from a client for whom the Bidder 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.

The Department reserves the right to request additional references or utilize references not provided by a Bidder.

#### **4.4.7 Key Personnel Under (Submit under Tab G)**

Resumes of each Key Personnel identified in IFB Section 1.2(ff) for each facility. If a Bidder is not able to provide resumes of Key Personnel as of Bid submission date, any Bidder recommended for award will be required to provide resumes of Key Personnel prior to the Go-Live date. All resumes will be reviewed for approval by DPSCS.

#### **4.4.8 List of Current or Prior State Contracts (Submit under Tab H)**

Provide a list of all contracts with any entity of the State of Maryland for which the Bidder is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Bidder 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 Bidder's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

#### **4.4.9 Non-Compete Clause Prohibition (Submit under Tab I)**

The Bidder shall include an affirmative statement that it agrees that its employees and agents below the Clinical Supervisor or Program Director level shall not be restricted from working with any successor contractor that is awarded the State contract.

#### **4.4.10 Financial Capabilities (Submit under Tab J)**

The Bidder 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).

#### **4.4.11 Certificate of Insurance (Submit under Tab K)**

The Bidder shall provide a copy of the Bidder's current certificate of insurance. The recommended awardee must provide a certificate of insurance with the prescribed limits set forth in Section 3.14 "Insurance Requirements," naming the State as an additional insured if required, within five (5) Business Days from notification by the Procurement Officer that the Bidder has been determined to be the apparent awardee.

#### **4.4.12 Subcontractors (Submit under Tab L)**

The Bidder shall provide a complete list of all subcontractors that will work on the Contract if the Bidder 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.

#### **4.4.13 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 Bidder and a brief description of any action;
- b. A brief description of any settled or closed legal actions or claims against the Bidder over the past five (5) years;
- c. A description of any judgments against the Bidder within the past five (5) years, including the case name, number court, and what the final ruling or determination was from the court; and
- d. In instances where litigation is on-going and the Bidder has been directed not to disclose information by the court, provide the name of the judge and location of the court.

### **4.5 Reciprocal Preference**

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

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

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

#### **4.6 Delivery**

Bidders may either mail or hand-deliver Bids.

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

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

#### **4.7 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 and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each with original signatures.

- a. signed Contract (**Attachment A**),
- b. completed Contract Affidavit (**Attachment C**),
- c. completed MBE **Attachments D-2 and D-3**, within ten (10) Working Days, if applicable; \*see **Section 1.33**,
- d. completed MBE **Attachment D-6** if a waiver has been requested, within ten (10) Working Days, if applicable; \*see **Section 1.33**,
- e. signed Non-Disclosure Agreement (**Attachment J**), if applicable; \*see **Section 1.37**,
- f. signed HIPAA Business Associate Agreement (**Attachment K**), if applicable; \*see **Section 1.38**,
- e. completed VSBE **Attachments M-2 and M-3**, if applicable \*see **Section 1.41**,
- f. completed 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 3.16 “Insurance Requirements,” naming the State as an additional insured, if applicable; \*see **Section 3.16**.

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## **IFB ATTACHMENTS**

### **ATTACHMENT A – Contract**

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

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

This Attachment must be completed and submitted with the Bid.

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

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

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

If required (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D-1 through D-6. Attachment D-1 must be properly completed and submitted with the Bidder's Bid or the Bid will be deemed non-responsive and rejected. Within 10 Working Days of receiving notification of recommendation for Contract award, the Bidder must submit Attachments D-2 and D-3 and, if the Bidder has requested a waiver of the MBE goal, usually Attachment D-6.

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

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

### **ATTACHMENT F – Bid Form Instructions and Bid Form**

The Bid Form must be completed and submitted with the Bid.

### **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 Bid.

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

If required (see Section 1.35), these Attachments must be completed and submitted with the Bid 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 Bid.

### **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 Bid.

### **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 Bid.

### **ATTACHMENT L – Mercury Affidavit**

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

### **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 Bid. 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 Bid.

**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 – Inmate Characteristic Data for Each Institution**

For informational purposes only.

**ATTACHMENT Q – DPSCS End of Month Report – Master**

For informational purposes only.

**ATTACHMENT R – DPSCS TC Staff Roster – Blank**

For informational purposes only.

**ATTACHMENT S – DPSCS Daily and Weekly Census – Blank**

For informational purposes only.

**ATTACHMENT T – Monthly Facility Staffing Schedule MFSS**

For informational purposes only.

**ATTACHMENT U – DPSCS Monthly Treatment List Submissions – Blank**

For informational purposes only.

**ATTACHMENT V – TC Client Management Spreadsheet – Blank**

For informational purposes only.

**ATTACHMENT W – TC Trainer’s Manual**

For informational purposes only.

**ATTACHMENT X – SMART\_Manual\_Revised**

For informational purposes only.

**ATTACHMENT Y – TAP Version III DOC 8-6-2012 – Final**

For informational purposes only.

**ATTACHMENT Z – MHSF- III**

For informational purposes only.

**ATTACHMENT AA – Toolkit-Patients**

For informational purposes only.

**ATTACHMENT BB – HQ ATP Drug Screening Tracking Submission Sheet**

For informational purposes only.

**ATTACHMENT CC – ADULT\_URICA\_Unlocked**

For informational purposes only.

**ATTACHMENT DD – TCU Drug Screen II**

For informational purposes only.

**ATTACHEMENT EE – Grant Application RSAT Aftercare**

For informational purposes only.

**ATTACHMENT FF – RSAT Grant Announcement**

For informational purposes only.

**ATTACHMENT GG – Group Pre-test Survey 10-11**

For informational purposes only.

**ATTACHMENT HH – Group Post-test Survey 10-11**

For informational purposes only.

**ATTACHMENT II – Group Satisfaction Survey**

For informational purposes only.

**ATTACHMENT JJ – Aftercare Services Plan 10-11**

For informational purposes only.

**ATTACHMENT KK – Aftercare Client Management Spreadsheet - Blank**

For informational purposes only.

**ATTACHMENT LL – Discharge Summary 10-11**

For informational purposes only.

**ATTACHMENT MM – Self-Help Database - Blank**

For informational purposes only.

**ATTACHMENT NN – RSAT Performance Measurement Evaluation Form – Version 2**

For informational purposes only.

**ATTACHMENT OO – Substance Abuse Treatment Liquidated Damages Table**

**ATTACHMENT PP - Offender Case Management System (OCMS) Assessment and Screening Dashboard – Sample.** For Informational Purposes Only

**ATTACHMENT QQ - Information Technology Status spreadsheet**

For Informational Purposes Only

**ATTACHMENT RR – Level of Service Inventory-Revised**

For Informational Purposes Only

## ATTACHMENT A – CONTRACT

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

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

### 1. Definitions

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

- 1.1 “Bid” means the Contractor’s Bid dated (Bid date).
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contract Manager” means the Department employee identified in Section 1.6 of the IFB as the Contract Manager.
- 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 “IFB” means the Invitation for Bids for Substance Abuse Treatment Services Solicitation # Q0015010, and any addenda thereto issued in writing by the State.
- 1.7 “Procurement Officer” means the Department employee identified in Section 1.5 of the IFB as the Procurement Officer.
- 1.8 “State” means the State of Maryland.

### 2. Scope of Contract

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

Exhibit A – The IFB

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

Exhibit C – The Bid

- 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 IFB. 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.

2.4 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 nearby.

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

3.1 The Contract resulting from this IFB shall be for a period of approximately two and one-half years beginning on or about February 1, 2015 and ending on June 30, 2017. The term of this Contract begins on the date the Contract is signed by the Department following approval of the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract upon receipt of official notification of award and a written Notice to Proceed issued by the Procurement Officer.

3.2 Further, this contract may be extended for two option periods of two years each at the sole discretion of the Department and at the prices quoted in the Bid for Option Years.

3.3 Audit, confidentiality, document retention, indemnification obligations and any other provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive expiration or termination of the Contract and continue in full force and effect.

### **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 on the Bid Form.

Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract shall not exceed \$ (**Not-to-Exceed amount**). Contractor shall notify the Contract Manager, in writing, at least sixty (60) days before payments reach the above specified amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult with the State and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached; and (b) when applicable secure databases, systems, platforms, and/or applications on which the Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

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 as from time-to-time amended, are prohibited. Invoices shall be submitted to the Contract Manager. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.



- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.
- 4.4 Contractor's eMarylandMarketplace vendor ID number is (Contractor's eMM number).
- 4.5 Each invoice must contain the following information:
1. Contract Number;
  2. Remittance address;
  3. Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
  4. Invoice period;
  5. Invoice number;
  6. State assigned Contract number;
  7. State assigned (Blanket) Purchase Order number(s);
  8. Goods or services provided; and
  9. Amount due.

and must be submitted to:

Accounts Payable  
Maryland Department of Public Safety and Correctional Services  
Indicate which Institution/Agency  
Indicate Address of Institution/ Agency  
Indicate Contact Person of Institution/Agency

- 4.6 Invoice Submission Schedule:

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

- a. The Contractor may submit invoices for properly performed services by the 10th of the month following the month in which services were rendered.
- b. The Contractor shall bill only for actual hours worked and only at the hourly rate detailed in the Contractor's Bid.
- c. The Contractor shall include with its invoice the Report specified in Section 3.14.2 (D) which includes, by facility, the dates and number of hours each employee worked and that employee's position.
- d. The Department may refuse payment for any labor hours invoiced by the Contractor which cannot be verified by the Department.

## 5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork,

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

- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 This Section 5 shall survive expiration of the Contract.

## **6. Exclusive Use**

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by 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.

## **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. Confidentiality**

- 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, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data

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

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

## **9. Loss of Data**

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

## **10. Indemnification**

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

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

10.3 The State 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, § 5-102, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of 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. 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 Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.
- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

## **14. Nondiscrimination in Employment**

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

## **15. Contingent Fee Prohibition**

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

**24. Documents Retention and Inspection Clause**

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, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. This Section 24 shall survive expiration or termination of the Contract.

**25. Compliance with Laws**

The Contractor hereby represents and warrants that:

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

**26. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Bid/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 Bid/Proposal, was inaccurate, incomplete, or not current.

**27. 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.

## **28. Liability**

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

## **30. Commercial Nondiscrimination**

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

## **31. Prompt Pay Requirements**

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

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



- iv. Assess Liquidated Damages as set forth in the IFB and Section [ ] of the Contract.
- 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. Liquidated Damages**

32.1 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.

32.1.1 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.

32.1.2 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.

32.1.3 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.

32.1.4 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.

32.1.5 Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$ 100.00 per day until the undisputed amount due to the MBE subcontractor is paid.

32.2 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.

### **33. 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.

**34. Insurance Requirements**

The Contractor shall maintain the minimum insurance requirements set forth in the IFB. The State of Maryland shall be named as an additional named insured on all liability policies (Worker’s Compensation and Professional Liability excepted) and certificates of insurance evidencing this coverage shall be provided prior to commencement of the contract.

**35. Security**

**35.1** Any person who is an employee or agent of the Contractor or subcontractor and who enters the premises of a facility under the jurisdiction of the Department is subject to search of his or her person and/or property, and in addition may be fingerprinted (for the purpose of a criminal history background check), photographed and required to wear an identification card issued by the Department. Further, the Contractor, its employees and agents and subcontractor’s employees and agents shall not violate any provisions of Title 9, Subtitle 4 of the Criminal Law Article of the Annotated Code of Maryland and such other security regulations, directives and policies of the Department about which they may be informed from time to time. The failure of any of the Contractor’s or subcontractor’s employees or agents to comply with any provision of this Section 33 of this contract is sufficient grounds for this Department to immediately terminate this contract for default.

**35.2** The Contractor shall comply with the MD Information Technology Security Policy and Standards available on line at: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>

**36. Contract Manager and Procurement Officer**

The work to be accomplished under this Contract shall be performed under the direction of the Contract Manager. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination. The Contract Manager identified for this contract is (include Contract Manager’s name).

**37. 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: (name of Procurement Officer)  
Procurement Officer  
(address and contact information for Procurement Officer)

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

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

The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The

Contractor agrees, further, during the term of this contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the Department immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

### **39. Compliance with HIPAA and State Confidentiality Law**

39.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:

- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
- (c) Otherwise providing good information management practices regarding all health information and medical records.

39.2 If in connection with the procurement or at any time during the term of the Contract, the Department determines that functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor acknowledges its obligation to execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form required by the Department.

39.3 Protected Health Information as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is: individually identifiable; created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

### **40. 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 Office of Equal Opportunity Limited English Proficiency (LEP) Plan, July 2014, and DPSCS Executive Directive OEO.020.0032, effective July 25, 2014.

**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: **Secretary, DPSCS**

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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

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

**ATTACHMENT B – BID/PROPOSAL AFFIDAVIT**

**A. AUTHORITY**

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

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

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

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

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

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

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

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

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

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

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

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

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

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

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

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**E. AFFIRMATION REGARDING DEBARMENT**

**I FURTHER AFFIRM THAT:**

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

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F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

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G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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



J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

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

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

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

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

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

I FURTHER AFFIRM THAT:

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

M. ACKNOWLEDGEMENT

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

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

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

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

---

(signature of Authorized Representative and Affiant)

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

**ATTACHMENT C – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

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

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

**I FURTHER AFFIRM THAT:**

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

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

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

Name and Department ID

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

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

Name and Department ID

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

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

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

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the above business will comply with, Election Law Article, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person

receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

#### E. DRUG AND ALCOHOL FREE WORKPLACE

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

#### I CERTIFY THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

**F. CERTAIN AFFIRMATIONS VALID**

**I FURTHER AFFIRM THAT:**

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

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

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

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

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

**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 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.**

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 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 a 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](http://www.mdot.state.md.us) to determine if a firm is certified with the appropriate North American Industry Classification System (“NAICS”) Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit [www.naics.com](http://www.naics.com). Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **WARNING:** If the firm’s NAICS Code is in **graduated status**, such services/products **may not be counted** for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term “Graduated” follows the Code in the MDOT MBE Directory.
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](http://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](mailto: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 Bidder/Offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the Bidder/Offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) or the Bid will be deemed not responsive, or the Proposal 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 - INSTRUCTIONS**

**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. (solicitation Number), I affirm the following:

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

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of 10 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 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.

**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) the percentage of the total Contract amount 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</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): _____%</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 workforce: _____</p> <p>_____</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</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:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</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    <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:</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:</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:</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:</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  
(PLEASE PRINT OR TYPE)

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

\_\_\_\_\_  
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 Bidder/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 Bidder/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 Bidder/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 Bidder/Offeror has made. The efforts employed by the Bidder/Offeror should be those that one could reasonably expect a Bidder/Offeror to take if the Bidder/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 Bidder's/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 Bidder/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 Bidder/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 Bid/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 Bidder/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 Bidder/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 a firm 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 Bidder/Offeror is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and to 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 Bidder's/Offeror's Good Faith Efforts when the Bidder/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 Bid/Proposal Items as Work for MBE Firms**

#### **1. Identified Items of Work in Procurements**

(a) Certain procurements will include a list of Bid/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 Bidder/Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.

(b) Bidders/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 Bidders/Offerors**

(a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Bidders/Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.

(b) Where appropriate, Bidders/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 Bidder/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 Bidder/Offeror shall make all reasonable efforts to solicit those MBE firms.

(b) Bidders/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 Bidders/Offerors**

(a) When the procurement does not include a list of Identified MBE Firms, Bidders/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 Bidder/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 Bidder/Offeror should:

(a) provide the written solicitation at least 10 days prior to Bid/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 Bidder/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 Bidder/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 Bidder/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 Bidder/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-bid 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**

Bidders/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. A Bidder/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 Bidder's/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 a MBE Firm's quote is excessive or unreasonable include, without limitation, the following:

(a) the dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Bidder/Offeror;

(b) the percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Bidder/Offeror;

(c) the percentage that the MBE subcontractor's quote represents of the overall contract amount;

(d) the number of MBE firms that the Bidder/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) the number of quotes received by the Bidder/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 Bidder/Offeror may not use its price for self-performing work as a basis for rejecting a MBE Firm's quote as excessive or unreasonable.

6. The "average of the other subcontractors' quotes received" by the Bidder/Offeror refers to the average of the quotes received from all subcontractors. Bidder/Offeror should attempt to receive quotes from at least three subcontractors, including one quote from a MBE and one quote from a Non-MBE.

7. A Bidder/Offeror shall not reject a 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 Bidder/Offeror concludes is not acceptable, the Bidder/Offeror must provide a written detailed statement listing the reasons for this conclusion. The Bidder/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 a 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 Bidder/Offeror:

1. made reasonable efforts to assist interested MBE Firms in obtaining the bonding, lines of credit, or insurance required by the procuring agency or the Bidder/Offeror; and
2. made reasonable efforts to assist interested MBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

## **III. Other Considerations**

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

The decision-maker may take into account whether a Bidder/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 Bidders/Offerors in meeting the contract. For example, when the apparent successful Bidder/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 Bidder/Offeror could have met the goal. If the apparent successful Bidder/Offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other Bidders/Offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Bidder/Offeror having made Good Faith Efforts.

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

At a minimum, a Bidder/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 Bidder's/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 Bidder/Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Bidder's/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 Bidder/Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Bidder's/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 a MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the bidder/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 Bidder's/Offeror's Good Faith Efforts.

2. Submit any other documentation the Bidder/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):

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

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

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

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

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

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

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

PAGE \_\_ OF \_\_

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 BIDDER/OFFEROR MADE AVAILABLE  
TO MBE FIRMS**

PAGE \_\_ OF \_\_

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

Identify those items of work that the Bidder/Offeror made available to MBE Firms. This includes, where appropriate, those items the Bidder/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 Bidder's/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 Bid/Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Bidder/Offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the Bidder/Offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

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

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 \_\_

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

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/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 Bidder/Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Bidder/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 Bidder/Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see **Attachment D-1B – Exhibit A**). If the Bidder/Offeror used a Non-MBE or is self-performing the identified items of work, Part 3 must be completed.

<b>Name of Identified MBE Firm &amp; MBE Classification</b>	<b>Describe Item of Work Solicited</b>	<b>Initial Solicitation Date &amp; Method</b>	<b>Follow-up Solicitation Date &amp; Method</b>	<b>Details for Follow-up Calls</b>	<b>Quote Rec'd</b>	<b>Quote Used</b>	<b>Reason Quote Rejected</b>
<b>Firm Name:</b> <hr/> <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b>  <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		<b>Date:</b>  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	<b>Date:</b>  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	<b>Time of Call:</b>  <b>Spoke With:</b>  <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
<b>Firm Name:</b> <hr/> <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b>  <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		<b>Date:</b>  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	<b>Date:</b>  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	<b>Time of Call:</b>  <b>Spoke With:</b>  <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 \_\_

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

This form must be completed if Part 2 indicates that a MBE quote was rejected because the Bidder/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.

<b>Describe Identified Items of Work Not Being Performed by MBE (Include spec/section number from Bid/Proposal)</b>	<b>Self-performing or Using Non-MBE (Provide name)</b>	<b>Amount of Non-MBE Quote</b>	<b>Name of Other Firms who Provided Quotes &amp; Whether MBE or Non-MBE</b>	<b>Amount Quoted</b>	<b>Indicate Reason Why MBE Quote Rejected &amp; Briefly Explain</b>
	<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 Bid/Proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

1. Bidder/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. Bidder/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.
- Bidder/Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements.  
(DESCRIBE EFFORTS): \_\_\_\_\_

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

5. **Please Check One:**

- Bidder/Offeror did attend the pre-bid/pre-proposal conference.
- No pre-Bid/pre-Proposal meeting/conference was held.
- Bidder/Offeror did not attend the pre-Bid/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 BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE 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) 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 Business Enterprise in its Bid/Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Bid/Proposal;
- (3) fail to use the certified Minority Business Enterprise in the performance of the Contract; or
- (4) pay the certified Minority Business Enterprise solely for the use of its name in the Bid/Proposal.

<p><b>PRIME CONTRACTOR</b>  Signature of Representative: _____  Printed Name and Title: _____  Firm's Name: _____  Federal Identification Number: _____  Address: _____  Telephone: _____  Date: _____</p>	<p><b>SUBCONTRACTOR</b>  Signature of Representative: _____  Printed Name and Title: _____  Firm's Name: _____  Federal Identification Number: _____  Address: _____  Telephone: _____  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 BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE 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><b>MBE PRIME CONTRACTOR</b>  Signature of Representative: _____  Printed Name and Title: _____  Firm's Name: _____  Federal Identification Number: _____  Address: _____  Telephone: _____  Date: _____</p>
--

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

Report #: _____ Reporting Period (Month/Year): _____ <b>Prime Contractor: Report is due to the MBE Liaison by the 10<sup>th</sup> of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract #: _____ 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:																																							
<b>List all payments made to MBE subcontractor named above during this reporting period:</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%; text-align: center;"><u>Invoice#</u></th> <th style="width: 25%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Paid: \$</b></td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Paid: \$</b>		_____	<b>List dates and amounts of any outstanding invoices:</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%; text-align: center;"><u>Invoice #</u></th> <th style="width: 25%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Unpaid: \$</b></td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Unpaid: \$</b>		_____
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<b>Total Dollars Unpaid: \$</b>		_____																																					

- 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):**

1. Send one copy to the DPSCS Contract Manager: 2. AND Send one copy to the DPSCS- Office of Equal Opportunity MBE Division Email: <a href="mailto:MBE@dpsc.state.md.us">MBE@dpsc.state.md.us</a> OR Fax to: 410-318-8905 OR mail to: DPSCS- Office of Equal Opportunity – MBE Division 6776 Reisterstown Road Baltimore, MD 21215
---

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

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

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

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

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

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

- |   |
|---|
| <ol style="list-style-type: none"> <li>1. Send one copy to the DPSCS Contract Manager:</li> <li>2. AND Send one copy to the DPSCS- Office of Equal Opportunity MBE Division<br/>           Email: <a href="mailto:MBE@dpscs.state.md.us">MBE@dpscs.state.md.us</a> OR Fax to: 410-318-8905<br/>           OR mail to: DPSCS- Office of Equal Opportunity – MBE Division<br/>           6776 Reisterstown Road<br/>           Baltimore, MD 21215</li> </ol> |
|---|

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

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

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

MBE Subcontractor Name:																															
MDOT Certification #:																															
Contact Person:	E-mail:																														
Address:																															
City:	State:	ZIP:																													
Phone:	Fax:																														
<b>Subcontractor Services Provided:</b>																															
<b>List all payments received from Prime Contractor during reporting period indicated above.</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 15%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Paid: \$</b> _____</td> <td></td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Paid: \$</b> _____			<b>List dates and amounts of any unpaid invoices over 30 days old.</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 15%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Unpaid: \$</b> _____</td> <td></td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Unpaid: \$</b> _____		
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Prime Contractor:	Contact Person:																														

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1. Send one copy to the DPSCS Contract Manager:
2. AND Send one copy to the DPSCS- Office of Equal Opportunity MBE Division  
 Email: [MBE@dpscs.state.md.us](mailto:MBE@dpscs.state.md.us) OR Fax to: 410-318-8905  
 OR mail to: DPSCS- Office of Equal Opportunity – MBE Division  
 6776 Reisterstown Road  
 Baltimore, MD 21215

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

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

**Solicitation Number DPSCS Q0015010  
Substance Abuse Treatment Services**

A Pre-Bid Conference will be held at 10:00 AM on Monday November 10, 2014 at MDOT Headquarters, 7201 Corporate Center Drive, Hanover, MD 21076 – TSO Conference Room – Richard Trainor. Please return this form by November 6, 2014, advising whether or not you plan to attend.

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

Patti Tracey  
Department of Budget & Management  
45 Calvert Street, Room 148  
Annapolis, MD 21401  
Email: patti.tracey@maryland.gov  
Fax #: 410-974-3274

Please indicate:

Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

No, we will not be in attendance.

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

---

Signature

Title

---

Name of Firm (please print)

## ATTACHMENT F – BID PRICING INSTRUCTIONS

In order to assist Bidders in the preparation of their Bid and to comply with the requirements of this solicitation, Bid Pricing Instructions and a Bid Form have been prepared. Bidders shall submit their Bid on the Bid Form in accordance with the instructions on the Bid Form and as specified herein. Do not alter the Bid Form or the Bid Form may be rejected. The Bid Form is to be signed and dated, where requested, by an individual who is authorized to bind the Bidder to the prices entered on the Bid Form.

The Bid Form is used to calculate the Bidder's TOTAL BID PRICE. Follow these instructions carefully when completing your Bid Form:

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

**BID FORM**

Provided separately as Attachment F – Bid Form in an excel spreadsheet

**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):

- Four checkbox options for exemption reasons: nonprofit organization, public service company, 10 or fewer employees, and more than 10 employees.

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.

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

- One checkbox option: 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

### A Summary of Certain Federal Fund Requirements and Restrictions

1. Form and rule enclosed: 18 U.S.C. 1913 and Section 1352 of P.L. 101-121 require that all *prospective* and present sub-grantees (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the form "Certification Against Lobbying." It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF- LLL.
2. Form and instructions enclosed: "Form LLL, Disclosure of Lobbying Activities" must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.
3. Form and summary of Act enclosed: Sub-recipients of federal funds on any level must complete a "Certification Regarding Environmental Tobacco Smoke," required by Public Law 103-227, the Pro-Children Act of 1994. Such law prohibits smoking in any portion of any indoor facility owned or leased or contracted for regular provision of health, day care, early childhood development, education, or library services for children under the age of 18. Such language must be included in the conditions of award (they are included in the certification, which may be part of such conditions.) This does not apply to those solely receiving Medicaid or Medicare, or facilities where WIC coupons are redeemed.
4. In addition, federal law requires that:
  - A) OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations requires that grantees (both recipients and sub-recipients) which expend a total of \$300,000 or more (*\$500,000 for fiscal years ending after December 31, 2003*) in federal assistance shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 and the Office of Management and Budget (OMB) Circular A-133. All sub-grantee audit reports, performed in compliance with the aforementioned Circular shall be forwarded within 30 days of report issuance to the Department Contract Manager.
  - B) All sub-recipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).
  - C) Recipients of \$10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B).

Section 503 of the Rehabilitation Act of 1973, as amended, requires recipients to take affirmative action to employ and advance in employment qualified disabled people. An affirmative action program must be prepared and maintained by all contractors with 50 or more employees and one or more federal contracts of \$50,000 or more.

This clause must appear in subcontracts of \$10,000 or more:

- a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- b) The contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor issued pursuant to the act.
- c) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the secretary of labor issued pursuant to the act.
- d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 791 *et seq.*) prohibits discrimination on the basis of handicap in all federally assisted programs and activities. It requires the analysis and making of any changes needed in three general areas of operation-programs, activities, and facilities and employment. It states, among other things, that:

*Grantees that provide health ... services should undertake tasks such as ensuring emergency treatment for the hearing impaired and making certain that persons with impaired sensory or speaking skills are not denied effective notice with regard to benefits, services, and waivers of rights or consents to treatments.*

- D) All sub-recipients comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.
- E) All sub-recipients of federal funds from SAMHSA (Substance Abuse and Mental Health Services Administration) or NIH (National Institute of Health) are prohibited from paying any direct salary at a rate more than Executive Level 1 per year. (This includes, but is not limited to, sub-recipients of the Substance Abuse Prevention and Treatment and the Community Mental Health Block Grants and NIH research grants.)
- F) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.
- G) For any education program, as required by Title IX of the Education Amendments of 1972, there may be no discrimination on the basis of sex.
- H) For research projects, a form for Protection of Human Subjects (Assurance/ Certification/ Declaration) should be completed by each level funded, assuring that either: (1) there are no human subjects involved, or that (2) an Institutional Review Board (IRB) has given its formal approval before human

subjects are involved in research. [This is normally done during the application process rather than after the award is made, as with other assurances and certifications.]

- I) In addition, there are conditions, requirements, and restrictions which apply only to specific sources of federal funding. These should be included in your grant/contract documents when applicable.

**CERTIFICATION REGARDING LOBBYING**  
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Award No.	Organizational Entry
Name and Title of Official Signing for Organizational Entry	Telephone No. Of Signing Official
Signature of Above Official	Date Signed

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. Contract <input type="checkbox"/> b. Grant <input type="checkbox"/> c. Cooperative Agreement <input type="checkbox"/> d. Loan <input type="checkbox"/> e. Loan guarantee <input type="checkbox"/> f. Loan insurance		<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. Bid/offer/application <input type="checkbox"/> b. Initial award <input type="checkbox"/> c. Post-award		<b>3. Report Type:</b> <input type="checkbox"/> a. Initial filing <input type="checkbox"/> b. Material change  For Material Change Only: Year _____ quarter _____ Date of last report _____	
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known:			<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known:		
<b>6. Federal Department/Agency:</b>			<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____		
<b>8. Federal Action Number, if known:</b>			<b>9. Award Amount, if known:</b>  \$		
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>			<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a) (last name, first name, MI):</i>		
<b>11. Amount of Payment</b> <i>(check all that apply)</i> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned			<b>13. Type of Payment</b> <i>(check all that apply)</i> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____		
<b>12. Form of Payment</b> <i>(check all that apply)</i> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____					
<b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b>  <i>(attach Continuation Sheet(s) SF-LLLA, if necessary)</i>					
<b>15. Continuation Sheet(s) SF-LLLA attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No					
<b>16.</b> Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
<b>Federal Use Only:</b>					Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Invitation for Bids (IFB) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "IFB-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
10. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

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## CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro Children Act of 1994, Part C Environmental Tobacco Smoke, requires that smoking not be permitted in any portion of any indoor facility owned, or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such Federal funds. The law does not apply to children's services provided in private residences, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole sources of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this certification, the offeror/contractor (for acquisitions) or applicant/grantee (for grants) certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-recipients shall certify accordingly.

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Signature of Authorized Certifying Individual

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

**Reference COMAR 21.05.08.08**

**(submit with Bid/Proposal)**

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)

## 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 Substance Abuse Treatment Services Solicitation # Q0015010; 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. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, 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 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 provided by the State 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.
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 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**

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

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

**CERTIFICATION TO ACCOMPANY RETURN 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.

**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)

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”) is made by and between the Department of Public Safety and Correctional Services (DPSCS) and \_\_\_\_\_ (Insert Name of Contractor) (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§ 4-301 *et seq.*) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

**DEFINITIONS.**

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- B. Specific definitions:
  - 1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean (Insert Name of Contractor).



2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean (DPSCS).
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
4. Protected Health Information (“PHI”). Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103.

#### **PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.**

- A. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement or as required by law.
- B. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity’s policies and procedures regarding minimum necessary use of PHI.
- C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.
- D. Business Associate may, if directed to do so in writing by Covered Entity, create a limited data set, as defined at 45 CFR 164.514(e)(2) , for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 CFR § 164.514(e)(2). Business Associate will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 CFR § 164.514(e)(4), with the limited data set recipient. Business Associate will report any material breach or violation of the data use agreement to Covered Entity immediately after it becomes aware of any such material breach or violation.
- E. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- F. The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the State’s payment of Business Associate for its performance pursuant to the Underlying Agreement.
- G. The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

#### **DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.**

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law;
- B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
- C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- D.
  - 1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure;
  - 2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:
    - A. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
    - B. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
    - C. Is in substantially the same form as **ATTACHMENT K-1** attached hereto; and
    - D. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
      - i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
      - ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
      - iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;

- iv) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
  - v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
- E. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;
- F. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- G. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
- H. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
- I. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- J. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.
- K. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

#### **IV. TERM AND TERMINATION**

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for Substance Abuse Treatment Services Solicitation # (Q0015010), and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner. If it is impossible to return or destroy all

of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or
2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered entity determines or reasonably believes that cure is not possible.

C. Effect of Termination.

1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

D. Survival. The obligations of Business Associate under this Section shall survive the termination of this agreement.

## V. **CONSIDERATION**

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

## VI. **REMEDIES IN EVENT OF BREACH**

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of

Business Associate's breach. The remedies contained in this Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to Covered Entity at law or in equity.

## VII. MODIFICATION; AMENDMENT

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA rules and any other applicable law.

## VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

## IX. COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

## X. MISCELLANEOUS

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

(Insert the name and contact information of the HIPAA contact person within the Department or appropriate covered health care entity)

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

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

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

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

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

E. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.

F. Severability. If any term contained in this Agreement 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 Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

G. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.

H. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

**COVERED ENTITY:**

**BUSINESS ASSOCIATE:**

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

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

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

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

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

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

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

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

**ATTACHMENT K-1**

**FORM OF NOTIFICATION TO COVERED ENTITY OF  
BREACH OF UNSECURED PHI**

This notification is made pursuant to Section III.2.D(3) of the Business Associate Agreement between (Department) and \_\_\_\_\_ (Business Associate).

Business Associate hereby notifies (DPSCS) that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: \_\_\_\_\_

Date of the breach: \_\_\_\_\_ Date of discovery of the breach: \_\_\_\_\_

Does the breach involve 500 or more individuals? Yes/No      If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach: \_\_\_\_\_

Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:

Contact information to ask questions or learn additional information:

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

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

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

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

Phone Number: \_\_\_\_\_

**ATTACHMENT L – MERCURY AFFIDAVIT**

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

**ATTACHMENT 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:

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

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

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

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

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

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

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

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

**ATTACHMENT O – DHR HIRING AGREEMENT**

This solicitation does not require a DHR Hiring Agreement.